**I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**
**IN THE WAITANGI TRIBUNAL**

**Wai 1750**
**Wai 339**
**Wai 1865**

| | |
|---|---|
| **In the Matter** | of the Treaty of Waitangi Act 1975 |
| **And** | |
| **In the Matter** | of the North-Eastern Bay of Plenty District Inquiry (Wai 1750) |
| **And** | |
| **In the Matter** | of a claim by Dean Flavell and Miranda Horan on behalf of the Hiwarau C Trust (Wai 339) |
| **And** | |
| **In the Matter** | of a claim by Miranda Jayne Horan and Roslyn Adair Pukepuke for, and on behalf of, the descendants of the original owners of Hiwarau B1B1 and Hiwarau B1B2 (Wai 1865) |

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**MEMORANDUM OF COUNSEL REGARDING JURISDICTIONAL ISSUES**

**Dated 20 November 2025**

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Waitangi Tribunal
***20 Nov 25***
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WELLINGTON

**TĒNĀ E TE TARAIPIUNARA**
**MAY IT PLEASE THE TRIBUNAL**

1. This Memorandum of Counsel is filed on behalf of:

    a. **Wai 339**, a claim by Dean Flavell and Miranda Horan on behalf of the Hiwarau C Trust; and

    b. **Wai 1865**, a claim by Miranda Jayne Horan and Roslyn Adair Pukepuke for, and on behalf of, the descendants of the original owners of Hiwarau B1B1 and Hiwarau B1B2.

    (**Claimants**)

**INTRODUCTION**

2. On 17 November 2025, at hearing week six of the North-Eastern Bay of Plenty District Inquiry, during the opening submissions for Wai 339 and Wai 1865, The Tribunal asked Counsel for further information about the contemporary aspects of Wai 339 and Wai 1865 and on what grounds that the Claimants are seeking a recommendation from the Tribunal, given that historical aspects of these claims have been settled by legislation.[1]

3. Counsel sought to respond to the Tribunal by way of written submissions, with the view of filing as soon as possible, during the hearing.

**BACKGROUND**

4. Under the Whakatōhea Claims Settlements Act 2024, the Claimants acknowledge that the Tribunal has no jurisdiction in respect of any matters that engage sections 15(4) and 15(6)(b), although the Tribunal can still make findings in respect of historical claims under sections 16(6)(a)(i) to (ii).

5. In summary, it is the Claimants' position that their claims encompass contemporary breaches of te Tiriti o Waitangi and its principles not because of the amalgamation of Hiwarau C specifically, but because of post-1992 (to present day) Crown legislation, policies and practices that prevent the

[1] Whakatohea Claims Settlements Act 2024.

beneficial owners from owning, using and utilising their land in a manner that aligns with their tino rangatiratanga and their mana motuhake. It just so happens that the manifestation of the exercise of rangatiratanga and mana motuhake, for the Claimants in this case, is de-amalgamation.

**THE MĀORI TRUSTEE**

6. The Māori Trustee remained as the responsible Trustee for Hiwarau C until 1 December 1992. In respect of the breaches of te Tiriti o Waitangi relating to the Māori Trustee, we submit that, because the Māori Trustee continued in their role until after the September 1992 cut off for historical claims, this brings that element of the claim within the contemporary claims timeframe, and therefore within this Tribunal's jurisdiction.

7. The primary issue with the Māori Trustee is the continued mismanagement of Hiwarau C lands up until resignation. We note that the Hiwarau C Ahu Whenua Trust was formed in response to the Māori Trustee's failure to protect the best interests of Hiwarau C owners,[2] and the Crown's failure to monitor and/or intervene in the Māori Trustee's administration in those months prior to resignation. Further, in our submission, the evidence regarding the disengagement of the Maori Trustee was not a clean and professional affair, returning the whenua in a good state and ready for the new trust to take over immediately, so that process covered a larger period within the "contemporary" era.

**COMPOUNDING CONTEMPORARY ISSUES**

8. The Claimants also assert that they have been and are experiencing compounding contemporary issues with Crown practice, policy and legislation that overall amount to breaches of te Tiriti o Waitangi, as they continue not to enable the Hiwarau C owners to exercise their own tino rangatiratanga and mana motuhake.

9. As referred to by Mr Flavell and Ms Horan during their presentation on Monday 17 November 2025, Crown legislation, the evidence being led for

[2] 67 Ōpōtiki MB 271-272

both Wai 339 and Wai 1865 shows that the policies and practices of the Crown and its agents in the present day fail to:

a. enable Hiwarau C owners to build on the block, where owners of Hiwarau C are unable to 'legally' live on their whenua and therefore must resort to establishing un-consented homes;

b. enable the Hiwarau C Trustees to adequately address the issue of squatting and disruptive squatters, subverting the trustees' rangatiratanga over the whenua for which they have the delegated responsibility;

c. remedy the position faced by Hiwarau C Trustees where their responsibilities place them at odds with either tikanga Māori or te Ture Pākehā, or both;

d. address the ongoing issue with the rating of the Hiwarau C block and, for some owners, their pre-amalgamated Hiwarau parcels;

e. address, as Ms Horan had indicated, the prohibitive costs of surveying with regard to partitioning out her whānau blocks from Hiwarau C, which has therefore prevented the partition order from being actualised, and therefore prevented Ms Horan's whānau from achieving their aspirations; and

f. adequately enable owners to access information regarding Māori Land Court pathways to achieving their aspirations, such as, in this case, section 45 of Te Ture Whenua Māori Act 1993.[3]

10. Counsel submit that, while this all stems from the alleged Crown action of amalgamation, which admittedly took place in 1969 and therefore can be regarded as having been swept into the Whakatohea Settlement, it is not the amalgamation itself that the Claimants are now primarily concerned with, but, rather, their inability to best utilise their existing whenua, in

[3] As Ms Horan stated in response to questions from the Panel, despite hoping to achieve something similar to the outcome achieved by Mary Korara Erickson regarding Hiwarau B1A, she was told by officials that the only pathway to achieve her aspiration is section 289 of Te Ture Whenua Māori Act 1993.

accordance with tikanga, with those barriers to doing so attributable to the Crown and its agents.

**EXPLORATION OF ALTERNATIVE PATHWAYS TO ACHIEVE HIWARAU C ASPIRATIONS TO DE-AMALGAMATE**

11. During the course of Mr Flavell and Ms Horan's discussions with the Panel, it became apparent that there remained a possible alternative remedy to the issues faced by the Hiwarau C Trust and owners. His Honour noted that section 44 of Te Ture Whenua Māori Act 1993 conferred on the Chief Judge 'special powers' to correct mistakes and omissions and, if requirements are met, to cancel or amend an order. This alternative approach is noted in Ms Horan's evidence,[4] however, as she stated, she was dissuaded from attempting anything but to pursue a partition order.

12. Counsel put parties on notice that we are instructed that a section 45 application under Te Ture Whenua Māori Act 1993 (**TTWMA**) will be pursued by the Claimants in due course. First, in respect of Hiwarau B1B1 and Hiwarau B1B2, and then, if successful, with other whānau blocks.

13. We however, submit, that this *may* not be a completely satisfactory remedy to enable the Claimants to exercise their tino rangatiratanga and mana motuhake, for the following reasons:

    a. In the first instance, a section 45 application may be declined, or fail to meet the requirements set out by the TTWMA. In that case, this reconfirms that there is no alternative remedy for the Claimants;

    b. If the section 45 application is successful, and the amalgamation order is cancelled, it remains to be seen whether the complete outcome sought by the Claimants can be achieved in practical terms. Counsel are, aware, for example, that a de-amalgamation and restitution of the numerous individual blocks will require considerable resourcing well beyond what the Court would be able to provide, such as surveying, valuing, costs of legal advice, and the

[4] Wai 1759, #E35(a) at p. 30.

diversion of Court staff time and personnel.

14. Counsel and Claimants endeavour to keep parties updated regarding this application where it is relevant to their claims before the Waitangi Tribunal.

**CONCLUSION**

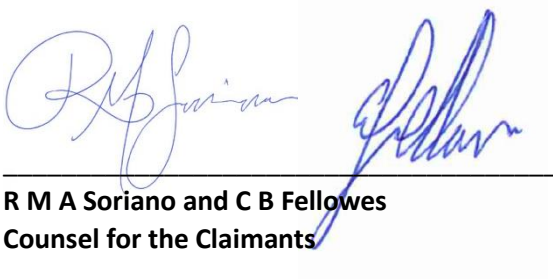
15. In conclusion, it is our submission that the Tribunal has jurisdiction to inquire into and make recommendations in respect of the contemporary issues raised by Wai 339 and Wai 1865.

16. In the process, information such as the process of the original amalgamation is essential context for the Tribunal to understand what went on, how things were done or left undone, and the impacts that all had on the claimants. This is valuable even if the Tribunal were found to be unable to make specific findings on such matters.

17. Should it assist the Tribunal and parties, Counsel are prepared to file Amended Statements of Claim for both Wai 339 and Wai 1865, which more accurately set out the specific allegations against the Crown that are contemporary in nature.

18. If this were directed by the Tribunal, Counsel respectfully seek leave to file the Amended Statements of Claim for Wai 339 and Wai 1865 respectfully, before the end of January 2026.

**Dated** at Kutarere this 20th day of November 2025



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