

IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 2003

IN THE MATTER OF

the Treaty of Waitangi Act
1975

AND

IN THE MATTER OF

Te Paparahi o Te Raki
District Inquiry

AND

IN THE MATTER OF

a claim by Cheryl Turner,
John Klaricich, Harerei
Toia (deceased), Ellen
Naera, Fred Toi, Warren
Moetara and Hone
Taimona on behalf of
Ngati Korokoro, Ngati
Wharara and Te Pouka
Hapu



BRIEF OF EVIDENCE OF CHERYL LOUISE TURNER

Dated this 17th day of March 2014

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*Kia whakapiri ake au ki aku maunga, ko Whiria kei te taha ki te marangai,
ko Maukoro ia kei te taha ki to hauauru,
ko Hokianga taku tai.
Waiho I Whiria I te paiaka o te riri I te kawa o Rahiri.
Ko te pa ko Whiria, te toa o runga ko Rahiri.*

Introduction

1. My name is Cheryl Turner, I am of Te Pouka, Ngatikorokoro and Ngatiwharara descent of Nga Hapu o Te Wahapu o Hokianga nui a Kupe. I am also of Te Mahurehure and Ngatihau, Ngatikaharau descent, and from the hapu Nga Uri o Hikihiki of Ngatiwai. Below you will see my whakapapa and descent from Rahiri and others:

Rahiri	Rahiri	Rahiri
Kaharau	Uenukukuare	Kaharau
Taura	Uewhati	Ruapotokatoka
Tupoto	Uetaoroa	Toia
Korokoro	Rangiheketini	Kaiahi
Whitiki	Kuiawai (<i>Te Mahurehure</i>)	Waiora
Angaroa	Tarahape	Hiku
Te Haunui	Te Taonga	Nohoawa
Te Hunga	Tukarawa	Te Toka
Hape	Hauraki	Tio Te Toka (<i>Te Pouka</i>)
	Huirangi	Matiu
<u>(Ngatikorokoro) Kahi</u>	<u>Kare (Ngatiwharara)</u>	Wiremu
	Penekahi – Rihi (<i>Atiawa</i>)	Hipio Wi Matiu – Mereana Te Kihi (<i>Ngatihau, Ngatikaharau</i>)
	Keita Hone Toia	
	Kare - Ivan Sarich (<i>Dalmatia</i>)	Pore Hipio Matiu – Makere Piripi (<i>Ngatiwai</i>)
	<u>Elizabeth Sarich</u>	<u>Keith Matthews</u>

Cheryl

2. My tupuna Kahi was a prominent chief of Te Wahapu o Hokianga, along with Moetara, at the time Augustus Earle (a well-known artist) visited Hokianga for the first time on October 30 1827 on board the Governor Macquarie under the command of Captain Kent. Kahi and Moetara are prominent figures of this time. In his journal, Augustus Earle described how;

“the ship came to anchor off a native village called Parkuneigh (Pakanae), where 2 chiefs of consequence came on board who soon cleared our decks of a considerable number. We paid great attention to these chiefs admitting them into the cabin ...the names of these chiefs was Moortara (Moetara) and A Kaeigh (Kahi) ... the chiefs of the village opposite to which we had anchored”¹.

3. According to my whanau korero, Penekahi (Kahi’s son) chose to leave Hokianga on board a sailing ship, never to return, resulting in the hapu leadership being passed from Kahi to his cousin, Moetara, as Kahi had 5 grand-daughters. Moetara fulfilled the leadership role after Kahi’s death. Moetara and Kahi were also brother in-laws having married two sisters, Kare and Kohau, who descend from Kuiawai of Te Mahurehure.

Korero from Uncle Patu Hohepa²; “Penekahi and group from Hokianga went to Paribaka to help Te Whiti o Rongomai and Tobu Kakahi. After sacking of Paribaka by Bryce, the 200 mile walk of many through snow to Obakune is well known. Not so well known is Penekahi, his tomo and marriage to Ribi (Ihapera Puketapu), his stay in Waimamaku - Pakanae - Waima - and our descent from him (eg Pene Kahi Trust). Thats our Atiawa side”.

4. My tupuna, Tio Te Toka, is a signatory to Te Tiriti o Waitangi. He was one of the leaders who took part in pre-1840 land transactions at Whiria (OLC 941), Oha (OLC 174), Omapere (OLC 541), Koutu (OLC 542) and Taikapiti (OLC 12).
5. I live with my husband on whanau land at Omanaia, whenua handed down from my tupuna Mereana Pekama Te Kihi of Ngatihau, Ngatikaharau. We returned from Auckland here to the Hokianga to live with Mum and Dad in 1995. My two children and five mokopuna also live in Hokianga.
6. From the time we moved back home my Dad encouraged me to get involved in the whenua, especially with the Marae, and over time I have come to be involved in many

¹ Augustus Earle, “A Narrative of Nine Month’s Residence in New Zealand” (1827), p30,31

² Personal communication with from Patu Hohepa, 18/3/14.

different roles. I enjoy my role as kai karanga at my Marae, a privilege and honour, the one place I can truly express being Maori, of continuing traditions and connecting with my tupuna of the past. I'm involved in every aspect of hui at our Marae and at other Marae too, from ensuring the cultural integrity and kawa is upheld, to manaaki tangata and working in the wharekai.

The Claim

7. In 2002 I started working as the claims co-ordinator and treasurer for the Hokianga Claims Collective. At this point I would like to acknowledge all our kaumatua and kuia who played a huge role in getting us here today, especially Uncle Adam and Aunty Rau Pickering, Matua Topia Makiha, the first chair of the Hokianga Claims Collective and Matua Rima Edwards.
8. In 2008 we filed our Te Wahapu claim to particularly focus on Crown breaches of Te Tiriti o Waitangi that affect our ability to act as aahi ka and kaitiaki and failure to protect and preserve our culture and way of life as Maori. We want to see our traditional practices benefitting our tamariki mokopuna and future generations as our tupuna envisaged.
9. In this brief I address the effects of Crown breaches in respect of:
 - a. Kaitiakitanga, and the lack of effective recognition and protection for us as aahi ka and kaitiaki;
 - b. Whenua tuku iho, the failure to ensure that sufficient land was left to sustain us;
 - c. Manaaki tangata, the failure to ensure adequate provision of health services.

Kaitiakitanga

10. Most of my childhood was spent at Pakanae with my parents and my mother's whanau, especially my mother's eldest sister, Aunty Parker. I learnt a lot about our whakapapa ties to the whenua, the moana and our awa from them. One of my earliest recollections is of walking with my Aunty Parker along the beach at Pakanae at the foot of Whiria maunga

to collect pipi. She would build a fire, place a sheet of corrugated iron over the fire, and throw the pipi on top to open. Even to this day when I smell manuka smoke I am instantly transported back to that time on the beach, eating pipi and bread, playing on the beach, or swimming, simply magic.

11. Mum would take us around “broken rock” in Pakanae to Koutu to the pipi beds there. The surviving pipi beds in Koutu are under constant threat of waste water discharge from the area. Silt and gravel are slowly smothering the beds in Pakanae due to deforestation of Te Ramaroa for timber and from our maunga, Puketi and Paeroa, cleared for farming. These pipi beds have sustained my whanau for many, many generations.
12. My hope is to be able to do that same thing with my mokopuna and my mokomoko too, but I am not confident that this will happen unless we can change the way our awa and wider environment is being managed.
13. I can remember collecting scallops at Pakanae, oysters on the rocks, and kina too. We only had to row out from Pakanae beach where you could always guarantee catching karati. Netting for patiki and kanae was a whanau event, everyone helped set the nets, pull them in loaded with fish, then clean them all. That rarely happens today, the fish aren't there like they once were.
14. My mother talks about the construction of the boat ramp at Opononi and how it took the sand away so she could no longer walk the traditional pathway from Pakanae to Omapere and beyond, it has disappeared and only slippery limestone and rocks remain.
15. Aunty Parker and some of my old Aunties were always insistent about keeping the foreshore and awa clean for the fish and kaimoana to ensure they would be there tomorrow. These things they instilled in me from the age of 6 years. I have always had that feeling and awareness of the need to protect our precious resources. Unfortunately, in my lifetime the health of our awa and its waters and fisheries has got worse and worse.
16. Over the last 15 or so years I have been an active member of the Pakanae Hapu Management Committee (“PHMC”) which was established to record our sites of significance and address environmental matters. As a member I have been asked to join local and central government groups that deal with resource management and environmental issues.

17. I am a member of the Far North District Council (“FNDC”) Maori Reference Group and have attended two meetings about consultation for resource consents. The PHMC and the Marae Committee at Pakanae, receive panui about consent applications in our area and sometimes in others areas too. We offer feedback if we need to, however as I will describe below, where FNDC is itself an applicant on consents for public utilities, we have not always been consulted.
18. In Te Wahapu we have experienced a lack of continuity and commitment in FNDC recognising our kaitiaki role, despite the work of the PHMC over the years. We always need to re-educate new council staff with our vision for our rohe and I haven’t seen any benefits come out of the hui held by the Maori Reference Group. Our last meeting was about 3 years ago.
19. Our draft Hapu Environmental Management Plan (HEMP) was lodged with FNDC in 2008, but since receiving the plan, FNDC have sat on it because of some perceived differences of opinion in content voiced by local whanau. The plan now needs updating and is to be redrafted.
20. I am a member the Hokianga Foreshore Restoration Committee which was formed to deal with proposals for the restoration of State Highway 12 along the foreshore at Opononi as part of a coastal management strategy. These proposals have come about in response to erosion all along our foreshore which has seen 20 metres of the foreshore eaten away since the 1960s. Storm events can erode huge areas in a very short period.
21. Although for the non Maori members of the group there are no cultural issues, we are there as kaitiaki. In response to a proposed new seawall at Opononi/Omapere, where SH12 was constructed in the 1930’s, we sought the protection of our ancient sites within the foreshore, and the protection of the limestone cliffs at Waiarohia, including the monitoring of the effects of works there. We opposed any access ways being provided from the cliff top to the beach, due to the dangers posed.
22. Last year I became a member on the Environmental Protection Authority’s Maori National Network, which has been very interesting. I have enjoyed attending their wananga to hear how and what other hapu and iwi groups are doing in their respective rohe. My impression is that we have a long way to go in our rohe, and in Ngapuhi, to attain the sort of relationships that others are working toward with local authorities. For

example at the conference last year speakers from Ngai Tahu spoke of the local government policies that support and protect the whale watching business there. They commented that to keep what they have, their waters must be pristine, and sewage is kept out of their water ways. They have formed a group with the local council and meet regularly to discuss anything to do with their harbour. Another issue where Ngai Tahu has real authority is over their pounamu, no one can take greenstone out of Waiponamu without Ngai Tahu tautoko. In Tainui, along the whole of the Waikato River we were told that in every section, every hapu have a say in what happens in their particular part of awa, with regard to cleaning it up. It seems that once a settlement with the Crown has been reached, there is more willingness to deal with Maori as kaitiaki.

23. The Maori National Network seems to be set up to identify, quantify and compartmentalise Maori kaitiakitanga. The networking is good but I have felt that although they say, 'we want to hear from whanau, hapu and iwi', actually we are just another Maori face to consult with.
24. To me there is an urgent need for hapu, as kaitiaki (not just iwi) to sit at the table with regional and central government decision makers. In other words for us as kaitiaki to be in a partnership with the Crown in our environment, not to be just treated like another stakeholder or interested party. In Te Wahapu we have had to become involved as submitters at the resource consent application stage and be prepared to spend time and resources protecting those things that are important to us through the court system, although they are supposed to be recognised and protected under te Tiriti o Waitangi.

Significant sites

25. In 1998 I became involved in a FNDC pilot programme to identify cultural sites of significance within our rohe. This came about as a necessity because sites at Omapere and Opononi were under constant pressure from development for housing. Many of our culturally important sites were being literally bulldozed overnight, like one of our maunga, Maungaroa at Kokohuia, which was destroyed by a developer who just didn't care about its cultural significance.
26. We decided that we needed to ensure the protection and preservation of our sacred sites and sought guidance from Uncle John Klaricich who was then the Deputy Mayor at FNDC. He directed us to council staff who were looking for a way to identify sites of

significance in the District Plan. The pilot programme was established and the PHMC was formed. The core group of members were Hone Taimona, Alan Hessel, Fraser Toi, Fred Toi, Te Wenehi Turner (my husband) and I. Although members of the group change from time to time, we still remain there.

27. Our first action was to hold hui and wananga with our kaumatua and kuia to hear and gather their precious korero in order to help us identify the many sites. Most of those kaumatua and kuia who shared their korero with us back then have passed away. Lily Rollo, Toi Marsden, Te Patara Tane, Pera Tane, Hona Hemara, Kevin Toia, Celia Yakas and Harriet Dawson, these were our main supporters. Wiritai Toi from Kokohuia lent his support and brought others with him too.
28. Once we had heard all of the korero we would write it up and then go and try to find it. Three of us were trained in the basic use of the Global Positioning Systems technology to assist us pinpoint the exact position of the sites. I stress the word 'basic' training because none of us were experts but there was no other means of accomplishing the mahi on a budget of \$0.
29. Our hikoi took 8 months during which time we identified and recorded over 100 sites of cultural significance to our hapu o te Wahapu. Many of these, including our notable trees at Nuhaka and Te Hunoke are identified in the Far North District Plan. The relevant pages are attached at Appendix A. A small number of silent files which are confidential to the hapu also exist.
30. During the hikoi we re-discovered our whenua, maunga, awa and moana, wahi tapu, old burial sites, tauranga waka, old gardens beds, shell pits, papakainga pits and battle grounds. Many of these places were named and occupied by Kupe, Ruanui, Nukutawhiti and Rahiri. When we identified the special sites where once our tupuna stood, slept, or sat, the need to protect them became even more paramount to us. We wanted to ensure that what we had seen, our mokopuna too will be able to see and know their significance to our hapu and to Ngapuhi.
31. There were some wonderfully satisfying experiences we encountered throughout the initial hikoi of discovery whereby everything seemed to mysteriously fall into place. Each hikoi begun and ended with karakia. We found various taonga, such as stone adzes and stone anchors. Te Wenehi found an un-finished adze head on the top of Whiria Pa, it

seems that during recent heavy rainfall, erosion had unearthed only a portion of the adze, the rest of it was still lodged inside the bank. It resembled a kutai sticking out. A karakia was performed and the adze was pulled from where it had lay for hundreds of years.

32. Another discovery was a significant papakainga on the northern face of Te Paatu Maunga in Waiwhatawhata. This extensive papakainga has about 6 levels of pits, some quite deep, which we know would have been used for living quarters. We were able to mark these places and write their relevant history.
33. All of those on our hikoi were eager to learn about our tupuna and the places they once touched. There was an unmistakable glow in the eyes of the kaumatua and kuia who attended the hapu hui and wananga we held to report back and discuss our progress.
34. The information collated during the pilot has been compiled into a hapu resource book, of which 3 copies were made and presented to our Marae at Pakanae, Kokohuia and Waiwhatawhata. These books have been well used by our people in their studies, and for whanau research purposes.
35. All of this knowledge helped to inform our draft HEMP, but despite all of this knowledge made available to FNDC and to the Northland Regional Council, (“NRC”), we still don’t seem to be able to rely on our values being upheld when it comes to major development. Although we have been able to influence some applications for resource consent to build houses, there is still an issue where it comes to the provision of public utilities and probably future developments too.
36. Over the past ten years or so, our Marae and the PHMC have been involved in opposing FNDC applications for resource consent to both, discharge wastewater into the Hokianga Harbour, and, to take water from our awa. In both cases we have had to appeal NRC decisions which have granted resource consents on conditions unacceptable to us.

Waste Water Discharge to the Hokianga Harbour

37. In 2007 our Marae were submitters against an FNDC application seeking resource consents for a 50% increase in the volume of wastewater being discharged into the Hokianga Harbour from the wastewater treatment ponds located at Waiarohia. The renewal consent was for a 24 year term (to 2031). We were not consulted prior to the application being made.

38. Matua John Klaricich has explained that at the time of the original application the elders remained silent to the outfall being placed where it is and for wastewater to be discharged into the harbour. The reason was that they had worked hard and wanted to move off the hills closer to their family land, but in order for housing permits to be issued, a treatment plant was required. Subsequently this was placed on the banks of our awa, the Waiarohia, and the treated discharge piped from there into the harbour. Ever since then we have tried to mitigate this cultural hara and oppose consents to renew the discharge.
39. We know that, at present, in addition to what is permitted to be discharged into the harbour from within our rohe (685 cu/m per day), treated wastewater discharges from consents granted at Rawene/Omanaia (254 cu/m per day) and at Kohukohu (40 cu/m per day) also eventually drain into the harbour. The Kaikohe waste water treatment plant discharges into a catchment which also ultimately drains into the Hokianga Harbour and that consent provides for a permitted daily discharge of 1710 cu/m per day. On these figures there is potential for almost 1 million cubic metres of treated waste water to be discharged and drained into the Hokianga Harbour every year. The consents provide for dry weather discharges, when there is wet weather the discharges are of significantly more volume. A copy of these consents is attached at Appendix B.
40. We were concerned that the existing discharge consent from the Waiarohia would be 'rolled over' and, if granted, could allow residential development beyond the township boundaries, thereby increasing pressure on both our waterways and our harbour. We also knew that there had been no proper investigation of alternative land disposal methods, that there was already poor compliance to ensure the wetland treatment ponds were being properly maintained with the result that our awa at Waiarohia becoming contaminated. We wanted to be involved in monitoring the conditions of consent and sought that a community liaison group be put in place.
41. As it turned out the NRC hearings committee granted consent. Although we achieved a reduction in the area of benefit, which was a huge win for us because it meant that the unrestricted development of our rohe that threatened to explode could be curtailed, and, the inclusion of a community liaison group to monitor the conditions, the other consent conditions didn't deal with our remaining concerns. We filed an appeal in the Environment Court on the following grounds:

- a. The waste water discharge pipe was not located where it should have been on the harbour bed (it was too short and close to the shore and a piece had broken off and not replaced);
 - b. Inadequate specificity of the sampling sites monitoring effects of the discharge on the Waiarohia Stream;
 - c. Failure to require investigation of alternative disposal methods and land treatment options (this was the purpose of reducing the consent term, to require that to be done);
 - d. Failure to require specific methods techniques and works for ensuring the treatment plant worked properly (there is significant storm water infiltration into the wetland treatment area).
42. Following the agreements reached at the Environment Court assisted mediation the consent conditions now require:
- a. Public waste water disposal is limited to existing housing and any future housing within the townships of Omapere and Opononi as the area of benefit;
 - b. A term of consent of 10 years (due to expire in 2019),
 - c. A community liaison group to be formed to discuss matters relating to the consent, (to include representatives from the Marae at Pakanae, Kokohuia, Waiwhatawhata and Waimamaku and from Te Runanga o Te Rarawa);
 - d. Works to be done to mitigate the storm water runoff into the waste water treatment ponds.
 - e. Investigation of alternative methods of waste water discharge to land areas within 2 years of the grant of consent.
43. The community liaison group has recently met with FNDC to discuss its compliance with the conditions of consent, and in particular the investigation of alternatives. Unfortunately FNDC appears to be more focussed toward the next consent process, rather than ensuring compliance with the current conditions of consent. The lack of willingness to consider alternative wastewater disposal methods, seems to be based purely on who will bear the cost with FNDC seeking to consult with the community over the

expense of changing the waste water system. The report on land alternatives has been nothing more than a desk top exercise. I attach a copy of the summary report at Appendix C.

44. We believe that improvements can be made to the way in which community wastewater is disposed of. We have suggested assessing the potential for summertime discharge of wastewater to land and considering alternative technologies to reduce and eventually end the discharges into our harbour. But without a proactive council willing to resolve the culturally unacceptable practise of dumping human waste into our food basket, we have to take part in the ongoing consenting processes which takes a toll on our people and meagre resources.

Wai

45. I have always been told to respect the water and our waterways, many of which contain wahi tapu and significant sites. My aunties and uncles taught us what could be done and not done in the different places along the awa. We have always maintained our kaitiakitanga over our waters drawn from catchments at Pakanae and at Kokohuia. We joined the Inquiry into the National Freshwater and Geothermal Resources, Wai 2358, to reiterate that we have never relinquished our status as kaitiaki of the waters and waterways within our rohe and that we wish to be heard on any matters that affect them.³
46. Our old people sought to ensure that our Marae and lands at Pakanae and at Kokohuia always had access to water, but through legislation, our ability to retain these cultural places and autonomy over our waterways has been ignored, the waters severely depleted and polluted, in some cases having dried up all together. These include our awa behind Araiteuru, Taiharuru just inside the harbour, Ngutupakapaka referred in Matua John's brief, Ohineturere, Waikohu, Pukohu, Pukanui, Waihuka and Putoetoe which have all been affected.
47. The PHMC was involved in opposing the FNDC application for a resource consent renewal for the Opononi/Omapere public water supply ("PWS"). This community resource is provided at the expense of the awa at Waiotemarama and Waiarohia.

³ Wai 2358, #3.1.058

48. The Waiarohia awa contains many wahi tapu and sites of significance, including the landing place of Ruanui's waka, Mamari. Our pepeha and karakia tell of the first human encounters with Waiarohia:

“E ta kei Waiarohia te tumu herenga waka, kei Kokohuia taku taumata puna wai i nobongia e te kokopu, Ko Akiba kei te tai, ko Mapuna kei te puaha, ko Taitapu ko roto mai, ko te tu, tena I whakapepehatia ai e nga tupuna e pari ai te tai e timu ai te tai’. Tena te mana o Ngapuhi he mea huna kei te wai e te kahui Ariki”

49. Our tupuna constructed a dam high up in the maunga located above Kokohuia, this supply provided water to Omapere school and some farms and houses. Despite the presence of this dam, in the 1970's and without consultation with us, the Hokianga County Council was granted consent to construct an in-stream storage dam right down on the lower reaches of the Waiarohia. This dam captures all of its tributaries for use as part of the public water supply. I attach a copy of part of the NRC report outlining this background and the associated problems it created at Appendix D.

50. In particular the report records:

“Ongoing management issues with the dam have been a feature of its history, including the build up of sediment and debris from the catchment, which serves to reduce the water storage capacity of the dam. This has also affected the quality of the water behind the dam, which has led to the need for greater treatment before use and also ongoing dam maintenance to maintain the capacity, thereby increasing the costs to the PWS when the water source is utilised.”

51. The land below the dam has been under threat and subject to flooding. Mrs Ellen Naera (nee Toi) will speak to this further in her brief.

52. The NRC Report on the application, also details a poor history of council compliance with previous consents, dating back to the 1970's and a lack of willingness to deal with the issues again in the 2004 application. A copy of the relevant parts of the report is attached at Appendix F. Of note is that there are no by-laws in place requiring onsite tanks, even though this was recommended in FNDC's own plan. In the summer there are regular and predictable shortages especially during the holidays when our awa frequently run dry due to the demand from visitors and those returning home for the holidays.

53. The report says,

“ ... other alternative options that have not been investigated or eliminated as options include increased bulk potable water storage to enable better management of existing resources, and the use of on-site water tanks for new and existing housing, as recommended by the Revised Proposed District Plan, and by a proposed bylaw for on-site water storage that was presented to the FNDC Utilities Committee in May 2006 for consideration, with no reported progress since.”

54. The Waioitemarama and the Kokohuia catchment areas are both a part of an important ecological area vested in the Department of Conservation (“DoC”). DoC also opposed the applications and provided the Hearings Committee with ecological information about the forested area that contributes to the water and soil protection of the catchment. A copy of the relevant part of the ecological information provided by the DoC is attached at Appendix E.

55. When they lodged the consent application in 2004, FNDC refused to acknowledge that their management of our water should have regard to our customary ownership and kaitiakitanga. They did not even carry out a cultural impact assessment.

56. At the NRC Hearings Committee meeting we sought an adjournment so that a cultural impact assessment could be undertaken. This was granted but the eventual Hearings Committee Decision did not sufficiently address our concerns and we filed an appeal in the Environment Court. In summary our grounds of appeal were:

- a. Excess water was proposed to be extracted from our awa (from 182 cubic metres per day to 900);
- b. The proposal failed to recognise or provide for our relationship with our ancestral waters and sites in that it continued the use of a dam structure and failed to require the water flow to be maintained;
- c. There was inadequate consideration of alternative water supply arrangements including relocating the dam;
- d. The proposal was in breach of the relevant planning documents and provisions in the RMA and did not provide for future generations.

57. Following mediation the conditions of consent were amended to, (amongst other matters):
- a. reduce the amount of increase in the water take (to 375cu m per day),
 - b. require that a continuous flow of water downstream from the dam is maintained;
 - c. require an investigation into the relocation of the dam within 2 years of the grant of consent, or 3 years if advised delayed;
 - d. construct a fish pass within 3 years of the grant of consent;
 - e. investigate leaks within the system;
 - f. restrict the area of benefit to the townships of Omapere and Opononi;
 - g. establish a community liaison group to discuss matters relating to the consent.
58. I attach a copy of the Consent Order which details the changes to the conditions as Appendix G.
59. The consent monitoring authority, NRC, has recently advised FNDC that they are in breach of the conditions of consent for both the Waioitemarama and the Waiarohia. At a recent meeting of the community liaison group, the FNDC officer indicated that the work required by the consent would be undertaken over the next few months. I attach a copy of the NRC monitoring report as Appendix H.

Matariki

60. Our people have always used the water from the puna Matariki, named by Kupe on his arrival into the Hokianga Harbour that falls from Te Ramaroa located above Pakanae. Awapokanui and Awapokaiti are its tributaries. We understand that it is the source from which Moetara provided visiting ships with fresh water in 1827, and right up to this day Matariki continues to feed the people of Pakanae.
61. Matariki is located on Pakanae 5A Block of which I am a trustee on the Ahu Whenua Trust that administers the block. In 1857, Pakanae 5A was partitioned from the original Pakanae 5 Block of 740 acres.⁴

⁴ Berghan, Northland Land Block Narratives, Wai 1040, # 39(j), p48

62. In 1926 Pakanae 5A was vested in the Tokerau District Maori Land Board which granted a neighbouring farmer, AG Fell the right to run water pipes over the land to access Matariki. The terms were for 15 years, with payment of one pound per year to the Board and free water supplied to the Pakanae settlement. Mr Fell was not able to charge the 'natives' for their use of the water or pipes, nor make a profit from the water, but could charge others for his expenses. If the local body or persons other than Pakanae Natives, used the water, the Board could charge a reasonable sum for their water use. I attach a copy of the agreement as Appendix I.
63. The Kauri Timber Company was the grantee previous to AG Fell, the pipes having been laid in 1901 to supply the Koutu Sawmill. In 1958, Glynn Fell's son, also a farmer, surrendered the water supply to the community and the Pakanae Water Board was formed to take over the maintenance of the pipes.
64. By 1999 the water supply provided free but untreated water to Pakanae Marae, 2 churches, 5 or 6 farms and about 26 houses. However as the water was untreated many manuhiri and our tamariki got sore puku's. Following severe flooding in 1999, a national water initiative to provide rural communities with clean safe drinking water provided an opportunity for us to upgrade our supply as a pilot project.
65. Auckland University Science graduate Divesh Mistry, researched our project, "Nga Puna Wai o Hokianga", as part of his Master's thesis entitled, "*Devolution and the decolonisation of local governance: Lessons from the Pākanae water supply*". A copy of his thesis is attached at Appendix J.
66. From Chapter 4, Divesh gives a good account of the factors that led to the project and the government's response to a parliamentary question from MP Alamein Kopu as to whether towns in Northland affected by the floods were still on "boiled water notice". The Northland Public Health Unit reported to Department of Health officer, Dr Taylor that they were "always on boiled water notice."⁵
67. As a result Dr Michael Taylor was instructed by the Minister of Health to evaluate the condition of drinking water supplies in Hokianga (at the request of Ms Kopu). Dr Taylor found that the results of water samples he collected around the district were,

⁵ See Appendix J page158

“frightening”. Drinking water supplies were a health risk, not only as a result of flooding but were an ‘endemic problem’.⁶

68. Divesh also gives a good account of the processes we, as kaikiaki went through to upgrade the quality of our drinking water. My cousin, Harerei Toia spoke of uncle Mick Wilcox always wanting the Marae to have water, and saying that the community supply was a by product of that. For our old people, the Marae always came first, and so it has turned out. As Harerei said,

*“As human beings we have a whanaungatanga relationship tie to water. Without it we are dead, and it doesn’t need us, we need it.”*⁷

69. Harerei was talking about the need to protect this life line to keep it safe. Now that our Marae drinking water is safe our people are definitely healthier.
70. Our people wanted to both use and protect Matariki, so with the help of local whanau volunteers, a second pipeline was constructed for Matariki to supply water to a downstream treatment plant.⁸ Although the Crown funded the project, our health community trust, Hokianga Health Enterprise Trust stepped up to assist us when we were looking for an entity to project manage the pilot.
71. We are very proud of our achievements, but were undermined when the PWB was required to apply to NRC for resource consent to extract the water. Although Pakanae 5A trustees formally granted an access easement to PWB, neither they, nor NRC notified us of the consent application.
72. In 2009 NRC issued a resource consent to extract an annual amount of 36,500 cu/m of water from Matariki until 2043.⁹ We are concerned at this volume because we don’t know how it was calculated, but we do know that Matariki suffers from low flows in the summer. We are also concerned that local government and resource management practises continue to override our kaitiakitanga, ignore our cultural concerns and usurp our customary authority.

⁶ See Appendix J page 98

⁷ See Appendix J pages 118 and 102

⁸ See Appendix J page 104

⁹ See Appendix J page 193, 194

73. The Pakanae 5A trustees do not charge money for access to Matariki. There is no road access to Pakanae 5A, but we have agreed to formalise easements for the PWB to access the water supply because we knew there was an intention by the local people to recognise our customary ownership. The PWB pay the rates, and we have a rates remission on the land. The untreated water to our urupa and to paddocks for farmers is free, but we remain very concerned about what other uses will be sought from our awa, and how it will be managed in future. We are continually under threat from requests for others to hook up to the supply, but the water is for the people of Pakanae and in summer time, with low flow, we only can feed our own.
74. The reality is the resource management legislation just doesn't work, all of the provisions which you might think would assist us to protect our kaitiakitanga, don't. In many ways our mahi to uphold our kaitiaki responsibilities has been successful, but only in part and if we are not vigilant and prepared to spend our own time and resources keeping up with what is happening then we end up losing our precious resources. While it is sometimes difficult to carry on, as kaitiaki we don't have any choice. While FNDC and NRC will often consult us about different projects this is on the basis of personal relationships that we have built up.
75. It is important that we secure a role in the future development of our District Plan, regional plans and national planning that affects us. Decision makers must be compelled to take our views into account and justify decisions that are made when implementing their policies in practise.
76. From a young age, my mother's people instilled in me a sense of belonging, and, the need to look after our taonga for all those to come after us. That is how I was versed in environmental matters as a child. We seek that the Tribunal recognise these fundamental issues and make findings that recognise the Crown failure to protect our kaitiaki responsibilities, and our taonga katoa, neither of which we have relinquished. We also seek recommendations for legislative change and any other means that be employed, including compensation to be paid, to enable our taonga katoa to be restored, and our customary status as kaitiaki properly recognised.

Whenua

77. As has been described by Matua John our hapu lands at Pakanae are only those of our urupa, Ro Iho, and our Marae, Maraeroa.
78. I have served as trustee/secretary of Ro Iho for many years. The land is formally known as Pakanae No 2 Wahi Tapu, was partitioned out under certificate of title on 21st March 1882 by Native Land Court Judge AG Holland. Nine people were named as owners, Perehatara Tio, Ngature Tohua, Hapakuku Moetara, Hemara Ngakai, Karauna Kautoki, Iraia Toi, Taniora Kowhai, Rakohu Paraea and Hiria Tahana.
79. The land was gazetted as a reservation in 1957 “for the common use and benefit of the Maori people as a Maori reservation for the purposes of a burial ground”.
80. The first name given to the reservation was “Ruaputa”, then “Makapera”, now “Ro Iho”. Tradition tells us the cemetery including the Waikiri Stream (now culverted to form the parking area) which flowed from the foot of Whiria Pa as a tidal lagoon (now a swamp area) was a papakainga established and occupied right up to the 1820’s. In places the sand has covered the original land to a depth of 1.5 metres. To illustrate, a particular burial in the south-western corner uncovered the remains of a hangi, used by our people in the early part of the century when they tried unsuccessfully to lift the tapu of the mana from the reserve. Re Kauere of Otaua led that group of people. Nearly every interment at different depths exposes evidence of a long period of occupation back to our founding ancestor, Kupe.
81. Although it is a Maori reservation, the cemetery has a history of community use, due mainly to the good will of our hapu. However with the rapidly expanding urban population of Opononi/Omapere and surrounding areas, it is placing an unfair demand on the available remaining space. We can now only accommodate for our hapu. A public cemetery for Omapere, Opononi and Koutu has been a long standing issue for our Marae and hapu on which we made submissions to the Western Community Board in 2009.
82. The Council continues to charge rates on the area of accreted land adjoining Ro Iho, and continually fails to recognise, acknowledge and make provision for our customary use of this whenua. We have been invited to go to meetings to justify our customary use in order to receive a rates remission, but I have refused to attend, as the Council’s attitude makes be angry.

83. I am the chairperson of Pakanae Marae, after serving as secretary for many years. Our whare tupuna, Maraeroa, is acknowledged as “the Matua Marae” of this area. The name Maraeroa is derived from the many moves the Marae has endured over the last 180 years. The original or first Marae stood at the entrance of the awa at the foot of Whiria. The Marae was then moved by Moetara further inland to be closer to the cultivated fields. The third move saw another Marae, built from kauri in the early 1900’s, located just below where the current Marae sits on top of the hill. The fourth Marae, a whare nikau built on top of the hill (period unknown) was described as having “walls of raupo with a nikau roof, had no windows and an entrance located at only one end”. The whare was said to measure about 80 feet long and was located about where the pou stands today back toward the buildings as seen in this photo.
84. In 1909 a native school was built on the Marae site and served the tamariki of Pakanae and surrounding areas.
85. The 3 canons at Pakanae Marae were given to Moetara by a man of war, the Brilliance or Enterprise belonging to Clendon. Moetara is said to have fired them from his waka.
86. In 1950 about 40 Maori leaders from around Hokianga gathered together and decided to erect an obelisk to the memory of our ancestor, Kupe, at Pakanae Marae. The project took 5 years to complete and is in the form of an obelisk of Okawa, a hard blue stone. Over 1000 people from around Taitokerau, Tamaki Makaurau and beyond came to the unveiling of Kupe’s memorial. 10 years later Maori leaders agreed to erect a monument to Rahiri on top of Whiria Pa.
87. Pakanae Marae not only acts as a “centre of operations” for our whanau and hapu, it also accommodates the general public. For example during the 1999 floods Pakanae Marae was used as the Civil Defence base and accommodated over 10 whanau during that time, Maori and Pakeha. However we struggle to achieve funding to keep our Marae and urupa facilities and infrastructure open and maintained. My impression is that we have limited funding avenues available to us to develop our Marae, we are not the ‘norm’, not a town hall or treated as a community facility so we only have very limited funding opportunities available to our hapu.
88. From our own whanau resources, over the last 10 years we have rebuilt our wharekai, but it will probably take another 10 years of fundraising to rebuild our wharehui. The daily

running of the Marae and the expectations on our committee members to do the cooking and cleaning and day to day running are exhausting, just keeping in touch with everyone is a hard job and we have to deal with a wide range of personalities, a lot of support is needed for our Marae to function well.

89. The lack of financial support and the lack of recognition of the place of our Marae in our community is symbolic of the decimation our culture has suffered from the Crown's determination to assimilate our way of life into a Pakeha way of life. This is not what was envisaged by our tupuna, when they signed te Tiriti, we want to restore our cultural norms as part of society, not apart from society, the Crown has a responsibility to assist us to achieve that.

Maori Trustee and Maori Land Court

90. I just recently resigned as the chair for the Penekahi Ahuwhenua Trust which administers 4 acres of land, 2 homes and a bach on the only block of Maori freehold land on the Pakanae foreshore. The other piece of land the trust administers is on the foreshore at Kokohuia, Putoetoe 11, named by the tupuna Toi and means "*a warm spot amongst the flax*". Toi's first whare wananga stood at Putoetoe. In the 1940s SH12 went straight through the middle of our whenua, cutting it in half, not to mention leaving us with less land. There are close to 2000 descendants (and growing) attached to these two blocks. The land was left to the 5 Penekahi sisters whose descendants include the Toia, Mocaraka, Cassidy, Wilcox and Tawhai whanau.
91. I hold the position of secretary for Waima Topu B Ahu Whenua Trust and Whakatere Manawakaiaia B34B; and serve as trustee of whanau trusts for land at Pakanae (2R2, 2Q3, 4B, 4C and 5A) and at Omanaia 89 and Paremata Mokau A13 in Ngatiwai. Most of these blocks have been, or continue to be, under the control of the Maori Trustee.
92. We are tied into long term leases, along with the Maori Trustee's practice of leasing our whenua for a pittance, with leaseholders benefiting the most from the use of our whenua. When I was a child we had to ask the pakeha farmer for permission to cross over our own land to get to my grandfather's whare at the back as his driveway had eroded away.
93. In some instances trustees have been successful in regaining control from the Maori Trustee of some of our whenua. The Pakanae 2R2 block was administered by Maori Affairs then the Maori Trustee on behalf of the owners until 2000. On the 1st of August

1967 a lease was granted to G.G Bateup for a period of 50 years. This lease was later transferred to M. Dove on 13 September 1976 and surrendered by him on 31 August 1999. The owners then went to Maori Land Court to get the administration of the block back in our control. We now have 3.4ha we use for camping, grazing and community gardens. We have been a much more efficient and economically successful lessor of our whenua than the Maori Trustee has proven to be, and have remained debt free for the last 14 years.

94. We have seen our land shrink, without even being aware of its loss in some cases until the deed is done. For example, approximately 17 years ago a single owner signed off on a consent that allowed State Highway 12 to go right through the middle of the Pakanae 2Q block. At no time did the Maori Land Court question that transaction and there was no consultation or discussion with the owners. Although, some years later, a meagre compensation of a few hundred dollars was paid to the owners through McNally Surveyors. Again, the result is our land with the highway running right through the middle and little compensation for the land loss or regard for its cultural significance.
95. The cultural significance of this land is huge. Pakanae 2Q formed part of the ‘spiritual pathway’ that our people used for hundreds of years when “koiwi” were taken to our sacred burial caves, Ninihi and Kauika, for internment on Te Ramaroa. The pathway begins from the south east corner of Whiria and runs all the way to Te Ramaroa. Te Rehia, a tupuna of Iraia Toi, was the last known kaitiaki of our sacred burial caves. The traditional pathway is now gone forever.
96. From my experience I firmly believe that we, as Maori land owners, must be in control of our own whenua because the office of the Maori Trustee has not and cannot achieve fair outcomes for us. An example of this involves the Paremata Mokau A13 block consisting of 94ha of my grandmother’s whanau lands on the East Coast in the Bay of Islands. In January 1908 the land was vested to the Taitokerau Maori Trust Board to administer, manage and if required, prepare the land for leasing on the owners behalf. The Maori Trustee replaced the Taitokerau Maori Trust Board as responsible trustee to lease the property, collect rent and distribute to the owners after deducting expenses. From 1957 the land was leased for a term of 21 years (non-reviewable) at a yearly rental of \$57 which equated to 25 cents per acre.

97. The lessee at the time managed the property for grazing and implemented various improvements to the property to support his operations. More over the lessee was entitled to first right of refusal and right of compensation for two thirds of the total value of improvements¹⁰.
98. So, in 1978 the lease ended with the owners incurring compensation costs for the lessee improvements to the property. Without capital available to us for compensating the lessee, the owners were advised to borrow funds from the Maori Trustee. Subsequently, the lease was extended a further 11 years until the loan was paid back to the Maori Trustee.
99. The land was further leased in 1989, however, the Maori Trustee failed to ensure a formal lease was executed resulting in yet again the owners incurring costs for maintenance not undertaken by the lessee and highlights yet again their failure to protect our whenua and waterways. We now have complete control of the block and have entered into a successful lease agreement for 25 years with a wealthy Russian businessman.
100. At this time we really had no other viable alternative but to enter into this long term lease, the rates for the property are about \$7, 000 pa and growing. Coastal blocks are desirable purchases for millionaires on the east side as it provides them with easy access to the water with tar sealed roads to the gate.
101. This illustrates to me the difference between the east and west coasts. The Wild West coast and our awa means that living here is not as easy, boats can't be launched from tranquil ramps and it is not so desirable for coastal recreation, so the opportunities in Te Wahapu are much more limited.
102. My whanau has also lost ancestral lands to the development scheme at Waiwhatawhata and through the public works taking for the road at Pakia Hill. My grandparents lived on the southern side of Pakia Hill and my Uncle John Sarich (now deceased) use to work on Pakia pulling timber logs up one side of the hill and down the other. I have been told that in the late 1800s and through the early 1900s huge logs were pulled up the southern side of Pakia using a pulley system.

¹⁰ Wai Claim 1726

103. The Crown is responsible for all these losses, I believe that they have never taken care to protect our lands and ensure we retained enough to sustain ourselves. Our meagre and fragmented landholdings today are proof of that. Our landlessness is a breach of te Tiriti.
104. The work to be done now for Maori land owners, whether they are involved with their whenua or not, is to register tupuna succession. This is seen as too difficult to do, but that is where Crown money and time should be spent reconnecting whanau with their lands. This should also be a top priority for the Maori Land Court and the Maori Trustee.
105. The Crown needs to reform the legislation so that we can not only reconnect but utilise our remaining lands.

Health Services

106. I am a registered nurse and I work at Rawene Hospital. I chose this profession because I am passionate about improving the health of my whanau, hapu and iwi. This mahi allows me an intimate understanding of the health needs of our people, young and old.
107. In 1827 while Augustus Earle was sitting in his waka anchored just off Pakanae, he wrote this about our Maori men,

*“Was this a mere accident that has brought some of the tallest and finest proportioned men before me. I examined these savages as they crowded round our decks with the critical eye of an artist: they were generally taller and larger men than ourselves; those that were of middle height were broader and muscular, and their limbs as sineny as though they have been occupied all their lives in laborious employment, and their hair is a perfusion of beautiful curls”.*¹¹

108. It is well documented that the health of our Maori people rapidly declined from that point onward, and right to this very day we lag so far behind compared to non Maori life expectations.
109. Hokianga is recognised as an isolated rural area with a population of approximately 6350 people. Maori represent 75% of the total population, with a significantly higher ratio of younger Maori aged 25 years and under. It is an area with low socio-economic status with

¹¹ Augustus Earle, “A Narrative of Nine Months Residence in New Zealand” (1827)

a high rate of unemployment¹². Hokianga has been described as “*one of the most socio economically deprived communities in New Zealand*”¹³.

110. There are significant disparities in health status for the population of Hokianga. We have relatively high incidence of cardio vascular disease, diabetes, respiratory disorders and other chronic conditions. Critical to the wellbeing of our people here in Hokianga is the continued provision of appropriate health services.
111. Quality affordable housing is also essential to improve good health outcomes for our people, especially our kaumatua and kuia and our tangata whaiora. We have approached FNDC about advising us of any decisions they may take to divest themselves of the kaumatua housing they currently provide in Omapere.
112. The daft annual plan for 2010/2011 proposed that the kaumatua housing currently provided on council owned land at Omapere would be sold as it was becoming too expensive to maintain. This proposal affected our kaumatua, all of the residents were Maori and they were very concerned where they would live. We made a submission as claimants, saying that we were interested in any proposals and were prepared to approach the government if necessary. I was approached by 2 councillors after my submission presentation to discuss what other properties council could identify for disposal in the upcoming treaty settlement process. I attach a copy of the FNDC LTCCP and our submission as Appendix K.
113. We are also dealing with appalling suicide rates affecting our young and not so young people. How this mental health aspect of wellbeing is dealt with is a Crown responsibility in partnership with us. Secure social services and health services are required in Hokianga and we at Te Wahapu want to be part of securing and providing those for our people.
114. On behalf of Te Wahapu and the Claimant group, I wish to conclude our submission and say that, in this brief I have tried to show that as kaitiaki we work hard because we have a cultural obligation and responsibility to retain the uniqueness and naturalness of Te Wahapu as our tupuna experienced it when their first footprints were imprinted on to the whenua. That is our spiritual connection to the whenua. That is what ties us to this place. To lose any part of this landscape is to lose that spiritual connection with our tupuna.

¹² Statistics New Zealand. (2006). *New Zealand: An urban/rural profile*.

¹³ New Zealand Institute of Rural Health. (2008) “Moving forward in rural health”

Te Wahapu is the gateway to Hokianga nui a Kupe, the cradle of Ngapuhi, “*te paiaka o te riri, te kawa o Rahiri*”. We, nga hapu o te Wahapu understand the significance of this place and our sense of duty and responsibility as kaitiaki as it forms the basis of our identity and future aspirations for our whanau, hapu and Iwi.

The Crown has not fulfilled its partnership obligations under Te Tiriti o Waitangi, it has not recognised and protected our Mana whenua, our Mana Moana, our traditions, our culture, our way of life, our very identity as Maori. The Crown has clearly breached te Tiriti. We have had little or no choice to work hard just to maintain our cultural integrity. We now seek findings and recommendations from the Crown to remedy these breaches.

Finally, I would like to take the opportunity to thank the Tribunal for the opportunity to present our submission today.

No reira ra, tena koutou, tena koutou, huri noa, tena tatou katoa.

Cheryl Turner
18 March 2014