BEFORE THE WAITANGI TRIBUNAL **WAI 1040**
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI **WAI 53**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Te Paparahi o Raki Inquiry

AND

IN THE MATTER of a claim to the Waitangi Tribunal by Renata Tane

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AMENDED BRIEF OF EVIDENCE OF PARATENE HIRINI TANE

Dated 4 November 2015

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NGĀWHĀ REVISITED: AN INVESTIGATION OF TITLE IN PĀRAHIRAHI

I. Introduction

He uri whakaheke tenei no Ngāti Rahiri, Ngāti Kawa, Te Uri Taniwha, Ngāti Hineira. No ngā marae o Oromahoe, Te Tii Waitangi me Parawhenua. Mai i Tahuhu-nui-o-rangi, ki a Kawa, ki a Karearikí, ki a Maikuku, ki a Te Rā, ki a Te Tane Haratua tae noa atu ki te ihu-hupe e tu mai nei. Koinei nga tātai tupuna i takoto mai i tēnei take whenua, take taonga, take ngāwhā. No reira ka huri.

1. My name is Paratene Tane. I am a descendant of one of the first Ngāwhā land owners named in the 1873 Native Land Court hearings over Pārahirahi, and the son of a current Trustee of the Pārahirahi C1 Trust.

2. Despite receiving an urgent report and recommendations in 1993 into aspects of its Treaty claim (WAI 53/304) from the Waitangi Tribunal, the Ngāwhā Treaty claim is yet to be addressed by the Crown. The Ngāwhā Treaty claim is concerned with the reinstatement of rangatiratanga over part of an ancestral resource that was wrongly acquired by the Crown, namely the Pārahirahi land block and the Ngāwhā springs. The lack of progress since the Waitangi Tribunal delivered its report into the Ngāwhā claim has been a major concern to those who are leading the claim (the Pārahirahi trustees); to those who manage the Ngāwhā springs (the staff); and to those on whose behalf the claim is brought (Ngāwhā hapū).

3. My brief of evidence outlines the Treaty claims and grievances in Ngāwhā, particularly in relation to the Pārahirahi block. It is based on research from my Master's thesis, '*Pārahirahi: a case study of Māori tribal leadership*', completed in 2013.[1]

4. Key outstanding grievances relating to Pārahirahi remain. This brief reviews the 1993 Ngāwhā report in light of the evidence which was put to

[1] Tane, P. (2013). Pārahirahi: a case study of Māori tribal leadership. Unpublished Master of Arts thesis. University of Otago.

the Tribunal, recent research, current regional claims/settlements (Te Paparahi o te Raki) and previous negotiation attempts.[2]

5. My brief concentrates on outstanding grievances in Pārahirahi, including aspects of the Wai 53 claim which were not addressed in the Tribunal's urgent report. There are four principal grievances in Pārahirahi:

   a) the implications of land alienation to the claim over the Ngāwhā geothermal resource and the effect this had on the subsequent claim over the geothermal resource brought almost 100 years later (1989);

   b) the alienation of the wider Pārahirahi lands and the Crown's agency in acquiring specific pieces of land in Pārahirahi (in 1894);

   c) the outstanding claim over the four acre Pārahirahi C block; and

   d) a contemporary grievance as a result of 20 years Crown inaction.

6. My brief focuses on the points 'b', 'c' and 'd'. Point 'a' is addressed in the brief of evidence of Nicole Butler.

7. While it may be assumed that most of these grievances have already been addressed by the Waitangi Tribunal in their 1993 report, that report was heard under urgency as a result of a resource consent application at the time by the Bay of Islands Electric Power Board and the Taitokerau Maori Trust Board seeking access to the Ngāwhā geothermal resource. As a result, the report did not make findings and recommendations in respect of the alienation of the wider Pārahirahi lands. It may be that the urgent nature of the hearing necessitated a narrowing of the issues at the time, with a focus on the issues directly affected by the resource consent process. I consider the alienation of the wider Pārahirahi lands to be a key component of the original claim.

[2] The primary method of data collection is through a survey of literature held by the Pārahirahi C1 Trust (annual general meeting reports, a feasibility report and correspondence to/from the Trust) and Waitangi Tribunal reports on Ngāwhā. Further primary and secondary research sources were also consulted. These include Waitangi Tribunal commissioned research for the Ngāwhā claims i.e. Daamen (1992), Journals to the House of Representatives, Archives New Zealand material such as title orders, title transfers and government correspondence, Māori/Native Land Court minute books, and newspaper articles. All relevant materials are referenced throughout.

II. Ngāwhā – An Overview

8. The Ngāwhā springs sit roughly in the centre of the east and west coast in Te Tai Tokerau (Northland), both in a genealogical and geographic sense.[3] The extensive genealogies overlaying Ngāwhā stretch back beyond the 16th century.

9. Current-day tangata whenua in Ngāwhā include Te Uri o Hua, Ngāti Rangi and Ngāi Takotoke hapū. Their mana in Ngāwhā is derived from generations of established authority in and around the Ngāwhā landscape. It is well established that Ngāwhā has, for generations, been a site of natural geothermal pools for bathing and healing and to relieve mothers of birth pains.[4]

10. Ngāwhā, like other Māori land, was subjected to the Native Land Court process. Customary land holdings in Ngāwhā were challenged by Native Land Court. Notions of hapū authority and trusteeship over tribal lands were distorted by a newly imposed court system which titled an individual's right over land. Ngāwhā was carved into smaller parcels of land blocks and title awarded to **selected** hapū members who were fortunate enough to be named as owners, not as trustees. An experience not unlike that detailed within the Orakei Claim (WAI 9).

11. For Ngāwhā in particular, the process of surveying and awarding of title was encouraged by prospecting Europeans interested in exploiting mineral resources.[5] Titling of the land containing the majority of the springs (Pārahirahi) began in 1873. The Pārahirahi land block totalled 5097 acres. This was then subdivided into three smaller blocks: Pārahirahi A (2546 acres), Pārahirahi B (2546 acres) and Pārahirahi C (containing the majority of hot springs - five acres).

12. What ensued was a complex series of subdivisions, succession orders, partitions, and alienation. On the whole, these were poorly administered by the Crown. And from a hapū perspective, the processes were virtually impossible for the local people to follow. This system of land tenure was, essentially, alien and not at all based on tikanga. By 1894

[3] Waitangi Tribunal, 1993, p. 10.
[4] Lee, 1983; Sissons et al., 2001.
[5] Waitangi Tribunal, 1993, p. 30.

Pārahirahi land holdings totalled 804 acres (15% of the original block), and by the 1960s only three acres (0.05%) remained in Māori ownership, leaving Ngāwhā hapū with minimal land holdings in a once tribally shared and maintained resource.

13. Today the Ngāwhā complex consists of a cluster of sixteen pools. The complex is modest and capacity of the pools is 50 to 60 people at a time.[6] The pools have been open to the wider public for over a century, and since 1926, they have been maintained by descendants of eleven owners, staff and volunteers.

III. The Wai 304 Urgent Claim and Report

14. In its final amended form, Wai 304 was brought on behalf of the Pārahirahi C1 Māori Reservation Trustees in 1992 on behalf of whānau and hapū having an interest in the Ngāwhā Geothermal resource. It was supported by named claimants for and on behalf of some ten hapū of Ngāpuhi collectively referred to as 'Ngā Hapū o Ngāwhā'. It covers the hot springs at Ngāwhā and the whole of the underlying geothermal resource in the Ngāwhā geothermal field, as well as the wider Pārahirahi lands. The amended claim sought an urgent hearing to address concerns over resource consents that were being sought at the time by a joint venture (the Bay of Islands Electric Power Board and the Taitokerau Māori Trust Board) under the Resource Management Act 1991 to exploit the Ngāwhā geothermal resource for the purpose of electricity generation.

15. The Waitangi Tribunal delivered its report on the urgent Ngāwhā claim in 1993. Key issues reported on by the Tribunal fell within four main areas, these concerned:

    a) The return of the four acres in Pārahirahi C;
    b) Rangatiratanga over the geothermal resource;
    c) Halting to current geothermal extraction in the area, and consultation for all future resource consents; and

[6] White, 2010, p.15.

d) Legislative reform (Resource Management Act 1991).[7]

16. The Tribunal determined that the Crown's acquisition of the four acres in Pārahirahi C in 1894 was in breach of the Treaty of Waitangi, specifically Article Two which guarantees to Māori their 'tino rangatiratanga over their taonga for so long as they wish to retain the same in their possession'. It was emphasised that the owners did not express a 'clear and unambiguous' intention to alienate their interests either in Pārahirahi C or in the hot springs taonga. The Tribunal recommended the entire four acres be returned to the hapū of Ngāwhā.[8]

17. The Tribunal recognised that the wider Pārahirahi land transactions that occurred were complex and flawed, but did not make specific findings and recommendations on these aspects of the claim, yet they remain signifcant issues for Ngāwhā. They noted that the deed drafted for the purchase of the Pārahirahi contained several flaws, so much so that Judge Kevin Cull, an expert witness, considered the deed of purchase for the entire Pārahirahi block to be a "legal nullity" by both contemporary legal standards and those of the time.[9]

18. The purchase deed was undated and unsigned by the Crown. Yet these facts were completely overlooked by the Crown because the Crown's purchase deed was drafted with the intention of an outright purchase of the whole block. As part of its purchase process, the Land Purchase Office followed an earlier un-subdivided block plan which made no reference to the sub-blocks Pārahirahi A, B and C. Nor did it refer to the restrictions on alienation placed on Pārahirahi land blocks A and C.

19. Crown purchasing in Pārahirahi was far from straightforward, and not without ambiguity, especially to hapū who were relatively new to both the then flawed the system of ownership and the concept 'individualised land title'. The Tribunal described Crown's purchasing of Pārahirahi as a "somewhat protracted process" which spanned the years 1886 to 1894.[10] The Crown purchased individual shares of a greater block; yet what had

[7] Waitangi Tribunal, 1993, pp. 1-4.
[8] Waitangi Tribunal, 1993, p. 151.
[9] Judge Kevin Cull was asked to provide an overview of the work of commission researcher Rosemary Daamen (Waitangi Tribunal, 1993, p. 4). See also Waitangi Tribunal, 1993, p. 62.
[10] Waitangi Tribunal, 1993, p. 45.

actually been purchased could not have been known or understood by hapū until a Native Land Court hearing in 1894, 21 years after titling began. This hearing was crucial in allocating the remaining land left in Ngāwhā hapū ownership. It would also have significant ramifications on hapū rights to the subsurface geothermal resource.

IV. Claim over the Geothermal Resource

20. While the Tribunal, in part, found in favour of the claimants, recommending the return of the four acres in Pārahirahi C be returned, it concluded that the hapū did not have rights or title in respect of the greater Ngāwhā geothermal resource.[11]

21. The hapū argued extensively that they originally exercised mana over, in and from land and geothermal resources, and had done so for generations. That ability was severely restricted when the Crown acquired land and therefore also, in the Crown's view, subsurface resources.

22. I suggest that if Ngāwhā and all its manifestations are considered to be linked and 'one' as stated by the hapū, then it follows that rangatiratanga could not be confined to one block. Indeed it extended to their ancestral lands including those where geothermal features were present.

Rangatiratanga defined: Ngāwhā and the geothermal resource – the severance of Ngāwhā

23. In 1840 (and prior to), Ngāwhā hapū were kaitiaki over Ngāwhā, which included all that was above and below Ngāwhā lands. Through the exercise of kaitiakitanga (management and trusteeship), or more broadly, occupation, defence and protection of Ngāwhā, the Ngāwhā hapū also maintained mana o te whenua (authority of, from and over land). The Tribunal acknowledged the claimant's expansive view of kaitiakitanga and mana whenua and recognised that the hapū had

[11] Waitangi Tribunal, 1993, pp. 150-151

interests in both the Ngāwhā lands and its resources, including the Ngāwhā geothermal field and all the hot springs on such land.[12]

24. The Tribunal noted, however, that hapū rights over the geothermal resource was jeopardised with the alienation of Ngāwhā lands to the Crown.[13] The Tribunal found that the hapū claim over the entire geothermal resource, while only having "ownership or rangatiratanga" to five acres (Pārahirahi C) of Ngāwhā "too narrowly states the basis for the rangatiratanga" over the geothermal resource.[14] That is, rights to five acres alone could not be used as leverage to claim over the greater geothermal resource.

25. However, the claimant's view 'that the surface manifestations were inextricably linked one with the other'[15] meant that there is no basis in tikanga by which the surface and sub-surface components of the geothermal resource can be severed. If this view is accepted, it must then follow that there could be no severance of rights over any surface component.[16] Against this, however, the Tribunal found that such severance of the geothermal resource did occur: when the Crown acquired ownership of part of Pārahirahi B block (on which the Ngāwhā Springs Hotel hot springs and the Tiger Bath hot springs are situated) and the Tuwhakino block (adjacent – to the north). In the Tribunal's words:

> If, as is well established, the surface hot springs or pools are linked to the sub-surface system, then if the sub-surface component is capable of ownership, the purchaser of a surface component would necessarily acquire an interest in the sub-surface component. Such a purchaser would also of course acquire the right to exclude others from access to the surface component on the property or indeed to the sub-surface of such property.
>
> (Waitangi Tribunal, 1993, p. 90)

[12] Waitangi Tribunal, 1993, pp. 90 and 149.
[13] Waitangi Tribunal, 1993, pp. 150-151.
[14] Waitangi Tribunal, 1993, p. 90.
[15] Waitangi Tribunal, 1993, p. 90.
[16] Waitangi Tribunal, 1993, p. 90.

26. So when the Crown acquired ownership of that part of Pārahirahi B block in 1894 (on which were hot springs) the hapū owners not only lost the right of access to the land (and the springs contained within), but also to the subsurface features directly underneath those blocks. The Tribunal concluded:

> Once ownership of the surface components is severed from that of other surface components no one group can validly claim ownership, rangatiratanga or the exclusive right to manage and control the underground fluid or, in all circumstances, to exercise a veto over its extraction and use.
>
> (Waitangi Tribunal, 1993, pp. 151-152)

27. It is my view, however, that the key issue is: **did the Crown acquire ownership of the hot springs on the other Pārahirahi blocks, and if so how?** The Tribunal summarised the Crown's acquisition of the Pārahirahi block in detail, but it did not make detailed findings or recommendations on the alienation of the Pārahirahi block or the other hot springs. It is my view that this question is critical to the issue of rangatiratanga over the Ngāwhā geothermal field. Because it did not make findings on the Pārahirahi alienation issue, the Tribunal's conclusions on the issue of rangatiratanga over the Ngāwhā geothermal field differ from that presented within this brief.

FIGURE 1: ILLUSTRATION OF THE NGĀWHĀ GEOTHERMAL RESOURCE CLAIM

The alienation of the Pārahirahi lands and the geothermal resource

28. The Tribunal's 1993 report and Rosemary Daamen's commissioned research for the same (1992) into land alienation in Ngāwhā revealed what the hapū consider to be large scale Crown breaches in acquiring the majority of the Pārahirahi lands.[17]

29. While the Tribunal recorded the flawed deed of purchase and the pressured manner of acquisition of the majority of shares in the wider Pārahirahi land block, including the purchase of undivided interests, it did not make any recommendations on these matters. Instead, recommendations were focused on the four acres of Pārahirahi C alone.

30. For some reason, the Tribunal suggested that it was the four acres of Pārahirahi C alone that were of importance to the claimants. Among other things, it noted that:

    (a) The act of separating out five acres in 1885 (to create Pārahirahi C) indicated that it was these pools that were of particular value to the hapū.

    (b) A restriction against alienation placed on the titles at that time applied only to Pārahirahi A and C, not Pārahirahi B or the pools located on that block.

    (c) Value placed on Pārahirahi C was emphasised through the series of petitions to government directed at the wrongful alienation of four acres of C alone.[18]

31. The Tribunal, therefore, inferred that the owners of the other Pārahirahi B block "had no desire to retain it because they did not place the same value on the surface geothermal manifestations on that block as they did on those on C block".[19] The basis of the Tribunal's assertion grounded

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[17] And indeed, I understand that she is presenting her evidence again at this Northland hearing. The full reference for her report is "Daamen, R. (1992). Report on the alienation of the Parahirahi block (Wai 304 #B35): Waitangi Tribunal. The minutinae of technical details on alienation matters are best dealt with by Daamen.

[18] A series of eight petitions by hapū to the Crown began in 1926, highlighting the Crown's wrongful taking of the four acres of Pārahirahi C. The petitions affirmed that no part of the Ngāwhā springs were sold, and maintained that C block was reserved and restricted against alienation.

[19] Waitangi Tribunal, 1993, p. 90.

on the outcome of the 1894 Native Land Court hearing which further subdivided the Pārahirahi blocks:

> On 19 October 1894 the court subdivided Parahirahi blocks A, B and C by allocating some 804 acres to non-sellers in new blocks A1-3, B1 and C1. The balance of 4293 acres, being the residue of the former Parahirahi A, B and C blocks, was vested in the Crown. This included all of the former B block except 150a[acres] 2r[roods] at the southern end which became B1. [...] The Ngawha Springs Hotel springs, formerly part of Parahirahi B block, were now on the new Parahirahi block D vested in the Crown. While criticism has been made of the failure of the court to award some land on B block adjacent to Parahirahi C, to Wiremu Te Ripi and other non-sellers, all subsequent complaints in the form of petitions and representations have been directed solely at the acquisition by the Crown of the Ngawha domain area of approximately four acres.
>
> (Waitangi Tribunal, 1993, p.89)

32. In my view, the hapū were confronted with a fait acompli concerning the Native Land Court system and Crown purchasing of individual shares; a system that virtually rendered the hapū landless save for one acre. The 1993 Tribunal succinctly summarises the effect of the Native Land Court process in the following way: This brief now looks at a crucial moment when the majority of Pārahirahi B was alienated through subdivisions made by the Native Land Court in 1894.

V. Alienation of the Pārahirahi Lands

The Native Land Court Process - 1984

33. By 1894 the Crown had approached most of the owners of Pārahirahi lands to sell their interests, but it had not managed to secure the agreement of all owners to sell. By May of the same year the Crown purchases in Pārahirahi had come to a notable halt. The Tribunal suggested the supposed halt in sales may have been attributable to

Hirini Taiwhanga (another owner in the land, Te Uri o Hua leader and MHR for Northern Māori). Taiwhanga had initially attempted to negotiate the sale of the entire Pārahirahi block with the Crown but later become "disenchanted with the Crown purchases and sought their reversal."[20] The Tribunal stated that "it is reasonable to infer that this marked change of attitude on the part of Taiwhanga would have contributed significantly to the falling away of sales to the Crown."[21]

34. As a result the Crown applied to the Native Land Court to have its interests in Pārahirahi ascertained.[22] The 1894 Court hearing was significant as it determined where (and to whom) the remaining land would be subdivided. However, it is important to contextualise the hearing in light of the period leading up to it and external events that took place outside of it. Of note are the negotiations between the Crown and those referred to as 'non-sellers'. Evidence (as discussed at 42. below) suggests that two Pārahirahi land owners of the time, Te Tane Haratua (aliased in court papers as Te Tane Marupo) and Hone Ngapua, declared interests in the land adjacent to Pārahirahi C, namely Pārahirahi B, which was awarded to the Crown.[23]

Prelude to the 1894 hearing

35. In the lead up to the 1894 hearing, new land owners were keen to extend their interests in Pārahirahi. For instance, George Patterson,[24] the lessee, and later, owner of the Tuwhakino block (on the north eastern boundary of Pārahirahi C) expressed an interest to the Crown in purchasing the land containing geothermal features in Pārahirahi C and B (Daamen, 1992, p. 28).[25] Patterson confided to the Crown that if he

[20] To summarise briefly, the Crown initially acted as if Taiwhanga had the mandate of all the owners and advised Taiwhanga that it was willing to enter into an arrangement with him for the purchase of the block Shortly after, however, the Crown advised Taiwhanga that it would pay the owners separately (Waitangi Tribunal, 1993, p. 59).
[21] Waitangi Tribunal, 1993, p. 46.
[22] Waitangi Tribunal, 1993, p. 46.
[23] It is important to note that, in the Tribunal's discussion regarding whether the Crown acquired ownership of the hot springs on the Parahirahi B block, only the owner Wiremu Te Ripi, 'and other non-sellers' are cited as criticising the lack of land allocation in Pārahirahi B (see Waitangi Tribunal, 1993, pp. 88-99).
[24] According to Daamen, Patterson was a gum merchant (Daamen, 1992, p. 28).
[25] While Pārahirahi had multiple named owners, the neighbouring block of Tuwhakino is an example of singular ownership. A day prior to the titling of Pārahirahi, the land block of 1086 acres to the north named Tuwhakino was awarded solely to Heta Te Haara, a Ngāti Rangi

could acquire land he would be able to float a large company which would mean a "big thing" for the district.[26] In a letter to R M Houston MHR for the Bay of Islands, Patterson wrote:

> The [Pārahirahi block C] I pointed out to you on the map in the land office cuts right into my block and tends to damage the sale or floating of a company as long as it is in the native hands. I would like to get this piece, also about 50 or 100 acres adjoining it [in Pārahirahi block B, including lakes Ngamokaikai and Waiparaheka].[27]
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> (Waitangi Tribunal, 1993, p. 48)

36. Patterson also added that he was willing to pay the government 'a reasonable price' for it and would help "them [the Government] in every way to get the balance [of the Pārahirahi lands]".[28] Patterson's interest in purchasing the geothermal parts of C and B blocks is important when considering the outcome of the 1894 hearing. Patterson suggested to the Crown that acquiring these pieces would bring economic returns to the region vis-a-vis, the Crown. Due to the halt in sales (described above), the Crown renewed its application to the Native Land Court to have its purchased interests in Pārahirahi defined. A Court hearing was then gazetted for the 15 October 1894.[29]

Adjournment of hearing

37. Before the hearing on 15 October 1894 could take place, the Ngāti Kawa/Ngāti Rāhiri (among others) hapū leader Te Tane Haratua requested an adjournment:

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rangatira (Waitangi Tribunal, 1993, p. 30). Tuwhakino contained a small portion of hot springs. Donald Loveridge (historian for the Crown) suggested there must have been some kind of negotiation between Heta Te Haara and the owners-to-be of Pārahirahi regarding the boundary lines of Tuwhakino and Pārahirahi as the survey plans reveal a five acre block that had been purposely severed from the Tuwhakino block to be included within Pārahirahi. This small area later became Pārahirahi C block (Waitangi Tribunal, 1993, p. 33). It is beyond the scope of this brief to enter into any proper discussion regarding the alienation of Tuwhakino.

[26] Waitangi Tribunal, 1993, p. 48.

[27] Daamen, 1992, p. 28.

[28] Daamen, 1992, p. 28.

[29] Waitangi Tribunal, 1993, p. 48.

> The court minutes note that Hone Ngapua handed in a letter from Tane Haratua asking that the case be adjourned either to Kawakawa or Waimate "as the old people could [not] come here being infirm"; The court adjourned to confer with the chief judge and the following day the recorder advised that the case would be adjourned to Kawakawa for hearing on 19 October 1894. He warned that the case would proceed on the 19th whether they appeared or not and there would be no further adjournments.[30]

38. In my view, the adjournment request is significant. This suggests to me that Haratua was concerned that consultation, or at least audience, with wider members (elders) of the community needed to occur before hearings could begin.

Native Land Court hearing – October 1894

39. The Native Land Court sitting on the 19th of October 1894 subdivided the areas of Pārahirahi that had been purchased by the Crown and created new subdivisions for the remaining hapū owners. As the Crown had been acquiring owners' interests individually, the actual total land purchased by the **Crown was unknown up until this point.** Crown agent Gilbert Mair engaged directly with these owners either prior to, or outside of, the Court hearing. The Court in fact adjourned specifically for periods to "enable" Mair to "arrange" the difficult matter of subdivisions outside of Court.[31]

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[30] Waitangi Tribunal, 1993, p. 50.

[31] Three days later, Mair in a letter reporting on the court hearing to Sheridan, stated:

> When the Court opened on the 19th I found that the non-sellers wanted the best of the block including all the Cinnabar workings. The Court was adjourned from time to time to enable me to arrange outside and after a great deal of disputing and delay the several subdivisions as shown on the attached plan were finally settled. The eight hundred and six acres cut off for the natives include their houses[,] stores and cultivations, many of the natives being resident on the land, but these portions are of no special value to the Crown.
>
> I am informed by Mr Goffe and others who have an intimate knowledge of the block that the 4290 acres awarded to the Crown, contain all the Quicksilver deposits and are therefore, the most valuable portion of the estate. Very probably several of the non-sellers will now want to dispose of their small interests, but unless all join in the sale, the expense of the several subdivisions will not be materially lessened. The natives were paid £1 per acre for the adjoining blocks by the European purchases and had an exalted idea of the value of this land (Daamen, 1992, p41).

Significance of negotiation of subdivision

40. The negotiations between Mair and Ngāwhā leaders Haratua and Ngapua outside of the Court were significant for three reasons. Firstly, it was one of two known negotiations to have taken place between the Crown and tangata whenua over the new subdivision of Pārahirahi. Secondly, it offers insight into key decisions being made by owners and hapū leaders at the time. Thirdly, the transfer of hot springs on Pārahirahi B to the Crown (and other surface manifestations discussed below), was the basis upon which the Crown would later define the claim of ownership to the entire geothermal resource.

41. The nature and scope of negotiations between hapū leaders and the Crown can be ascertained from Court rulings, notes and Gilbert Mair's reports.[32] In Mair's report (three days after the hearing), Mair noted that, when it came to "cutting out the area" for the remaining owners, two of the owners, Te Tane Haratua and Hone Ngapua, had requested:

    (a) that their own shares be separated from the others; and

    (b) that they be located adjacent to the hot springs in Pārahirahi C, described as the "best of the block including all the Cinnabar workings".[33]

42. The two hapū leaders considered the area of Pārahirahi B at the "far end" of the block (which was offered by Mair) of inferior quality.[34] What they wanted was another (better) part of Parahirahi B (as described above).

43. Despite their interest in land near Pārahirahi C, Haratua and Ngapua were not awarded any land in Pārahirahi B. Gilbert Mair noted that:

> The eight hundred and six acres cut off for the natives include their houses[,] stores and cultivations, many of the natives

[32] Daamen, 1992, p. 42.
[33] Daamen, 1992, p. 42.
[34] Waitangi Tribunal, 1993, p. 51.

> being resident on the land, but these portions are of no special value to the Crown.[35]

44. Mair stated that this had been "an exceptionally difficult matter to settle".[36] In the end, Mair persuaded Ngapua and Haratua out of the land they desired to retain and surrendered altogether their respective interests in Pārahirahi B block. The result was that Haratua and Ngapua were awarded just over 412 acres in Pārahirahi A1 (see figure 2 below for map of 1894 subdivisions). Collectively, the remaining owners were allocated 804 acres in new blocks A1-3, B1 and C1.[37]

45. At the same time, 4293 acres (the balance of A, B and C) was awarded to the Crown and was titled Pārahirahi D. Land awarded to the Crown, contained all the geothermal areas of Pārahirahi B. This was the "most valuable portion of the estate".[38] The other 'non-sellers' who retained an interest in B block (Pārahirahi B1 of 150 acres 2 roods) were, in the words of the surveyor who worked on the survey of the Pāahirahi subdivisions, left with:

> nothing but worthless kauri gum land, very broken, and utterly unfitted for cultivations in any part, and therefore not suited for the purpose it was intended. The land N[orth] of A No 3 would be better adapted for a Maori reserve. [39]

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[35] Daamen, 1992, p. 41; Waitangi Tribunal, 1993, p. 52.
[36] Waitangi Tribunal, 1993, p. 52.

[37] The only other negotiation known to have occurred was outside of the 1894 Court session between Gilbert Mair, William Goffe (a licensed interpreter who worked also as a Lands Purchase officer) and others only identified as 'non-sellers'. The Crown had been requested by these owners "to have their interest cut off commencing at Te Neaaia [?] and then to [the] stream Tukuwhenua and along its bank" (Daamen, 1992, p. 40). As it would happen, the owners of this negotiation were not present at the hearing, and therefore relied on Mair to inform the Court of the areas they wished to reserve for themselves (and presumably for the others as well) from sale (Daamen, 1992, p. 40). Whether these owners received these areas has not been explored in this report.

[38] Waitangi Tribunal, 1993, p. 52. Furthermore, the subdivision included a discrete transfer of four acres (Pārahirahi C) containing the majority of geothermal surface features in Ngāwhā. Details of the acquisition of the four acres to this day remain unclear. What is important is that the Crown asserted that they had acquired the majority stake (over four acres) in Pārahirahi C. After some sort of negotiation with the owners, the Crown was willing to take only four acres leaving one acre for non-sellers. As a result Pārahirahi C1 of one acre was created.

[39] Waitangi Tribunal, 1993, p. 55.

46. The Tribunal previously deliberated over the question of whether non-sellers were awarded the areas they wished to retain and acknowledged that it was clear that they did not get what they wanted. Instead they were prevailed on to surrender their interest in the B block.[40]

47. As stated above, the allocation of land containing springs in Pārahirahi B to the Crown had significant consequences for hapū mana and rights to the underground geothermal resource. A key point for us is how the Crown leveraged a position over the owners in order to obtain the areas of land it desired despite indications to the contrary from the owners. Factors that may have influenced hapū acceptance of this negotiation will be explored now.

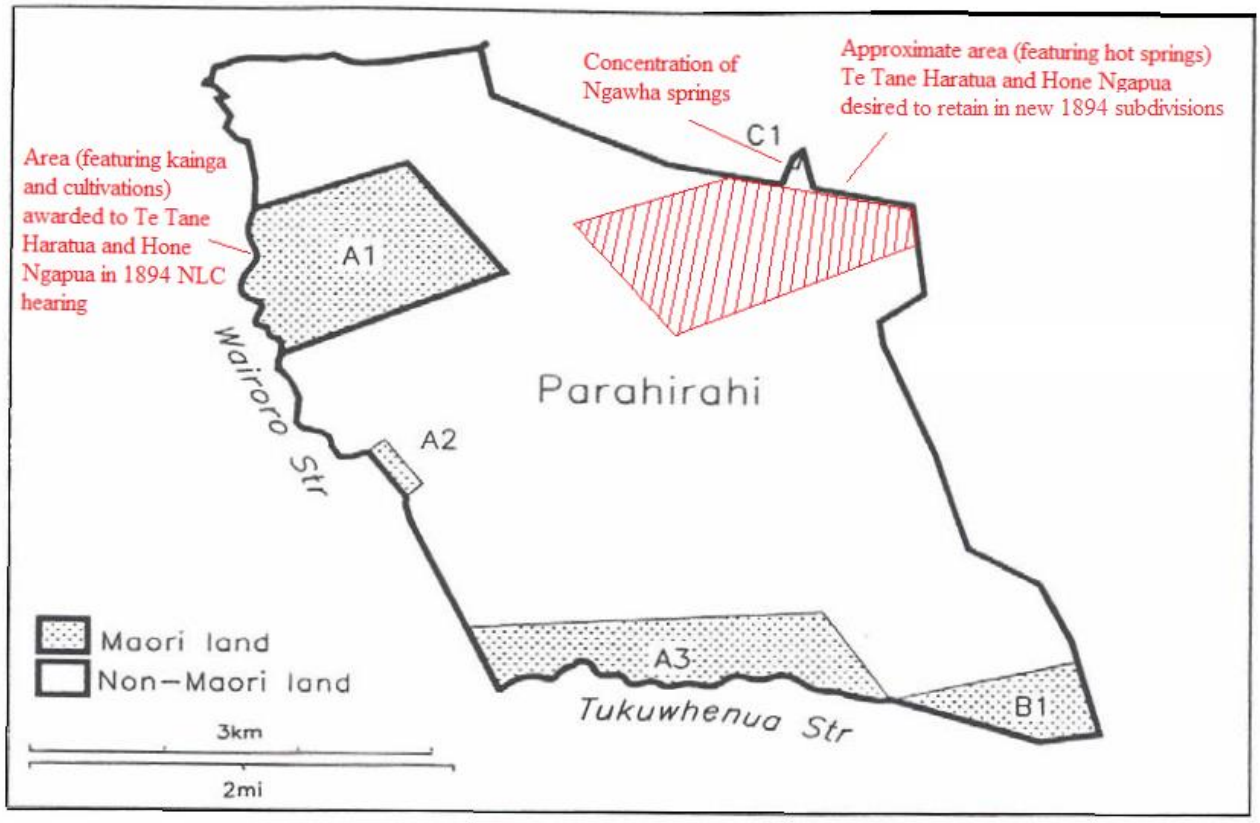

Figure 2: Pārahirahi Land block showing 1894 subdivisions and areas of negotiation between Te Tane Haratua, Hone Ngapua and Gilbert Mair (Waitangi Tribunal, 1993, p. 54, original held in Pārahirahi block order file No. 2, Māori Land Court, Whangarei).

[40] Waitangi Tribunal, 1993, p. 55.

Crown agency and the role of Gilbert Mair

48. The Waitangi Tribunal acknowledged that the Crown had a role in pressuring sales by approaching individual owners to sell their shares in Ngāwhā.[41] Pressure was also applied to owners when determining where they would receive their land allotment within the Pārahirahi block.

49. Gilbert Mair, to a large extent, was successful in convincing owners to move out of areas they wished to keep in Pārahirahi B. Mair was concerned to obtain land that would be of value to the Crown. In addition, the land that was set aside for the remaining owners (particularly Pārahirahi A1) also contained kāinga of those who had previously sold their shares to the Crown. In short, non-sellers were providing land and the living area for not only themselves but those who had 'sold'. [42]

50. The Crown acquired 4290 of the original 5097 acres **(84%)** in Pārahirahi. The Crown had leveraged itself into a position in which it was able to control which land it determined fit for acquisition, silencing hapū opinion, their rangatiratanga. The Crown clearly had an agency in the outcome of the hearing. This was reflected in the proactive negotiations led by Crown agent Gilbert Mair. Mair's reputation and status may have played a role in influencing Māori and in altering the tenurial landscape in Pārahirahi.[43]

Te Tane Haratua and Hone Ngapua

51. Te Tane Haratua and Hone Ngapua's direct negotiations with Gilbert Mair were described as "exceptionally difficult". This suggests that Haratua and Ngapua did not easily accept Mair's proposal, and in my

[41] Waitangi Tribunal, 1993, pp. 42-47.
[42] Waitangi Tribunal, 1993, pp. 55-56.
[43] Mair was an interpreter for the Native Land Court. His involvement in government acquisition of Māori land grew apace when he was appointed land purchase officer in 1879 (Savage, 2012; P. Tapsell, 2006a, p. 44). A consequence of Mair's influential involvement in the Government purchase process over 25 years, as argued by P. Tapsell, was major alienation of lands for many tribes, specifically in the North Island (2006a, p. 44).

view indicates that they were considering carefully what was at stake for the Pārahirahi lands and community.

52. Given Ngapua and Haratua's considerable efforts in land affairs[44], it is difficult to accept that individuals of their calibre and political orientation would simply agree to Mair's demands. Based on the outcome of subdivisions, it is my view that Haratua and Ngapua were compelled to make an informed, but pressured, decision, to relinquish the springs in Pārahirahi B in order to retain several kāinga and mahinga kai (cultivations) in Pārahirahi A.[45] They were simply left with no other choice, because of the Crown's efforts to buy up individual shares in the land. Service to hapū in the context of this negotiation required Haratua and Ngapua to compromise parts of their land interests; i.e. surrender some parts containing geothermal pools in exchange for other parts. Central to their decision-making was to support those who still lived on the land.

53. The actions of Ngapua and Haratua in Pārahirahi illustrate an overlap of responsibilities in leadership and ownership. Ironically, the workings of the Court and Mair on one hand stifled hapū rangatiratanga by diminishing the tribal estate. On the other hand, it set the context for individual leaders to emerge in land dealings with the Crown. It provided the environment in which leaders were able to assert their trusteeship responsibilities in attempting to protect the community from the alienation of their papakāinga.

54. Hone Ngapua and Te Tane Haratua revealed their dissatisfaction with Crown acquisition of Māori land both directly and indirectly in relation to Pārahirahi. They retained shares for and on behalf of others; they also had no choice but to exchange areas of land with the Crown in an attempt to provide for the wider community. More broadly, they actively

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[44] Both Haratua and Ngapua were recognised leaders in the Bay of Islands region in relation to a number of specific concerns, but especially concerning land. Both were involved in the Treaty of Waitangi movement, with Haratua also involved in the Kotahitanga movement (Moon, 2006, p. 56; Orange, 1987, pp. 320-321; see also Rankin-Kawharu, 2010; Cox, 1993). Another of Haratua's roles was as a representative or 'karere' for the Bay of Islands District Runanga.

[45] It seems that those who had sold their shares in Pārahirahi at an early stage (prior to 1894), were unaware they had sold the land that they were living on and farming in Pārahirahi A. It is likely that Gilbert Mair was aware of this situation and used this knowledge to his and the Crown's benefit.

engaged in movements such as Kotahitanga (where one of the central pillars of Kotahitanga was the retention and control of Māori land by Māori). They were also involved in critical leadership roles in petitions and in presenting arguments on behalf of local communities to the government (i.e. petitions over lands in Waitangi) in relation to land problems.[46]

VI. Implications of Land Alienation on the Geothermal Resource Claim

55. An unresolved question remains: as Hone Ngapua and Te Tane Haratua received just over 400 acres, why did they not split the shares to secure both locations and retain the hot springs on Pārahirahi B as well as the kāinga and mahinga kai on Pārahirahi A? It is possible that this choice was not offered by the Crown, via Mair. It is reasonable to believe that the Crown's vested interest in acquiring Pārahirahi B (as declared through George Patterson's interest) may have influenced this. In any case, as a result of the negotiations, the Crown acquired the majority of land remaining in the Pārahirahi B Block. Unbeknown at the time, the Crown also acquired a substantial part of the Ngāwhā geothermal resource.

56. Counter to the Tribunal's inference that only Pārahirahi C was of importance to the hapū, the negotiations referred to above demonstrate quite clearly the importance of B Block to Ngāwhā hapū. The area of Pārahirahi B block adjacent to Pārahirahi C was not willingly released by Ngāwhā hapū, and specifically by owners Hone Ngapua and Te Tane Haratua. Hapū leaders worked hard to keep land in Pārahirahi B (specifically the springs).

[46] Appendix to the Journal of the House of Representatives Session I, I-03, 1888; Kia Henare Tomoana, kia Wi Pere, kia Henare Matua. Wananga, Volume 5, Issue 37, 14 September 1878, Page 462. Haratua and Ngapua's concerns were carried by Ngapua's son Hone Heke MHR (Reta Tuku Mai Kite Etita. Huia Tangata Kotahi , Issue 19, 16 September 1893, Page 6 available at http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&cl=search; Waitangi Tribunal, 1993, pp. 47-48; Daamen, 1992, p. 48)

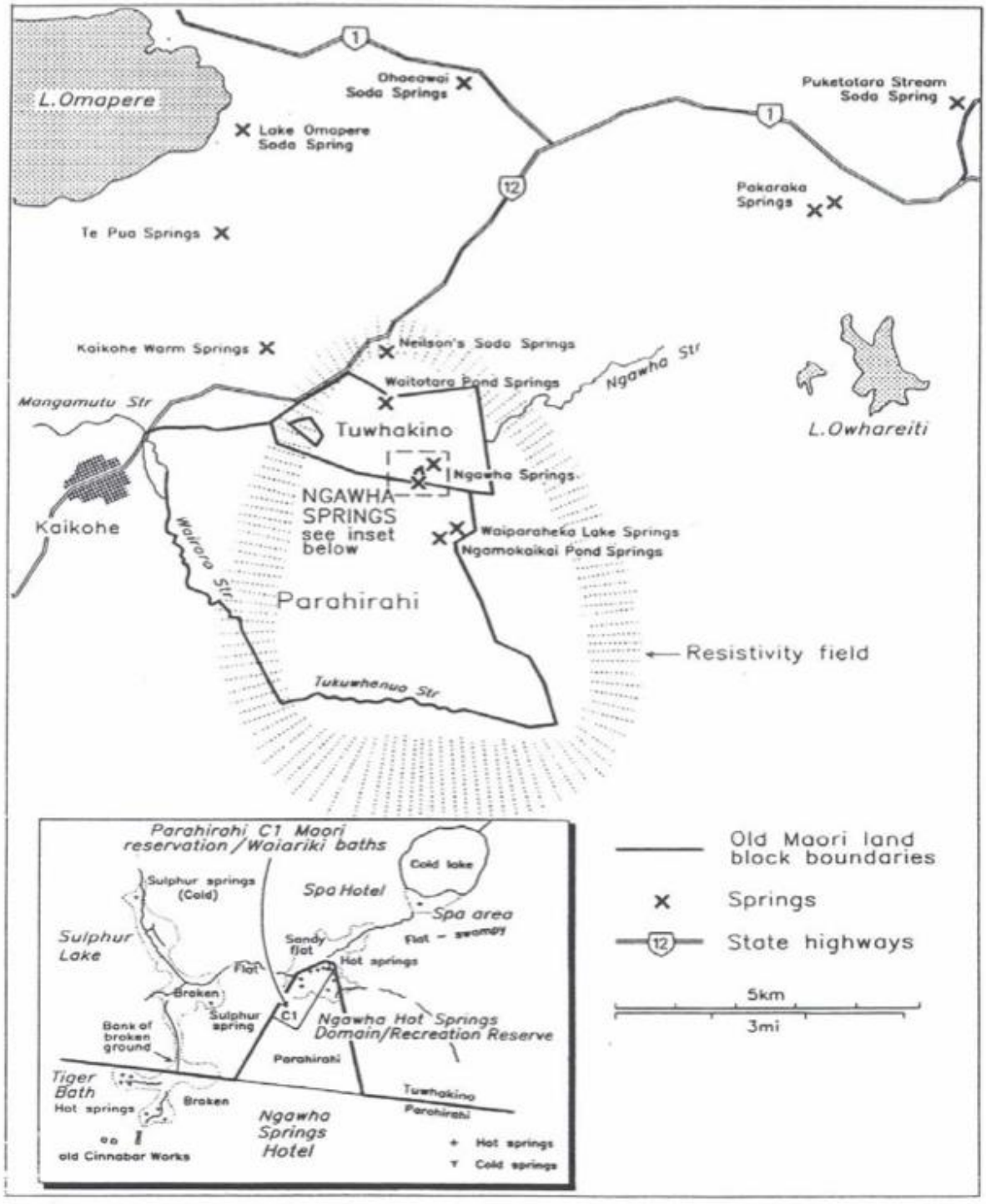

Figure 3: Map of springs in the vicinity of Ngāwhā and the Ngāwhā geothermal field cited in (Waitangi Tribunal, 1993, p. 28).

7. Wider Grievances in Pārahirahi

57. Following the subdivisions made in 1894, the overall pattern of alienation in Pārahirahi was that of yet more government-pressured alienations.[47] To summarise, between 1913 and 1957, most remaining land was taken through Public Works or Native Land legislation, or sold by the Tokerau District Māori Land Board. The net effect was that Ngāwhā hapū were left with less than three acres (in the Pārahirahi lands).

Alienation of Pārahirahi B1

58. After Ngapua and Haratua (and Hone Heke Ngapua), the Taitokerau District Māori Land Board assumed the role of dealing with Pārahirahi land issues. Its role was not underpinned by the kinds of trusteeship or kaitiakitanga and mana principles that shaped the leadership of Ngapua and Haratua. It functioned under statutory (i.e. western) authority, with seemingly little, or no, consultation or authority of the descendants in the land. Under s5 of the Native Settlement Act 1907 the Board was deemed the legal owner of the land, and held it in trust for the beneficial Māori owners. The only requirement of the Board was that it 'act in the interest of the owners'.[48]

59. In 1909, Pārahirahi B1 came under the control of the Tokerau District Māori Land Board.

60. Despite its non-tikanga charged role and its lack of accountability to hapū, in 1915, the Board sold the B1 block to the Crown for £60. Successions of title to the block, however, continued to be recorded until 1946.[49] Owners of B1 did not claim payment for the land from the Board. Daamen suggests that these owners were not, in fact, aware of the sale by the Board, as negotiations were made by the Board independently of the owners.[50] There is no record in the Board files of meetings with the owners to discuss the sale. In 1945 Wiremu Hongi Te Ripi Junior

[47] For further information on alienation of the remaining Pārahirahi blocks A1, A3 and B1 see Daamen (1992, pp. 56-71).
[48] Daamen, 1992, p. 64.
[49] Daamen, 1992, p. 61.
[50] Daamen, 1992, p. 64.

appeared to be unaware the land had been sold and was then living on Pārahirahi B1.[51]

Alienation of Pārahirahi A1

61. Hone Ngapua and Te Tane Haratua's land in Pārahirahi was divided amongst several people, including spouses and children. Over a number of years, beginning in 1949, the majority of the shares in A1 were consolidated and transferred to the youngest of Te Tane Haratua's five grandchildren, Pereri Waharoa Tane (including Ema Ngapua's shares – previously Hone Ngapua's).

62. In Pereri's lifetime, the government proclaimed 380 acres in Pārahirahi A1 as Crown land pursuant to the Public Works Act 1926 to build a technical school (on behalf of the now Northland College).[52] In July 1976, after numerous successions and consolidations, roughly 34 acres ceased to be Māori land on application of the owners. Then in 1981, 134 acres was taken for 'scientific and industrial research' under the Public Works Act 1928.[53] This is a very large area for an undefined purpose other than the general notation.

63. Despite the efforts of Ngapua and Haratua to retain land in Pārahirahi, no form of leadership emerged to contest the Crown acquisitions in Pārahirahi A1. Given the history traverrsed in my evidence, it becomes clear that it was virtually impossible to continue 'the fight' at a specific level concerning Pārahirahi. Let us also not forget, and important to note, hapū needs turned to addressing major issues of the mid to latter twentieth century including economic depression, World War II, urban migration, the 1980s economic pressures and other concerns, as documented widely in published literature. The ultimate outcome was a disconnection between descendants in the land and Pārahirahi lands. Today, according to Māori Land Online, none of the Pārahirahi A1 block remains in Māori ownership.

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[51] Daamen, 1992, p. 64.
[52] Daamen, 1992, p. 57, 121.
[53] Daamen, 1992, p. 105.

8. A Contemporary Grievance

64. In 1993, the Waitangi Tribunal recommended that the Crown return the four contested acres of Pārahirahi C to Ngāwhā 'Māori', noting that "good faith, fairness and the honour of the Crown.. are compelling reasons for the acceptance of our recommendation for the reinstatement of the rangatiratanga of the hapū of Ngāwhā".[54] This recommendation did not, however, guarantee settlement. The claim has remained unresolved for over 20 years. Nicole Butler's evidence addresses this issue in detail. The Treaty principles of good faith and partnership have effectively been ignored by the Crown.

65. As an intermediate solution to the predicament, the Pārahirahi C1 Trust has had to take a pragmatic approach to address immediate 'on the ground' concerns such as, for example, focussing attention on formalising its legal management function over the development of the Far North District Council recreation reserve (four acres of Pārahirahi C). It has resulted in the small group of trustees diverting much of their energy from prioritising the Treaty claim to reactionary management concerns. Had settlement of the claim been timely, many, if not most, of the current issues would not have surfaced. If anything, the lack of addressing the claim has meant that maintenance issues have been exacerbated. And fundamentally, the non-action has been a total disregard of the importance of the relationship between the people and their ancestral lands.

66. To indicate briefly, the Ngāwhā pools are, essentially, in a state of disrepair. The Ngāwhā environment is damaging to most materials of the built structures of the pools. They need constant maintenance and care, stretching the minimal resources of the Trust. All areas of the current facilities are in need of major renovation including the office, changing rooms, walkways, railings, steps, pool surroundings, electrical wirings and fittings, shelters and fences. For some time the perimeter fence has

[54] Waitangi Tribunal, 1993, p. 80.

not been resilient enough to withstand vandals and others trying to gain access to the complex after hours.[55]

67. The current customer charges are minimal. In recent years, returns from the pools have averaged around $50,000 per year. This level of annual revenue does not allow staff to be paid [regularly] nor can it sustain the constant repairs needed on the complex.[56]

68. Another major concern for the Trust is flooding. The Ngāwhā pools are subject to regular flooding each time there is significant rainfall. The cleanup after rainfall is labour-intensive and can be expensive. The Ngāwhā pools are situated in a natural basin, part of an old lake bed. At times of significant rainfall, the nearby Tuwhakino Stream flows into Lake Tuwhakino – the lake level rises back into the stream and floods the pools.[57]

69. To give an indication of the difficulties of administering basic functions, duties and compliance issues, the Council's right to discharge water from the complex into the adjacent stream has expired and the Northland Regional Council is pressuring the Trust to renew the resource consent, yet some would consider this to be a natural customary use which has always occurred.[58] Water discharge rights should be explored in Treaty settlement.

70. **The four acre claim represents an opportunity for a new beginning.** The restoration of title to this area will free up legal, political and economic roadblocks that have been in place since the Crown claimed ownership in 1894. The return of title will enable the hapū to exercise their rangatiratanga, to explore a new horizon of sustainable geothermal development and to restore community wellbeing. It offers significant opportunities for the beneficiaries/ hapū / marae in terms of cultural

[55] White, 2010, pp.15-17.
[56] White, 2010, p. 13.
[57] The pools are at a similar level to the water level of the Tuwhakino Stream. It is estimated that the stream can only cope with a flow of around one cubic meter - the stream regularly has volumes in excess of two cubic meters. When flooding occurs, abatement of pool flooding is subject to the stream levels. Walling around the pools has provided protection against for less severe flood events, but the deterioration of these wall continues to expose the pools to flooding (White, 2010, p. 28).
[58] White, 2010, p. 18, 27.

restoration, and economic, social, cultural and political development within and beyond Ngāwhā.

9. Conclusion

71. The struggle for partnership with the Crown has been a dilemma for leaders in Te Tai Tokerau since 1840[59]. The reality now is that almost a century of protest, petition, research and negotiation in Ngāwhā has passed for what may be seen as the return of a mere four acres. The issues however, are far deeper and wider than that. They concern the restoration of mana in the Pārahirahi lands, and the restoration of what hapū leaders thought they were entering into when they signed Te Tiriti: partnership. It is these twin themes: mana and partnership that are at the heart of the efforts of the Pārahirahi leaders today regarding Pārahirahi.

72. Since 1993, the Pārahirahi trustees, as defacto hapū 'leaders', have revised and updated the depth of Treaty breaches in Ngāwhā. My evidence has been concerned to highlight the ongoing grievances. It is essential to address the alienation of the wider Pārahirahi lands and so enable mana that was lost by disenfranchised hapū to be recovered and to be strengthened. This will go some way towards restoring the Crown's honour in the eyes of hapū in Ngāwhā.

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DATED at Kerikeri this 4th day of November 2015

P Tane

[59] See, for example, Merata Kawharu's 2008 report Te Tiriti and its Northland Context, Wai 1040 #.

References

Cox, L. (1993). Kotahitanga, The Search for Maori Political Unity. Oxford: Oxford University Press.

Daamen, R. (1992). Report on the alienation of the Parahirahi block (Wai 304 #B35): Waitangi Tribunal.

Lee, J. (1983). I have named it the Bay of Islands. Wellington: Computype Services Ltd.

Moon, P. (2006). Ngāpua: The Political Life of Hōne Heke Ngāpua, MHR. Auckland, NZ: David Ling Publishing Limited.

Orange, C. (1987). The Treaty of Waitangi. Wellington: Allen & Unwin.

Rankin-Kawharu, F. (2010). 'Ngapua, Hone Heke - Biography', from the Dictionary of New Zealand Biograpy Retrieved 6/07/2012, from http://www.TeAra.govt.nz/en/biographies/2n12/1

Savage, P. (2012). 'Mair, Gilbert - Biography', from the Dictionary of New Zealand Biography Retrieved 23.08, 2012, from http://www.teara.govt.nz/en/biographies/1m4/1

Sissons, J., Wi Hongi, W., & Hohepa, P. (2001). Ngā pūriri o Taiamai: a political history of Ngā Puhi in the inland Bay of slands. Auckland: Reed Publishing Ltd.

Tapsell, P. (2006a). Ko Tawa, Maori treasures of New Zealand. David Bateman, Auckland.

Te Rōpu o Tuhoronuku. (2011). It is time for Ngapuhi to vote. Kua tae ki wā e Ngāpuhi kia pōti. Kaikohe: Te Runanga a Iwi o Ngapuhi.

Te Rūnanga Ā Iwi O Ngāpuhi. (2001). Profile. Retrieved 20.8, 2012, from http://www.ngapuhi.iwi.nz/profile.htm

Waitangi Tribunal Reports

Waitangi Tribunal. (1993). Ngawha Geothermal Resource Report (Wai 304). Wellington, NZ: Brooker & Friend Ltd.