IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 2750
WAI 745
WAI 1308

IN THE MATTER OF	Te Tiriti o Waitangi Act 1975
AND	
IN THE MATTER OF	A claim filed by Luana Pirihi and Paki Pirihi (deceased) on behalf of Patuharakeke and Ngawaka Pirihi and others on behalf of the owners of Pukekauri 1B1, 1B2, 1B3, 1B4 and 1B5 and Takahiwai 4C, 4D1, 4E, 7A, 7B2 and 7C

AMENDED STATEMENT OF CLAIM FOR WAI 2750 – THE HOUSING SERVICES AND POLICIES KAUPAPA INQUIRY

Dated the 30th day of October 2020

RECEIVED
Waitangi Tribunal
30 Oct 2020
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

Ko Manaia te Maunga

Ko Whangarei Terenga Paraoa te Moana

Ko Rangiora te whare

Ko Takahiwai te Marae

Ko Patuharakeke te hapū

Tihewa Mauriora!

Introduction

1. This Amended Statement of Claim is filed on behalf of Luana Pirihi and Paki Pirihi (deceased) on behalf of Patuharakeke and Ngawaka Pirihi and others on behalf of the owners of Pukekauri 1B1, 1B2, 1B3, 1B4 and 1B5 and Takahiwai 4C, 4D1, 4E, 7A, 7B2 and 7C.

2. The claimants assert that they are Māori and meet the requirements for bringing claim as set out under section 6 of the Treaty of Waitangi Act 1975.

3. This Amended Statement of Claim supplements the Wai 745 and Wai 1308 Amended Statement of Claim dated 15 June 2018 and sets out the claimants' contemporary claim in respect of the homelessness issues affecting the rohe of Patuharakeke.

4. The claimants represent Ngā hapū o Patuharakeke. Patuharakeke are the descendants of Te Toru (also known as Urekuri), and Motatau. It is through the descendants of Te Toru and Motatau that Patuharakeke are closely related to iwi including Ngapuhi, Ngati Wai, Ngati Whatua and Te Uri o Hau.

5. Patuharakeke are linked by whakapapa to their lands and their taonga. This connection establishes their mana whenua, kaitiakitanga and tino rangatiratanga, including their right to establish and maintain a meaningful and sustainable relationship between hapū, whānau and their ancestral taonga.

The Claim

6. The claimants say that the Crown has duties and obligations under Te Tiriti o Waitangi ("Te Tiriti") to provide Patuharakeke with access to adequate housing services to support Māori that homeless.

7. The claimants say that the Crown owes a duty to actively protect Māori and to treat Māori as an equal partner in terms of decision-making, governance regarding issues affecting their whānau, hapū, and iwi.

8. The claimants assert that the Act and associated Crown practice and policies are contrary to and inconsistent with Te Tiriti and its principles.

Crown Breaches of Te Tiriti

9. The claimants say that Patuharakeke did not cede their sovereignty to the Crown in signing te Tiriti in 1840. This was confirmed by the Waitangi Tribunal presiding over stage one of the Wai 1040 Te Paparahi o Te Raki (Northland) Inquiry who found that,

> *"Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the rangatira did not surrender to the British the sole right to make and enforce law over Māori. It*

was up to the British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson's silence on this crucial matter means that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met."[1]

10. The Crown has breached the following principles of Te Tiriti:

    a. **Autonomy -** the Crown guaranteed to protect Māori autonomy. Inherent in Māori autonomy is their own customary laws and institutions, and the right to determine their own decision-makers and land entitlements

    b. **Active Protection** – the duty of the Crown to actively protect the interests and rights of Māori.

        i. At the core of the principle of active protection is the principle of tino rangatiratanga, that the Crown will protect tino rangatiratanga. In Article II, tino rangatiratanga is defined as the "unqualified exercise of chieftainship and confirms and guarantees to Māori their property and other rights".[2] This limits the Crown's authority to govern[3] and obliges the Crown not only to recognise Māori interests specified in the Treaty but to actively protect them.[4]

        ii. The principle of active protection of tino rangatiratanga is not merely a simple acknowledgement of tribal autonomy and self-management, it also includes a

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1. He Whakaputanga me Te Tiriti: The Declaration and the Treaty – The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry (Waitangi Tribunal, 2014) at 526-527.

2 I. H. Kawharu, "Treaty of Waitangi - Kawharu Translation" (2011) Waitangi Tribunal – Te Rōpū Whakamana i te Tiriti o Waitangi. Retrieved from: http://www.waitangitribunal.govt.nz/treaty/kawharutranslation.asp%3E.

3 Waitangi Tribunal, *Te Whanganui a Tara Me Ona Takiwa: Report on the Wellington District* (Wai 145, 2003) at 74.

4 Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8, 1985) at 69.

requirement that the Crown actively protects and supports Māori in the exercise of their rangatiratanga.

c. **Partnership** – the duty to act with the utmost good faith, the duty to consult Māori and obtain the full, free and informed consent of the correct right holder;

d. **Consultation –** the duty of Māori and the Crown to act reasonably and with the utmost good faith towards one another.[5] The obligation to consult includes the duty to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.[6]

    i. The Crown's duty of consultation requires open and honest dealing with Māori which includes the Crown's duty to gain the full, free and informed consent of the correct right holders to any land transactions.

e. **Equity –** the duty of equity not only requires the Crown to afford Māori equal access and resources to those of British subjects, but also requires the Crown to take active measures to restore balance where Māori have been disadvantaged.[7]

f. **Right to Development** - this principle encapsulates the right of Māori to develop as a people, in cultural, social, economic and political senses.[8] It is the Crown's responsibility to ensure Māori have the right to develop, as such development is essential to Māori wellbeing.[9]

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[5] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 663-664.
[6] Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 3.
[7] Above n 6, at 5.
[8] Waitangi Tribunal, *He Maungo Rongo* (Wai 1200, 2008) at 914.
[9] Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wai 26 & 150, 1990) at 41-43; and Waitangi Tribunal, *Radio Spectrum Management and Development Claims (Interim)* (Wai 776, 1999) at 7.

g. **Options** - the duty to ensure Māori were afforded options when settlement and the new society developed.[10] Māori were to have the option to continue their tikanga and way of life largely as it was, to assimilate to the new society and economy, or to combine elements of both.[11] Māori choices were to be free and unconstrained.[12]

h. **Reciprocity** – a reciprocal partnership is one of fundamental exchanges for mutual advantage and benefits.[13]

i. **Redress** – the duty to provide adequate redress to Māori where the Crown have acted in breach of the principles and its duties under te Tiriti and that consequently, Māori have been prejudiced.

11. These treaty principles are not to be considered in isolation, they overlap and intertwine and support and inform one another. However, essential to meeting these treaty principles is tino rangatiratanga and partnership for no other principle can be met without true self determination and honourable partnership based on good faith. This ought to be the relevant and necessary starting point in which to assess the conduct of the Crown towards Māori.

First Cause of Action: The Crown's failure to address the housing inequities suffered by Māori including homelessness within the Northland region.

12. The claimants say that homelessness is a direct result of the Crown's failure to ensure access to safe, quality, and affordable housing for Māori.

13. The claimants say that the decline in home ownership rates amongst Māori, the increased representation of Māori in the rental sector is strongly linked to the rising homeless Māori population within the Northland region.

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[10] Above n 6, at 5.
[11] Above n 6, at 4; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 195.
[12] Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 195.
[13] Above n 6, at 4.

Particulars

14. Māori continue to be overrepresented in overcrowded, poor quality homes, and those in need of state housing.[14]

15. Māori represent over 50% of those in rental housing which has increased since the 2006 Consensus.[15] This corresponds with drop in Māori homeownership since 2006, as Māori make up mere 28.2% of all homeowners in New Zealand.[16]

16. Home ownership provides stability, wealth, and better health[17] however, Māori are not guaranteed the same access to due to socioeconomic disparities exasperated by racism and discrimination.[18]

17. Rates of Māori home ownership have declined since the 2006 Consensus[19] and are not improving.[20] This is particularly prominent within the Far North and Whangarei districts. In Whangarei alone, Māori home ownership rates have dropped by nearly 40%.[21]

18. Alongside overrepresentation within the rental sector, Māori are also overrepresented in the homeless population. Compared with their NZ European counterparts, Māori are five times more likely to be homeless.[22]

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[14] Statistics New Zealand, *Living in a crowded house: Exploring the ethnicity and well-being of people in crowded household*s at 32-33.
[15] Statistics New Zealand, 2013 Ethnic Group Profiles: Māori – Rental Housing.
[16] Statistics New Zealand, 2013 Ethnic Group Profiles: Māori – Home Ownership.
[17] C Houkamau and C Sibley, *Looking Māori Predicts Decreased Rates of Home Ownership: Institutional Racism in Housing Based on Perceived Appearance* (March 4 2015) at 2.
[18] Above n, 17 at 13.
[19] Te Ara – The Encyclopaedia of New Zealand, *Stories: Ethnic Inequalities* at 7
[20] Laura Bootham, *Māori home ownership falling behind,* RNZ (9 June 2016).
[21] Statistics New Zealand, *Changes in home-ownership patterns 1986–2013: Focus on Māori and Pacific people* (June 2016) at 7.
[22] Dr Kate Amore, *Everybody Counts Defining and measuring severe housing deprivation (homelessness),*University of Otago (2019) at 146.

19. Of the six territories in Aotearoa which have the highest homeless population, two of those include the Far North and Whangarei.[23]

20. Out of 41,000 people that were homeless in New Zealand in 2013, nearly 10,000 of them were children under 15 years of age, and that number has most likely increased.[24]

21. Due to the poor living conditions, social stigma, and exclusion, homelessness has extreme negative impacts on the physical, spiritual, social, emotional, and mental well-being of a person.[25] Likewise, homeless are amongst the most vulnerable people in society. The claimants say that there is a direct causal link between homelessness to poverty, unemployment, lack of affordable housing, physical and emotional trauma.

22. Homelessness numbers are increasing in New Zealand and Māori whānau including their tamariki and pēpi are disproportionately affected.

23. The claimants contend that they face as part of the population of Te Tai Tokerau and the urban centres, the same if not more impact from the breaches of the Crown that have resulted in disproportionate numbers of Māori homelessness.

Second Cause of Action: The Crown's failure to implement and provide appropriate support services for Māori.

24. The claimants say that the Crown's failure to implement targeted housing policy and legislation which addresses the overrepresentation of homelessness suffered by Māori, breaches Te Tiriti and its principles.

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[23] Above n, 20 at 139.
[24] Natalia Sutherland, "Who are NZ's homeless? Thousands of Kiwi kids and it could be getting worse, expert warns" (18 September 2018) <https://www.tvnz.co.nz/one-news/new-zealand/nzs-homeless-thousands-kiwi-kids-and-could-getting-worse-expert-warns>
[25] Isabelle Bouchard, Katherine Ravenswood and Gail Pacheco, *Scoping the costs of homelessness in New Zealand* (NZWRI, 2016) at 3.

25. In addition to the Crown's failure to establish adequate policy and legislation, the claimants say that the Crown fails to recognise and meaningfully incorporate tikanga Māori within its services intended for homeless Māori.

26. Further, the claimants say that the Crown neglects te tino rangatiratanga o nga hapū by failing to provide Māori with the necessary funding and resources to address homelessness within their whanāu, hapū, and iwi.

Particulars

27. Māori are more likely than non-Māori to live in deprived areas and endure housing problems.[26] Therefore it is incumbent on the Crown to ensure that equity is achieved by providing equal housing support and opportunities for Māori.

28. Under Article Two of Te Tiriti, the exercise of tino rangatiratanga is guaranteed over land and taonga katoa. The claimants say that the number of housing services within the Northland region is disappointing. Despite the range of social services within the rohe, these are not specific to housing issues and do not cater to the complex and layered causes of homelessness.

29. As a territory with one of the highest rates of homelessness, the lack of Kaupapa Māori housing services is felt within the rohe of Patuharakeke. Only recently the first Northland-based Kaupapa Māori housing provider was registered with the Ministry of Housing and Urban Development.[27]

30. The need for Kaupapa Māori housing services is significant and this has been recognised as an integral way forward in addressing homelessness.[28]

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[26] Dr Claire Dale, *Whakapono: End child poverty in Māori whānau A preliminary report* (Auckland, 2017) at 32.
[27] Te Hau Ora ō Ngāpuhi, "Te Hau Ora Ō Ngāpuhi becomes first Māori Community Housing Provider in Northland" (March 2016 2020) <http://tehauoraongapuhi.org/te-hau-ora-o-ngapuhi-becomes-first-Māori-community-housing-provider-in-northland/>
[28] Ministry of Māori Development "Kaupapa Māori approach for homelessness" (press release, 13 February 2020).

31. A Kaupapa Māori approach would ensure that homeless Māori can access a holistic support system which not only addresses their physical needs in terms of housing but also their mental, emotional, cultural, and spiritual needs.

32. For the claimants, the ability to exercise their tino rangatiratanga regarding housing issues and solutions within their rohe, is of the utmost importance. However, due to the lack of land available and resourcing to implement hapū-led Kaupapa Māori approach, the claimants are unable to meet their housing aspirations.

Third Cause of Action: Failure by the Crown to protect and recognise the values and tikanga of Patuharakeke to provide housing within their rohe

33. The claimants say that Crown legislation and policies have diminished and have been detrimental to their ability to provide adequate housing for whānau with whakapapa to Patuharakeke and those that reside in the rohe from elsewhere.

Particulars

34. The claimants have suffered significant loss of land and resources by the Crown and these historical and contemporary losses and confiscations have been brought before the Waitangi Tribunal in other inquiries.[29]The loss of land has had a significant impact on the claimants' ability to provide for their whānau in all aspects of society including health, education, employment and housing.

[29] The claimants filed the Wai 745 and Wai 1308 claims in the Wai 1040 Te Paparahi o te Raki Inquiry for the historical grievances of Patuharakeke and subsequently the Wai 2490 Ngapuhi Mandate Inquiry, the Wai 2561 Ngatiwai Madate Inquiry Report, the Wai 2660 Marine and Coastal Act Inquiry and other Kaupapa Inquiries yet to be heard.

35. Patuharakeke's current landholdings include multiply owned Māori land, Māori reserves, and small blocks of General Land owned by Patuharakeke make up only 1% of the original tribal estate that was held by the hapū.[30]

36. The ability of Patuharakeke to manaaki and accommodate whānau in their rohe is limited because of the lack of available land and prohibitive local government plans and policies that govern papakainga housing.

37. The lack of resourcing and support to Patuharakeke has come at a high financial and human resource cost to the hapū who work voluntarily. The claimants say that in order to remedy homelessness issues in their rohe, land must be returned to them to provide a land base to accommodate their whānau and hapū and those that reside in their rohe from elsewhere.

Papakainga

38. Papakainga as a concept has been redefined by Crown agencies to fit with legislation and policy and does not reflect the values and tikanga associated with Patuharakeke turangawaewae. It is the claimants' assertion that the concept of papakainga must have whakapapa as a central determinant to reconnecting Patuharakeke whānau to their turangawaewae.[31]

39. In breach of the principle of equity, local government through successive legislation including the Town and Planning Act 1977 and the Resource Management Act 1991 has enabled subdivision and development policies affecting general land to take precedent over papakainga policies impacting Māori land. This has resulted inequitable outcomes for Patuharakeke and barriers to the provision of housing for the claimants and their whānau.

[30] Patuharakeke Te Iwi Trust Board Incorporated, *Patuharakeke Hapū Environmental Management Plan,* 2014, p.40.
[31] Above n 30, at.46.

Short and long term problems

40. The claimants say that the local government process for addressing urgent housing needs is onerous and costly and planning documents do not reflect the small land holdings/high need situation that exists.

41. Transitional housing proposals that have been put to those living in the claimants' rohe by Kainga Ora have not addressed the long term needs of the claimants to provide sustainable and healthy living pathways for whānau.

42. The claimants say that in breach of Te Tiriti, the Crown has failed to engage with them to assist in the development of appropriate systems of funding and resourcing to enable outcomes that uphold hapū decision making and reflect values and tikanga of the claimants.

Prejudice

43. The claimants say that they have suffered the following prejudice as a result of the Crown's acts and omissions that continue to be inconsistent with Te Tiriti:
    a. the denial of Māori right to exercise their own mana and rangatiratanga at a governance level on decisions that affect them;
    b. the lack of safe, warm, affordable, and quality housing for Māori;
    c. the loss of employment, and educational opportunities inevitably linked to homelessness;
    d. the negative health impacts caused by inadequate housing;
    e. restrictions faced in returning to live on their turangawaewae; and
    f. the impairment of, or damage to, the spirit, wairua, mana, and ihi.

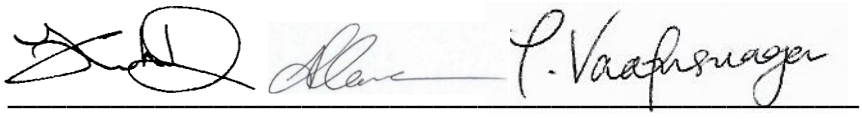
Relief Sought

44. The claimants seek the following findings and recommendations from this Tribunal:
    a. a finding that the claim is well founded;
    b. a finding that the Crown has breached Te Tiriti o Waitangi and its principles;
    c. that the Crown provide adequate resourcing and support to and for Māori-led initiatives addressing Māori homelessness;
    d. the implementation of culturally appropriate and responsive policy, legislation, and services which addresses Māori homelessness;
    e. robust engagement and consultation provisions with Māori on decisions that affect them in the housing system;
    f. adequate protection and promotion of mana and rangatiratanga within the housing sector; and
    g. Any other recommendations the Tribunal sees fit to make.

AMENDMENT

45. The claimants reserve the right to further amend and particularise this Statement of Claim.

Dated this 30th day of October 2020



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This Amended Statement of Claim is filed by **KELLY DIXON** and **TESA VA'AFUSUAGA,** Solicitors for the Claimants, of Dixon & Co Lawyers, Auckland. The address for service of the claimants is at the offices of Dixon & Co Lawyers, Level 9, 56 Cawley Street, Ellerslie, Auckland.

Documents for service on the plaintiff may be left at that address for service, or may be-

- Posted to the solicitor at PO BOX 11359, Ellerslie, AUCKLAND 1542; or
- Transmitted by facsimile to 09 620 6250; or
- Emailed to kelly@dixonandcolawyers.com.