IN THE WAITANGI TRIBUNAL

Wai 2180

CONCERNING the Treaty of Waitangi Act 1975

AND the Taihape: Rangitīkei ki Rangipō District Inquiry

PRELIMINARY OPINION ON CUSTOMARY RIGHTS IN THE KĀWEKA AND GWAVAS CROWN FOREST LICENSED LANDS

16 February 2024

Claimant counsel
L Watson *Ngā Iwi o Mōkai Pātea amalgamated claim* (Wai 1705, 647, 588, 385, 581, 1888)
A Sykes (Annette Sykes & Co.) *Ngāti Hinemanu me Ngāti Paki amalgamated claim* (Wai 662, 1835, 1868)
K Feint (Thorndon Chambers) *Ngāti Tūwharetoa amalgamated claim* (Wai 61, 575)
C Hockly (Hockly Legal) *Ngāti Hikairo amalgamated claim* (Wai 37, 933)
P Walker (Kahui Legal) *Waiouru to Ohakune Lands claim* (Wai 151)
D Naden (Tamaki Legal) *Horowhenua Block claim* (Wai 237) and *Tongariro Power Development Scheme Lands claim* (Wai 1196)
B Gilling (Mahony Horner) *Ōwhāoko C3B claim* (Wai 378), *Kaweka Forest Park and Ngaruroro River claim* (Wai 382), *Ahuriri Block claim* (Wai 400), and *Ngāti Kauwhata ki te Tonga surplus lands claim* (Wai 972)
T Afeaki (Afeaki Chambers) *Renata Kawepo Estate claim* (Wai 401)
R Siciliano & J Burgess (McCaw Lewis) *Te Reu Reu Land claim* (Wai 651) and *Ngāti Pikiahu claim* (Wai 1872)
P Johnston (Rainey Collins) *Kauwhata Lands and Resources claim* (Wai 784) and *Te Kotahitanga o Te Iwi o Ngāti Wehiwehi claim* (Wai 1482)
Y Singh (Legal Hub) *Awakino and Other Lands claim* (Wai 868), *Ngāti Hekeawai Land Block claim* (Wai 1299), *Lands and Resources of Ngāti Ngutu/Ngāti Hua claim* (Wai 1409), *Ngāti Ngutu Hapū claim* (Wai 1497), *Hauturu Waipuna C Block (Herbert) claim* (Wai 1978), *Ngāti Kinohaku and Others Lands (Nerai-Tuaupiki) claim* (Wai 2131)
M Tuwhare *Ngā Poutamanui-a-Awa Lands and Resources claim* (Wai 1254)
C Linstead-Panoho (Wackrow Panoho & Associates) *Ngāti Waewae Lands claim* (Wai 1260) and *Ngāti Parewahawaha (Reweti) claim* (Wai 1619)
T Bennion (Bennion Law) *Waimarino No. 1 Block and Railway Lands claim* (Wai 221), *Ngāti Tara Lands claim* (Wai 1261), and *Tahana Whānau claim* (Wai 1394)
D Hall (Woodward Law) *Ngāti Kauwhata ki te Tonga and Rangitīkei-Manawatū, Reureu blocks and Awahuri reserve lands claim* (Wai 1461)
M Sinclair (Te Haa Legal) *Raketapauma (Descendants of Ropoama Pohe) claim* (Wai 1632)
M McGhie for the *Te Wai Nui a Rua (Ranginui and Ranginui - Tamakehu) claim* (Wai 2157)
Representatives for the *Ngāti Hikairo ki Tongariro Lands claim* (Wai 1262)

Unrepresented claims
Te Kōau Block and Ruahine Ranges claim (Wai 263)
Gwavas Forest Park claim (Wai 397)
Parakiri and Associated Land Blocks claim (Wai 1195)
Descendants of Mōkai-Pātea (Cribb) claim (Wai 1639)

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Introduction

Background

1. This preliminary opinion constitutes step three in a process that commenced in May 2018 to inquire into customary interests in the Kāweka and Gwavas Crown forest licensed (CFL) lands. It is essentially a preliminary assessment of part of the Taihape inquiry claims that overlaps with the settlements achieved between the Crown and, respectively, the Heretaunga Tamatea and Ahuriri claimants. The claims in question were brought by members of Ngāti Hinemanu me Ngāti Paki, represented by the Ngāti Hinemanu me Ngāti Paki Heritage Trust ('the Heritage Trust'). They assert customary interests in the CFL lands through their ancestor, Punakiao.

2. In this preliminary opinion we do not consider claims against the Crown. We are first seeking to clarify whether the claimant group has customary interests in the CFL lands that would prompt an examination of Crown actions. If we find no evidence of those interests, then the parties may consider that this part of the process cannot proceed further. It is well settled that the Tribunal is able to regulate its own procedure. Our task is arguably similar to that faced by the Tribunal in its Te Tau Ihu o Te Waka a Maui inquiry concerning claims by Te Tau Ihu iwi to customary rights in the statutorily defined Ngāi Tahu takiwā. Te Tau Ihu claimants alleged that Crown actions both in the nineteenth century and in its more recent settlement with Ngāi Tahu had overlooked their rights and breached the treaty. As the Tribunal put it, 'To assess these claims, it was necessary for us first to establish whether Te Tau Ihu iwi did, in fact, have customary interests in the takiwa.'[1] We are in any event satisfied that we have jurisdiction to proceed under section 6 of the Treaty of Waitangi Act 1975, as the Ngāti Hinemanu me Ngāti Paki claims in relation to the Kāweka and Gwavas CFL lands are made against the Crown.

3. To place our preliminary opinion within its proper context, we traverse the procedural background that has led us to this point in Appendix A. That background begins with the negotiations between He Toa Takitini, a body representing Heretaunga Tamatea claimants, and the Crown in 2010 and 2011. At that stage, our inquiry boundary had only just been defined and we remained years away from commencing hearings. It also includes the decision to grant urgency to the Ngāti Hinemanu me Ngāti Paki Heritage Trust claim arising from the proposed Heretaunga Tamatea Deed of Settlement (Wai 2542) from which an eventual agreement was reached between the parties following mediation. That agreement set out a process that eventually involved the commissioning of further evidence from Dr Te Maire Tau and Dr Martin Fisher and a testing of that report and the hearing of further claimant evidence at Ōmāhu Marae in 2020. This was then followed by a second review of Tau and Fisher's report by Paul Meredith.

4. We have now considered all of that evidence, including Tau and Fisher's report and the Meredith review, along with claimant evidence and counsel's submissions. Our preliminary opinion on customary interests in the Kāweka and Gwavas CFL lands is set out in paragraphs 65 to 80.

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[1] Waitangi Tribunal, *Te Tau Ihu o Te Waka a Maui: Preliminary Report on Te Tau Ihu Customary Rights in the Statutory Ngai Tahu Takiwa* (Wellington: Legislation Direct, 2007), p 183

Ngāti Hinemanu and Ngāti Paki

5. Ngāti Hinemanu are the descendants of Hinemanu, the daughter of Punakiao and Taraia II (or Taraia Ruawhare). Through her father Hinemanu had lines of descent from Tamatea-pōkai-whenua, Kahungunu (Ngāti Kahungunu), Rongomaitara (Te Aitanga a Rongomaitara), and Te Ōhuake (Ngāi Te Ōhuake). Through her mother she had lines of descent from the early tangata whenua people, Whatumāmoa and back to Te Tini o Te Hā and Ngāti Ōrotu, the early people of Ahuriri. Although born in Heretaunga, she returned to live on her ancestral lands at Pātea and married Tautahi, the grandson of Haumoetahanga and Whitikaupeka. The wharekai at Winiata Marae is named for Hinemanu and the wharepuni is named for Tautahi. They had four children, one of whom – Tarahe – was sent back to live at Heretaunga to keep his mother's claims there warm. From Tarahe's descendants Ngāti Hinemanu are also tangata whenua in the Heretaunga district, based at Ōmāhu Marae.

6. Ngāti Paki are essentially a hapū of Ngāti Hinemanu. They too are based at Winiata Marae, on land gifted to their ancestor Winiata Te Whaaro by Utiku Potaka of Ngāti Hauiti after their expulsion from Pokopoko on the Mangaohāne block in 1897. Ngāti Paki are descended from Te Rangiwhakamātuku, the second son of Te Ōhuake and Nukuteaio. However, differences exist about the identity of the eponymous ancestor of Ngāti Paki. The Heritage Trust say that it is Te Aopakiaka, the grandfather of Te Ōhuake, while the Mōkai Pātea Waitangi Claims Trust ('the Claims Trust') say it is Te Rangi te Pakia, who originated from Heretaunga and married Taungapunga of Ngāi Te Ohuake. In this regard they point to the Pātea whakapapa recorded by Native Land Court officer A T Blake in the late nineteenth century. Blake wrote 'Origin of name Ngati Paki' alongside Te Rangi Te Pakia's name in his chart of Ngāti Paki whakapapa.[2] The differences in opinion between these two claimant groups over their shared history and whakapapa become clear in our account that follows. In any event, we consider that the identity of Ngāti Paki's eponymous ancestor is ultimately a matter for Ngāti Paki to determine.

Procedural overview

Four-step process

7. In our directions of May 2018, we set out a four-step process for determination of the issues surrounding the Kāweka and Gwavas forest claims of Ngāti Hinemanu me Ngāti Paki, as follows:[3]

   (a) **Step one:** the commissioning of historical research into the customary interests in the Kāweka and Gwavas CFL lands;

   (b) **Step two:** the hearing and cross-examination of the historical research and the hearing of any further evidence regarding customary interests in the Kāweka and Gwavas CFL lands;

   (c) **Step three**: a preliminary Tribunal decision on customary interests in the Kāweka and Gwavas CFL lands; and

[2] Wai 2180, #O2(a) p 30. See also Wai 2180 #A12, p 33.
[3] Wai 2180, #2.6.53 at [70]-[75]

(d) **Step four**: an inquiry into Crown actions and omissions in relation to the Kāweka and Gwavas CFL lands.

8. At the end of each step, parties were to advise the Tribunal whether they considered it necessary to proceed to the next step, or whether they had sufficient material to proceed with a process other than a Tribunal inquiry including direct negotiations.[4]

9. Step one was completed on 28 November 2019 when the Crown Forestry Rental Trust filed the report *Customary Interests in Kāweka and Gwavas CFL Lands* by Dr Tau and Dr Fisher (the Tau and Fisher Report). It was placed on the Record of Inquiry as #O2(a). In directions dated 23 December 2019, in response to parties' submissions, the Tribunal confirmed that it would progress to step two.[5] Step two took place in the form of hearing 10, which was held from 17 to 19 February 2020 at Ōmāhu Marae. The Tau and Fisher Report, as well as a range of further evidence concerning customary interests in the Kāweka and Gwavas CFL lands, was presented and cross-examined.[6]

10. The impact of the COVID-19 lockdowns during 2020 affected progress. With directions dated 4 September 2020, we addressed outstanding evidential matters arising from hearing 10. Submissions were also sought on whether a Tribunal preliminary opinion on customary interests in the Kāweka and Gwavas CFL lands was required considering the evidence heard.[7] The Tribunal received several submissions. Ms Ennor for the Crown supported a preliminary opinion,[8] as did Mr Afeaki for the Renata Kawepo Estate (Wai 401).[9] Mr Watson for the Claims Trust submitted that a preliminary opinion would be beneficial and advised that the Claims Trust's parallel mandating process has included provision for this preliminary opinion on customary interests.[10] Ms Sykes for the Heritage Trust submitted that a preliminary opinion is required and included detailed submissions as to why the Tribunal can find that Ngāti Hinemanu and Ngāti Paki have customary interests in the Kāweka and Gwavas CFL lands.[11] Other parties expressed no view and would abide by the Tribunal's decision.[12] Plainly, then, the parties supported the issuing of a preliminary Tribunal opinion on customary interests in the Kāweka and Gwavas CFL lands. Accordingly, the Tribunal began to review the relevant evidence for this purpose.

Review of Tau and Fisher Report and next steps

11. While assessing the relevant evidence, we decided that the Tau and Fisher Report needed to be reviewed to ensure that there were no gaps in the possible evidence and that the authors had explored and made best use of all possible available material. As part of this review, advice was sought from Paul Meredith. His review is titled 'Review of the "Customary Interests in Kāweka and Gwavas CFL Lands" Research Report by Te

[4] Wai 2180, #2.6.53 at [68]
[5] Wai 2180, #2.6.90
[6] See Wai 2180, #4.1.21 for the transcript of hearing 10 and its appendices for parties' corrections.
[7] Wai 2180, #2.6.104
[8] Wai 2180, #3.2.797 at [3]
[9] Wai 2180, #3.2.798 at [7]
[10] Wai 2180, #3.2.802 at [2]-[4]
[11] Wai 2180, #3.2.801(a)
[12] Danyon Chong for Ngāti Wehi Wehi (Wai 1482). Emily Martinez for Ngāti Kauwhata ki Te Tonga (Wai 784). Dr Gilling for the Ōwhāoko C3B (Wai 378) claim, the Kaweka Forest Park and Ngaruroro River (Wai 382) claim, the Ahuriri Block (Wai 400) claim, and the Ngāti Kauwhata ki te Tonga surplus lands (Wai 972) claim.

Maire Tau and Martin Fisher' and has been placed on the Record of Inquiry as document Wai 2180, #O2(k).

12. Submissions were invited from any of the parties directly affected by the review. They were to concentrate on both the content of the review and any other relevant matters along with what future steps if any might be appropriate in the circumstances. Parties were directed to file submissions by 7 August 2023.[13]

The report by Te Maire Tau and Martin Fisher

13. Step one commenced in October 2018 when the Crown Forestry Rental Trust commissioned Tau and Fisher to undertake the research project.[14] As noted above (paragraph 9), their report 'Customary Interests in the Kāweka and Gwavas CFL Lands' was completed in November 2019 and filed with the Tribunal.

14. In their introduction, Tau and Fisher summed up the essence of their task:

> The key question facing us and the Tribunal is whether Ngāti Hinemanu me Ngāti Paki derive their interests from a different tupuna, Punakiao, than Ngāti Hinemanu ki Heretaunga, who derive their interest from Punakiao's husband Taraia II, who are part of the Heretaunga-Tamatea Settlement Trust mandate. The shared whakapapa is undeniable, but the derivation of the interests from a specific tupuna is one that is certainly open to debate. Ngāti Hinemanu me Ngāti Paki stress that a key difference is their focus on descent flowing from a female tupuna on a different ancestral line than that of Ngāti Hinemanu ki Heretaunga.[15]

15. Tau and Fisher explained the limitations of the documentary record concerning customary rights in the eight land blocks that contain parts of the Kāweka and Gwavas CFL lands today. This stems from five of the blocks being pre-1865 Crown purchases, for which few if any details about customary right-holders were recorded, while two of the other three blocks passed the Native Land Court at an early point in the court's history, when investigations of customary rights were relatively cursory. Because of this, Tau and Fisher looked also at the later title investigations for six blocks in the north-eastern part of the Taihape inquiry district. They found little to support the position of the Heritage Trust, though, and provided the following overview of their research findings: 'From the material that is available, it was difficult to find direct evidence of a specifically Punakiao-derived Ngāti Hinemanu right or a separate Ngāti Paki occupation of the area that is now known as the Kāweka and Gwavas CFL lands.'[16]

16. A lot of discussion in Tau and Fisher's report centred around Winiata Te Whaaro, who they said 'epitomised' the Ngāti Hinemanu me Ngāti Paki claim 'as the most ardent exponent of Ngāti Paki in the NLC process in the late nineteenth and early twentieth century'.[17] Te Whaaro was born in Pātea as the son of a Ngāti Hinemanu and Ngāti Paki mother, Kinokino, and a Ngāti Pouwharekura father, Wi Turitakoto. His father had migrated to Pātea because of the battles in the 'turbulent decades prior to 1840'. These migrations, said Tau and Fisher, had produced 'a range of new interests that were fought out in the NLC' later that century. Tau and Fisher considered that, by 1840, 'the

[13] Wai 2180, #2.6.137 at [16]
[14] Wai 2180, #6.2.53
[15] Wai 2180, #O2(a), p 4
[16] Wai 2180, #O2(a), pp 4, 5-6
[17] Wai 2180, #O2(a), p 192

descendants of Punakiao and Taraia II had established themselves over a very large area through not only conquest but also significant intermarriage'.[18]

17. In 1890, Te Whaaro was a central witness before the Otaranga and Ruataniwha North Commission, more commonly known as the Awarua Commission. This was set up to establish the western boundaries of the secretive Hawke's Bay Crown purchases conducted in Wellington in the late 1850s. It concluded that the Ōtaranga boundary had only extended as far as the top of the Ruahine Range, and its findings led to title investigations for three new blocks: Tīmāhanga, Te Kōau, and – belatedly, in 1991 – Awarua o Hinemanu. Te Whaaro's knowledge of the area seems to have been unparalleled. He had been the principal guide for surveyors of the Awarua block and could describe all the peaks and food-gathering places on the range. Notably, Te Whaaro remarked that all lands to the west of the range 'belong to us', 'the Patea people', whom he listed as 'N' Whiti, N'Ohuake and N' Hauiti'. He also said that 'Ruahine was ancestral boundary of Whiti and Ohuake and not for convenience of sale. N' Kahungunu had to east of it. N' Whiti and descendants of Ohuake occupied west of it.'[19]

18. Te Whaaro had an opportunity before the commission to stake his own claims to Ōtaranga but did not do so. Tau and Fisher thought he had 'strong interests' on the eastern side of the Ruahine Range but held back from asserting these to bolster his claims to blocks he was contesting in Pātea, such as Mangaohāne. However, he asserted much later, in 1909, that Ruataniwha North was 'the land of our ancestors' and had been sold without permission. Te Whaaro did not name the tūpuna he made this claim through, and Tau and Fisher considered that it would 'most likely' have been his father's Ngāti Pouwharekura whakapapa. Te Whaaro did tell the 1890 commission that Ngāti Hinemanu had rights on both sides of the range, although again he did not give any information about the ancestors they would have asserted these rights through.[20]

19. Tau and Fisher observed that, while '[e]vidence of specific discussions of the name Punakiao were not present in the Kāweka and Gwavas CFL lands in terms of claims to the land', Punakiao's children and their descendants 'were a key part of most blocks involving Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai and Ngāti Mahuika particularly'.[21] They were left to conclude as follows:

> Overall there was limited evidence to show a specifically Punakiao-derived claim to the blocks that make up the Kāweka and Gwavas CFL lands. Nonetheless Ngāti Hinemanu me Ngāti Paki maintain that a lack of early Crown purchasing or NLC evidence does not equate to a lack of interests. They highlight especially the Ngāti Pouwharekura line with Ngāti Hinemanu me Ngāti Paki which has undeniable interests in the Ruataniwha North block. In 1890 Winiata Te Whaaro denied any occupation rights in Heretaunga, but in 1909 he made a claim to the Ruataniwha North block. These kinds of contradictions feature throughout the evidence gathered for this report and reflect our uncertain conclusion.[22]

[18] Wai 2180, #O2(a), p 55
[19] Wai 2180, #O2(a), pp 83, 86-87
[20] Wai 2180, #O2(a), pp 87, 97, 134, 192
[21] Wai 2180, #O2(a), pp 87, 97, 134, 189
[22] Wai 2180, #O2(a), p 192

Testing Tau and Fisher's report at hearing

20. Step two involved us calling for submissions on whether the Tribunal should hear viva voce evidence on customary rights in the Kāweka and Gwavas CFL lands.[23] The Claims Trust submitted that they would abide by our decision, but felt we were already now in a position to decide whether the Heritage Trust claim was 'well-founded' or not.[24] (As per section 6(3) of the Treaty of Waitangi Act, only where we find a claim to be 'well-founded' are we able to recommend that action be taken to compensate for or remove the prejudice). By contrast, the Heritage Trust wanted the evidence heard and, if a hearing took place, intended to file further tangata whenua evidence. The Crown did not express a view on the matter, having previously stated that the question of whether Ngāti Hinemanu me Ngāti Paki had customary rights in the CFL lands based on an ancestor not covered by the Heretaunga Tamatea settlement was a matter for them and the affected parties.[25]

21. Upon careful reflection we decided that the report by Tau and Fisher should be presented at hearing, giving the parties an opportunity to question the authors on their research and conclusions. Had there been a Tribunal inquiry in Heretaunga Tamatea, the need for us to do this may not have arisen. The absence of such an inquiry, however, had left some uncertainties about the extent of overlapping customary interests along our administrative boundary. We therefore scheduled a hearing on customary rights in the Kāweka and Gwavas CFL lands for 17-19 February 2020 at Ōmāhu Marae in Heretaunga.[26]

22. After Tau and Fisher had presented their summary on 17 February 2020, we opened the questioning.[27] We asked them whether – if Punakiao did have rights to the areas in question – would it not be likely that there would be 'some footprint on the historical record'? Tau and Fisher both agreed.[28] We expressed surprise that there was such a difference of opinion about the identity of the eponymous ancestor of Ngāti Paki. Was it common, we asked, for this sort of disagreement between such closely connected groups? Dr Tau replied that 'it's becoming common'.[29] We asked them about their lack of a firm conclusion. Was it because they had had a certain amount of time to conduct their research and they had not located evidence for anything more definite? They agreed, so we probed further and asked if they were effectively saying that 'the mountain of evidence that we have assessed is silent on that issue, at a time when people were litigious, land rights were highly contested, and you would expect that if there was that interest they would say so'? Dr Tau qualified this characterisation. As he put it,

> I think we would say there was an absence of evidence of take whenua and I want to make that separate from the Native Land Court evidence. So I would say, we did not find a mountain of evidence on take whenua which we see as different from Native Land Court evidence.[30]

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[23] Wai 2180, #2.6.85 at [20]-[21], [24]
[24] Wai 2180, #3.2.631 at [9]
[25] Wai 2180, #2.6.90 at [10]-[17]
[26] Wai 2180, #2.6.90 at [22]-[26]
[27] We note that there are some minor wording differences between our account of Tau and Fisher's comments and what appears in the transcript. That is because we took the additional step of listening to the audio recording of the hearing to make sure their words had been transcribed correctly.
[28] Wai 2180, #4.1.21, p 38
[29] Wai 2180, #4.1.21, p 45
[30] Wai 2180, #4.1.21, p 53

23. Ms Sykes then questioned Tau and Fisher on behalf of the Heritage Trust. She put it that the settlement process had created an 'imaginary boundary' that did not recognise 'the fluidity of relationships'. The position in the relatively recent title investigation of Awarua o Hinemanu had been, she suggested, that 'There is no Ngāti Hinemanu ki Taihape, there is no Ngāti Hinemanu ki Heretaunga, we are one people, one iwi and that is our land.' However, Dr Tau responded that 'I think what you are trying to examine is the difference between the regions and if there is in fact a difference. The best answer we can give is, there is an absence of explanation for that in the evidence that satisfies the threshold for the needs of both parties.'[31]

24. Ms Sykes then turned to 'this more vexing question of the status of women and colonialism'. She put it that 'women of status' had inherited the mana over lands from their husbands. However, because of 'colonial attitudes' women were often 'invisibilised'. She was clearly referring here to Punakiao, but also raised Pouwharekura, a woman of high status who had married Kahungunu but who had been demeaned in historical accounts as having been a mere slave, owing to her capture in battle at Kaiwhakareireia pā.[32] Ms Sykes noted that Winiata Te Whaaro relied on descent from Pouwharekura for his rights over the range, and thus Pouwharekura was 'significant for our claimants to assert customary rights' in the CFL lands. Dr Fisher agreed 'with your overall proposition in terms of the silencing of female tūpuna within that [Native Land Court] process.' But Dr Tau added that 'I saw an absence of take whenua and take tupuna, which I tend to see as the same'.[33]

25. Ms Sykes accepted that Tau and Fisher had a very difficult assignment, to come in fresh to the material and pronounce on hotly contested customary rights. She asked them to reflect more broadly on the issue:

> I'm asking you to look through a different lens of just this hearing, to look through the lens that I'm trying to paint, which is whakapapa. Whakapapa unites, not divides, and if you take that proposition, then that take tūpuna should be the key to unlocking the entitlement of both sides of the ranges, whether it's Upokoiri or Ngāti Hinemanu and Ngāti Paki.[34]

26. We note here that this tone represented a somewhat different position than that taken when the Heritage Trust was objecting to the inclusion of Ngāti Hinemanu ki Pātea in the He Toa Takitini mandate. As Mr Winiata-Haines had put it in June 2015, the 'very basis' of the Heritage Trust's 'objections to the mandate of HTT which we set out in the first place' was that 'Ngati Hinemanu ki Heretaunga and Ngati Hinemanu and Ngati Paki ki Mokai Patea are separate and distinct entities'.[35]

27. In answer to Ms Sykes's question, Dr Fisher accepted that Ngāti Hinemanu rights existed on both sides of the range but made the point that this was not the question they were required to answer:

> We are no way denying that Ngāti Hinemanu rides on both sides into these Crown Forest licensed lands. There is a very specific topic that was set up to us which was the descent through Punakiao, now this is because of the Treaty settlement process which took Taraia II within the Heretaunga-Tamatea Settlement Mandate for the tupuna that will be settled for a lack of better term, and so that's the answer that we had to – that's a question we

[31] Wai 2180, #4.1.21, p 60
[32] Wai 2180 #4.1.21, pp 62-65; Wai 2180 #P15 at [47]
[33] Wai 2180, #4.1.21, pp 65-66
[34] Wai 2180, #4.1.21, p 71
[35] Wai 2180, #A33 at [16]

> had to provide an answer for, and that is still inconclusive we would say, which is the point that we made in the report. Hinemanu rights across the ranges, undeniable. It's throughout this report. It's throughout so many others. It's throughout hundreds of pages of evidence, but it was that specific descent – those descent issues. The take tupuna which is what was put to us.[36]

28. Ms Sykes appeared to appreciate the confirmation of Ngāti Hinemanu rights in the CFL lands, so we sought further clarification from the witnesses that they were not suggesting that rights to the forests derived through Punakiao. Dr Fisher replied, pointing to both their introduction and conclusion, 'We couldn't find any evidence for that'. Ms Sykes's final word was to suggest then that 'that would be a quite difficult proposition in light of the Māori Land Court view on those matters in the Awarua-Hinemanu case, wouldn't it?'. Dr Fisher replied 'yes'.[37]

29. In due course, Tau and Fisher were questioned by Mr Watson on behalf of the Claims Trust. He put it firmly that the question was not whether Ngāti Hinemanu had customary rights in the CFL lands, but whether any of their rights there derived from Punakiao. Dr Fisher agreed.[38] Mr Watson then turned specifically to the Māori Land Court's investigation of title to Awarua o Hinemanu in 1991 and subsequent award of that title to Ngāti Hinemanu. Given Dr Fisher's reply to Ms Sykes on this, Mr Watson put it that the court's award had been on the basis of descent from Punakiao, and not from Taraia II. His implication here was that award of title was quite consistent with Ngāti Hinemanu's rights deriving on one side of the range from Punakiao and on the other from Taraia II. Dr Fisher confirmed that the Awarua o Hinemanu decision had been based on the rights of Punakiao, adding that he could not recall Taraia II being mentioned.[39]

30. Mr Watson asked Tau and Fisher whether their 'inconclusive' position was because they preferred the Tribunal to make the determination, or because 'there was simply a paucity of evidence'. Dr Tau replied that 'in absence of evidence we found it difficult to reach the conclusion of Punakiao's take whenua'.[40] Mr Watson then suggested that the demeaning of women's status in the land court 'doesn't really stack up in this particular context', as there was evidence in the Tīmāhanga case, for example, of witnesses 'relying extensively and consistently on the mana wahine of their ancestors'. Dr Fisher replied, 'We'd accept that.'[41]

31. Mr Watson put it to Tau and Fisher that (according to Claims Trust witness Richard Steedman) when blocks like Ōmahaki and Tīmāhanga were being claimed by members of Ngāti Hinemanu, it was not based on 'an assertion of Ngāti Hinemanutanga, but on the particular tupuna from which that take derived'. One could not simply 'assert Ngāti Hinemanu as the derivation of interests in these lands', said Mr Watson. Dr Fisher replied 'Yes, we'd agree.'[42]

32. Counsel for He Toa Takitini, Jacki Cole, raised the omission of Ngāti Pouwharekura from the claimant definition in the Heretaunga Tamatea settlement. She suggested 'it would be superfluous to have mentioned Ngāti Pouwharekura … given the reference

[36] Wai 2180, #4.1.21, p 72
[37] Wai 2180, #4.1.21, pp 72-73
[38] Wai 2180, #4.1.21, p 83
[39] Wai 2180, #4.1.21, pp 87-88
[40] Wai 2180, #4.1.21, p 88
[41] Wai 2180, #4.1.21, pp 88-89
[42] Wai 2180, #4.1.21, pp 93-94

specifically to [Taraia II's] tipuna Rākaihikuroa'. Dr Fisher would not agree to this, noting that the Crown tended to be quite thorough in including tupuna and hapū names in treaty settlements. He did accept, however, that the lack of reference to Ngāti Pouwharekura did not mean the hapū was necessarily excluded from the settlement. Beyond that he would not be drawn.[43]

33. Ms Cole also noted Tau and Fisher's observation that Ngāti Hinemanu me Ngāti Paki 'currently' emphasised that Punakiao's marriage to Taraia II represented a 'merging of interests'. She observed that they had contrasted this with the more longstanding view 'embedded' in evidence to and decisions of the Native Land Court that Ngāti Hinemanu's rights in Heretaunga derived from Taraia II and in Pātea from Punakiao. She asked what their use of the word 'currently' signified. Did they mean recently? Dr Fisher did not want to put a timeline around when this change had taken place.[44]

34. Crown counsel, Ms Ennor, probed further around the 'merging' of interests. She said that Mr Winiata-Haines had effectively suggested that 'Taraia's interests became Punakiao's and Punakiao's interests became Taraia's'. She asked 'is that how you understand a marriage of this nature to be able to work under custom?' Dr Tau thought she had correctly interpreted Mr Winiata-Haines' meaning, but in his view it 'would not be custom'. Later, when pressed again by Ms Ennor, Dr Tau went slightly further and said he did not believe customary interests were shared via the marriage.[45]

35. Ms Ennor sought to contrast the idea of a merging of interests with what she proposed had been 'repeatedly' put forward in Ngāti Hinemanu me Ngāti Paki evidence, that rights derived from Punakiao were different to rights derived from Taraia II. Dr Fisher agreed with her summation.[46] On the question of Ngāti Pouwharekura's omission from the claimant definition, Dr Fisher told Ms Ennor that, first, Ngāti Pouwharekura's interests did not derive from Punakiao and, secondly, Ngāti Pouwharekura was generally accepted as being a Heretaunga hapū.[47]

Evidence from other witnesses

36. Arapata Hakiwai was called by Dr Gilling, counsel for several claimants based in Heretaunga albeit with whakapapa interests reaching into the Taihape inquiry district. Dr Hakiwai spoke about the history of Ōmāhu Marae. We asked him if there had ever been a building at Ōmāhu called Punakiao, and he said he thought there had been a wharekai named for her.[48] Ms Sykes followed up with a question about the exact location of this whare, and Dr Hakiwai said it was at nearby Rūnanga Marae.[49] She was intrigued by what this naming may have symbolised, but Dr Hakiwai knew no more details.

37. Several other witnesses were called by Dr Gilling: Bayden Barber, Jerry Hapuku, Greg Toatoa, and Wero Karena. They variously gave evidence about the strong connections of Ngāti Hinemanu ki Heretaunga and Ngāi Te Upokoiri – who are both based at Ōmāhu

[43] Wai 2180, #4.1.21, pp 101-102
[44] Wai 2180, #4.1.21, p 107
[45] Wai 2180, #4.1.21, pp 109-111, 115-116
[46] Wai 2180, #4.1.21, pp 111
[47] Wai 2180, #4.1.21, pp 115-116
[48] Wai 2180, #4.1.21, pp 122-123
[49] Wai 2180, #4.1.21, p 128

– to the Kāweka and Gwavas CFL lands.[50] Mr Karena also spoke of the closeness of Ngāti Hinemanu at Ōmāhu to Ngāti Hinemanu at Winiata. As he put it, the relationship was so close that 'I don't see a mountain between us'. Ms Sykes asked him if Punakiao had interests on the Heretaunga side of the range but Mr Karena said he did not know.[51]

38. Dr Joe Te Rito, a member of Ngāti Hinemanu ki Heretaunga and a trustee of Ōmāhu Marae, appeared as a witness for Ms Sykes's clients. We asked him about the wharekai called Punakiao. He said he had not been aware of that himself but had been 'enthralled' to hear Dr Hakiwai's kōrero on it. He explained that:

> I'm not surprised because in the whakapapa – in the history I see that Punakiao was taken up there to Rūnanga by Taraia Ruawhare, she was left there, but the people there didn't look after her, didn't feed her. She complained about not being fed properly apparently and so he came back, and he banished those people you might say, they then moved further away because they hadn't cared properly for Punakiao. But I was pleasantly surprised to hear that there was [a] wharekai, that was an excellent question that Dr Soutar [asked] because had that not been asked, we would not know, and I actually think it's really quite critical really to this whole case and to the stance and mana of Punakiao in Heretaunga because they would have not named a wharekai or any whare after someone if they had no status and she was not valued.[52]

We found it unusual that news of a wharekai called Punakiao was of such surprise to members of Ngāti Hinemanu on both sides of the Ruahine Range.

39. In questioning from Ms Sykes, Dr Te Rito also stated that Punakiao had 'a Kahungunu whakapapa in her own right', as a descendant of Rākaihikuroa's sister Rongomaitara.[53] We asked him whether that meant that every descendant of Kahungunu 'would have some Kahungunu rights there too'? Dr Te Rito was 'not sure about the technicalities', but guessed so. We asked him then whether Hinemanu's rights on the Heretaunga side of the Ruahine Range came from Taraia II or Punakiao, but he said he did not know.[54] Ms Ennor asked him if Punakiao's rights in Heretaunga came through her whakapapa or her marriage to Taraia II. Again, he was unsure, but he felt that 'the mere fact that there was a wharekai built in her honour at … Rūnanga', and that Taraia had punished the haukāinga there for not treating her well, 'must surely mean that she has some mana'.[55]

40. Jordan Winiata-Haines was a key witness for the claimants. He said that it was only when the Crown began purchasing land that 'we start drawing lines around the whenua' and 'lines around boundaries between our people'. He was enthusiastic about the evidence that the wharekai at Rūnanga had been named Punakiao and said a witness for Ngāti Hinemanu me Ngāti Paki would be able to 'give a full brief on that wharekai' at the hearing.[56] He attempted to explain why the memorandum of understanding (MOU) signed by the Heritage Trust and He Toa Takitini in May 2014 (see paras 11-15 of appendix A) had stated that Ngāti Hinemanu's interests in Heretaunga – based on the rights of Taraia II – would be settled by He Toa Takitini. Ngāti Hinemanu had been in 'a very sticky situation', he said, because unless they could differentiate between Ngāti Hinemanu in Pātea and Heretaunga their claims would be settled in Heretaunga-

[50] Wai 2180, #4.1.21, pp 133-141, 302-309, 310-315, 315-338
[51] Wai 2180, #4.1.21, pp 328, 335
[52] Wai 2180, #4.1.21, pp 183-184
[53] Wai 2180, #4.1.21, p 182
[54] Wai 2180, #4.1.21, pp 184-185
[55] Wai 2180, #4.1.21, pp 203-204
[56] Wai 2180, #4.1.21, pp 223, 231

Tamatea or they would be blamed for holding that settlement up. But they never had any doubt at the time that Punakiao had rights in Heretaunga. He Toa Takitini had then failed to uphold the MOU and mediation had been required to resolve matters. He appeared to regard the Crown's ultimate recognition of a threshold interest in the CFL lands as vindication. He concluded that 'the narrative that has been developed by the Crown has tried to limit the territorial homelands of our peoples to one side of a mountain range where in fact, we are one and the same. There was no Ngāti Hinemanu ki Heretaunga or Ngāti Hinemanu ki Inland Pātea.'[57]

41. Before questioning of Mr Winiata-Haines began, Ms Sykes called forward Charmaine Pene, a kuia of Rūnanga Marae, who knew the marae's history and could explain about the wharekai called Punakiao. Ms Pene said the wharekai at Rūnanga was a replacement of the original wharekai but it 'still holds the name Punakiao'. We noticed, however, that on the Māori Maps website the wharekai's name was recorded as Puanani, so we asked Ms Pene about that. She apologised for her error and confirmed that the wharekai was indeed called Puanani, and not Punakiao – and as far as she knew had never been called Punakiao. Taraia II and Punakiao had stayed there though, she added.[58] We were then addressed though by Natasha Hanara, from Te Āwhina Marae, who said that Puanani was the name of the wharekai at that marae,[59] although we note that the Māori Maps website does not record a wharekai at Te Āwhina. Ms Sykes undertook to provide us with clarification after the hearing, but it does not appear that she ever provided any.[60]

42. We then turned back to the questioning of Mr Winiata-Haines. Leaving aside the matter of the wharekai, we asked him what evidence he had 'that will give us a definite lead as to Punakiao's rights over here?' He named her whakapapa; her marriage to Taraia Ruawhare; having her children in Heretaunga; the way she could stay on the land when Taraia was away; and the instructions Taraia left that she be well looked after in his absence. He accepted that evidence did not exist in Native Land Court minutes and other documentary records. He considered that Ngāti Hinemanu had never thought in terms of the rights of Taraia or Punakiao 'no matter which side of the range you were on or what lands you were on'.[61]

43. We asked Mr Winiata-Haines what he understood was meant by the term 'threshold interest'. He said it meant 'a whakapapa right'. We suggested to him that there was a lot of speculation about Punakiao, and not any hard evidence supporting the claim of her customary rights in Heretaunga. We circled back to the MOU and asked just why an agreement had been reached that the Heretaunga claims of Ngāti Hinemanu would be settled based on descent from Taraia. Mr Winiata-Haines said that, at the time, they had been unaware of the exact location of the CFL lands in terms of the Taihape inquiry boundary. He also said the MOU had been agreed to bring 'some comfort' to their kin in Heretaunga Tamatea 'that they could progress with their aspirations to settle'. We asked him whether he thought the debate about Punakiao would ever have taken place if the Kāweka and Gwavas CFL lands did not exist. He said '[p]ossibly not', noting that the

[57] Wai 2180, #4.1.21, pp 235-237
[58] Wai 2180, #4.1.21, pp 238, 240, 242-243
[59] Wai 2180, #4.1.21, p 244
[60] Wai 2180, #4.1.21, p 245. We followed the undertaking up in post-hearing directions on 4 September 2020, but we have no record of Ms Sykes responding on this point. See Wai 2180, #2.6.104 at [23]-[24].
[61] Wai 2180, #4.1.21, pp 247-248

forests were 'one of the biggest Crown assets that sits within our whenua for both of us on both sides'.[62]

44. Another witness for Ngāti Hinemanu me Ngāti Paki was Lewis Winiata, Jordan Winiata-Haines's father. He laid particular stress on the 1992 award of title to Awarua o Hinemanu to Ngāti Hinemanu, which sat just across the range from the CFL lands.[63] With regard to Heretaunga, he said it was understandable that claims were made to land via Taraia Ruawhare rather than Punakiao. However, he said, this was no reason to ignore 'her rangatira lines'. He was adamant that 'Punakiao has rights in her own name, under her own mana', and these were 'distinct from Taraia'.[64] We asked him where exactly these rights were, and he indicated they were around Whanawhana.[65] We asked him why Winiata Te Whaaro had never pursued land claims in Heretaunga citing Punakiao. He felt the matter was 'complex' but suggested that sometimes people with whakapapa links did not make claims. He also agreed with our proposal that a customary right required more than just a whakapapa interest, and that it involved holding the land by occupation, for example.[66]

45. Several other witnesses appeared for the Heritage Trust. Patricia Cross spoke about Winiata Te Whaaro's familiarity with the Ruahine Range and his relationship with the Beamish family, who began farming at Whanawhana from 1878 (and who still farm there today).[67] Florence Karaitiana spoke about her great-grandfather Keepa Winiata's travels over the range with his father Winiata Te Whaaro.[68] Terence Steedman described the tracks and old pā sites through the range,[69] as did Kathleen Parkinson, who also described māhinga kai and the history and status of the Awarua o Hinemanu block.[70]

46. We also heard from Richard Steedman, a member of the Claims Trust. He appeared on behalf of Maraea Bellamy and Te Rangianganoa Hawira, with whom he had jointly filed a brief of evidence. Mr Steedman is also a direct descendant of Winiata Te Whaaro and a member of Ngāti Paki, but his allegiances lie with the Claims Trust rather than the Heritage Trust. This placed him in the opposite camp to several members of his whānau, as we shall see (a split that we note has also occurred within other whānau).

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[62] Wai 2180, #4.1.21, pp 249-251
[63] Wai 2180, #4.1.21, pp 272-273
[64] Wai 2180, #4.1.21, p 274
[65] Wai 2180, #4.1.21, pp 280-281
[66] Wai 2180, #4.1.21, pp 284, 287. We also received a summary (Wai 2180, #P15) from Peter McBurney of his earlier Ngāti Hinemanu me Ngāti Paki oral and traditional history report (Wai 2180, #A52), along with several pages of commentary on the Tau and Fisher report. In his earlier report McBurney noted that his Ngāti Hinemanu informants had told him that their mana at Pātea 'derives from the descent lines of Punakiao from Whatumānoa, while their rights at Heretaunga derive from Taraia II' (p 89). To that extent, it was not helpful to the Heritage Trust's arguments. McBurney's main point about Tau and Fisher's report was that it did not set out the extent to which a concerted effort was made to undermine Winiata Te Whaaro's rights in Pātea (let alone Heretaunga) both because they were so strong and because Renata Kawepo needed to be awarded title so he could clear his debts to John Studholme. McBurney even suggested that 'the debate about Punakiao's rights versus those of Taraia II seems to me to be a red herring' (#P15 at [139]).
[67] Wai 2180, #4.1.21, pp 207-215
[68] Wai 2180, #4.1.21, pp 264-270
[69] Wai 2180, #4.1.21, pp 289-298
[70] Wai 2180, #4.1.21, pp 386-393; Wai 2180, #P10

47. Mr Steedman emphasised that 'the assessment of customary interests must include an understanding of the derivation of those interests through whakapapa'. He stressed 'the importance of distinguishing between the mana whenua rights of Punakiao in the Mōkai Pātea rohe, and the mana whenua rights of her husband Taraia in the Heretaunga rohe'. He explained that, when he stood on different pieces of whenua around the region, his rights came from different ancestors. On Awarua o Hinemanu, for example, his rights were through Hinemanu from Te Ōhuake, but when he stood at Ōmāhu, his rights were through Hinemanu from Taraia II and from Kahungunu. 'That is not a separation or a split of myself, my whānau or hapū', he said, 'that is me being precise about my whakapapa and holding each of my tūpuna, our tūpuna, and the mana whenua each represents'.[71]

48. Mr Steedman further stated that the Ngaruroro River was the boundary between the whakapapa of Kahungunu and the whakapapa of Whitikaupeka and Te Ōhuake. Furthermore, Winiata Te Whaaro's rights to the area containing the Gwavas Crown forest were through his Ngāti Pouwharekura father, and 'Ngāti Pouwharekura is not a Mōkai Pātea hapū but sits firmly within Heretaunga and within Ngāti Kahungunu whakapapa.' He had never heard of a wharekai called Punakiao, but since the original name of the whare at Ōmāhu was Taraia Ruawhare he said he would 'not at all be surprised if there was a whare manaaki tangata that was called after his wife'.[72]

49. We asked Mr Steedman why, as a descendant of Punakiao and member of Ngāti Hinemanu himself, he was not seeking to take advantage of the Crown's recognition of a threshold interest. This was, in effect, an opportunity for Ngāti Hinemanu. He explained that 'the point … is I don't see Punakiao as having rights over here'. He considered that Ngāti Hinemanu were not missing out, because they were already covered by the settlement because of their descent from Taraia II. He described the claim being advanced as 'a separate mana whenua right for us in Mōkai Pātea to these two CFL blocks', which he did not accept.[73]

50. Ms Sykes put it to Mr Steedman that she was acting for his father, his uncle, and his aunts, and they had an opposite position to the one he was taking. Why was that, she asked? Mr Steedman answered that their position was incorrect. Ms Sykes noted that he had given testimony in the investigation of title to Awarua o Hinemanu and had claimed the land for Hinemanu rather than for Ōhuake. She wondered why he promoted Ōhuake now. Mr Steedman said that the Hinemanu whakapapa he provided began with Ōhuake, but he considered this was a separate issue to the one at hand. Ms Sykes said that those who went into the Awarua o Hinemanu title were all Ngāti Hinemanu but without 'the artificial distinction' the Crown was making in the Heretaunga-Tamatea settlement. Instead, they were there through a 'merging' of the respective interests of Punakiao and Taraia Ruawhare, or a 'fusion'. Mr Steedman agreed there had been a 'fusion' in the generations after their union, but said it remained important to know 'where … those rights come from'. He said it had 'to be done on the correct basis'.[74]

51. Ms Sykes suggested Mr Steedman was 'a lone voice in the wilderness where everyone here wants to unify Ngāti Hinemanu not separate them'. He replied that he had always

[71] Wai 2180, #4.1.21, p 343
[72] Wai 2180, #4.1.21, pp 352, 358, 360-361. Mr Steedman looked into the existence of a whare named Punakiao at Ōmāhu after the hearing but could find no evidence of one. Wai 2180, #3.2.802 at [4].
[73] Wai 2180, #4.1.21, pp 365-367
[74] Wai 2180, #4.1.21, pp 370-374, 377

maintained that Ngāti Hinemanu was unified, but 'We just don't need to get hooked into changing our whakapapas.' He asked Ms Sykes whether if 'my whānau says something regardless of whether I think it's right or wrong that I have to agree to it?' She replied that he needed to 'analyse' himself as to why the position he was taking was different from the rest of his whānau, which drew an objection from Mr Watson. Mr Steedman said the objective had to be 'for us all to have a proper understanding of who we are, hopefully so that we don't argue so much and are not so divided so that we can actually move forward in this world that we find ourselves in'.[75]

Deliberations prior to proceeding to step three

52. Following delays caused by the onset of the COVID-19 pandemic, we issued directions on 4 September 2020 concerning evidential matters that remained outstanding. At this point we directed parties – as per step three of our process – to file, by 17 November 2020, submissions on whether a preliminary Tribunal opinion on customary interests in the CFL lands was needed.[76] Ms Ennor replied that the Crown supported the production of such an opinion.[77] For the Claims Trust, Mr Watson said it would be 'beneficial'.[78]

53. In a lengthier submission that revisited a lot of the evidence placed before us at the February hearing, Ms Sykes, for the Heritage Trust, submitted that a preliminary opinion was 'required'. She maintained that the evidence presented had demonstrated not only that Ngāti Hinemanu me Ngāti Paki had a threshold interest in the CFL lands, but that they also had 'substantive customary rights and interests'. She submitted that we should confirm, in our opinion, that these interests exist, and thus embark upon the fourth step in our inquiry process, an inquiry into Crown actions and omissions.[79]

54. It was plainly apparent from this that the parties supported the production of a preliminary opinion. We therefore commenced our work, exploring the relevant evidence. In doing so, however, we decided that we would benefit from a review of Tau and Fisher's report to ensure that there were no gaps in their coverage and that they had made the best use of the available evidence. We therefore sought advice from Paul Meredith, an expert in the areas of Māori customary law, Māori identity, and iwi history. In April 2023 Mr Meredith provided us with a 16-page review.[80]

The review by Paul Meredith

55. Meredith noted that the key question was, as Tau and Fisher had remarked, whether Ngāti Hinemanu me Ngāti Paki derived rights in the CFL lands from a different ancestor (namely Punakiao) than Ngāti Hinemanu ki Heretaunga, who derive their rights from Taraia II.[81] He considered that, in section 2 of their report, Tau and Fisher had provided 'a robust study of the complex web of whakapapa and the changing relationships across a fluid tribal landscape with shifting rights', outlining 'both agreed and contested whakapapa'. Meredith thought this context helped an understanding of why certain whakapapa lines had been used in particular circumstances. He noted that specific lines

[75] Wai 2180, #4.1.21, pp 378-380
[76] Wai 2180, #2.6.104 at [27]
[77] Wai 2180, #3.2.797 at [3]
[78] Wai 2180, #3.2.802 at [2]
[79] Wai 2180, #3.2.801(a) at [132]-[133]
[80] Wai 2180, #O2(k)
[81] Wai 2180, #O2(k) at [9]

of descent on their own, 'even where they are from the original or earlier ancestors in the region, do not necessarily equate to customary interests'.[82]

56. Meredith observed that there was 'general agreement among all concerned' that Ngāti Hinemanu held customary rights in the CFL lands, and that those rights had previously been claimed through descent from Taraia II. He noted, however, that witnesses such as Lewis Winiata had claimed that Punakiao had rights under her own mana in Heretaunga, which would accordingly create an independent claim to the CFL lands. In assessing these claims Meredith considered that Tau and Fisher had taken the correct approach of testing and scrutinising the evidence presented, regardless of whether it was oral or written tradition. He could see from Tau and Fisher's report that Ngāti Hinemanu witnesses had a lot of knowledge about the eastern side of the Ruahine Range. However, he noted that Tau and Fisher had still been 'unable to say whether those rights were derived from Punakiao or Taraia II'. Meredith further noted that the claimants had placed great store by the knowledge and access rights of Winiata Te Whaaro, but 'again there is no specific evidence to say whether any rights he claimed derived from Punakiao or Taraia II'.[83]

57. Meredith then considered Tau and Fisher's examination of Native Land Court minutes, including from blocks surrounding those where the CFL lands are located. He noted, with approval, their recognition of the unreliability of much of the evidence before the court, with many claimants distorting oral traditions to gain awards of title. He concluded that they had exercised appropriate caution, looking 'across the evidence rather than cherry pick[ing] isolated examples of customary interests'. Meredith undertook a light review of the relevant court minutes himself in order to satisfy himself that Tau and Fisher had covered the material thoroughly, and 'came to a similar conclusion in terms of Taraia II being the dominant tupuna promoted in the Heretaunga region to secure Ngāti Hinemanu interests'.[84]

58. Meredith addressed Lewis Winiata's claim that the colonial degrading of women's status meant that Punakiao's rights had been inevitably 'obscured'. Meredith accepted that 'mistreatment' of women occurred in the court but offered examples of where Pātea claimants had in fact cited descent from Punakiao in pursuing their cases. On the question of whether the Ruahine Range formed a tribal boundary, Meredith noted that Tau and Fisher had said that the evidence pointed to it being such a dividing line, although they had added (in Meredith's paraphrase) that 'some evidence might challenge that'. Meredith suspected Tau and Fisher were being diplomatic. That is, while they had cited Winiata Te Whaaro's late claim to Ruataniwha North, they had also suggested that this was likely to have been on the basis of his Ngāti Pouwharekura whakapapa. In other words, the evidence that might 'challenge' the prevailing understanding was itself weak. Meredith himself had seen no evidence to suggest that Pouwharekura interests were derived from Punakiao.[85]

59. Meredith listed a wide range of online sources he had consulted in order to cross-check the land court evidence. These included newspaper databases and other digitised

[82] Wai 2180, #O2(k) at [11]
[83] Wai 2180, #O2(k) at [12]-[14]
[84] Wai 2180, #O2(k) at [15]-[20], [25]-[26]
[85] Wai 2180, #O2(k) at [20], [22]

archival material. The keywords he used for searching in these databases were the names of relevant ancestors, hapū, iwi, blocks, and physical features in the environs of the CFL lands. Through this method he found two potential items of interest that had not been located or mentioned by Tau and Fisher. One was an 1894 letter to the editor in the newspaper *Huia Tangata Kotahi* from a Ngāti Hinemanu and Ngāti Paki 'Komiti' that referred to two tribal 'takiwa' of 'Whakarauika, Haki pei' and 'Poko Poko, Haku pei'.[86] Meredith could not establish where Whakarauika was.[87] In response, Mr Watson noted that 'Haki pei' was not necessarily indicative of Whakarauika being east of the Ruahine Range given that Pokopoko's location was also referred to as being in Hawke's Bay.[88] Ms Sykes submitted that 'the actual meaning of that section is that there was a panui written from an "Assembly" or "Whakarauika" of the NHNP people. It is not a location, but an event.'[89] We do not think this is a likely interpretation. 'Whakarauika' also appears at the head of the letter,[90] and a study of the format of letters to the editor of *Huia Tangata Kotahi* at the time indicates that this is the address of the correspondent.

60. The other item Meredith found was in the January 1993 edition of the Kahungunu newspaper. It outlined a submission from Ngāti Hinemanu and Ngāti Paki to be part of the Heretaunga Taiwhenua of the Rūnanganui of Ngāti Kahungunu. However, he did not appear to regard this as significant. His overall conclusion was as follows:

> Tau and Fisher maintain that from the 'material that is available, it was difficult to find direct evidence of a specifically Punakiao-derived Ngāti Hinemanu right or a separate Ngāti Paki occupation of the area that is now known as the Kāweka and Gwavas CFL lands.' The Native Land Court evidence, as the major source of information, points largely to Taraia II as the basis of Ngāti Hinemanu's customary interests.
>
> My own search across archival sources did not produce any new information of substance to suggest a different finding. Tau and Fisher have made the best use of the limited information that was available to them.[91]

61. We released the Meredith review to the parties on 3 July 2023 and asked for submissions by 7 August 2023 both on the review itself and on 'what future steps if any might be appropriate in the circumstances'.[92] Mr Watson submitted that the review was 'comprehensive': Meredith had reached the same conclusion as Tau and Fisher, which was a position supported by the evidence of the Mōkai Pātea claimants. Mr Watson added that his clients still supported the release of a Tribunal preliminary opinion, but if the Tribunal's resources were limited then the landlocked land report and main historical report were more important. In terms of whether any other process could address the matter besides a Tribunal inquiry, Mr Watson submitted that the Mōkai Pātea claimants were making 'significant progress' in their settlement negotiations with the Crown. On the specific matter of Ngāti Pouwharekura's omission from the Heretaunga-Tamatea settlement claimant definition, Mr Watson submitted that Ngāti Pouwharekura (who include of course the descendants of Winiata Te Whaaro) may yet need to challenge this non-recognition to secure their interests in the CFL lands.[93]

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[86] 'Haki' and 'Haku' are both used as transliterations of 'Hawke's'.
[87] Wai 2180, #O2(k) at [29]-[36]
[88] Wai 2180, #3.2.939 at [7]
[89] Wai 2180, #3.2.941 at [42]
[90] 'Reka tuku mai ki te etita', *Huia Tangata Kotahi*, 7 July 1894, vol 2 issue 21, p 4 (Papers Past | Newspapers | Huia Tangata Kotahi | 7 July 1894 | RETA TUKU MAI KI TE ETITA. (natlib.govt.nz))
[91] Wai 2180, #O2(k) at [37]-[39]
[92] Wai 2180, #2.6.137 at [16]
[93] Wai 2180, #3.2.939 at [3]-[10]

62. For the Crown, Ms Ennor submitted that Meredith's review was 'comprehensive' and 'premised on sound methodology' and that his conclusions should alleviate any concerns we may have had about the thoroughness of Tau and Fisher's report. On next steps, Ms Ennor reiterated the Crown's support for us to produce a preliminary opinion. She added that 'The Crown's view is that sufficient evidence is available to the Tribunal to bring this aspect of the inquiry to a close. Step four is not required.'[94]

63. Ms Sykes submitted that she understood the reason for the review but was critical that Meredith had not contacted those members of Ngāti Hinemanu me Ngāti Paki who had provided evidence to the Tribunal. If any weight was to be given his review, she added, clarity was first needed as to whether Meredith would be made available for cross-examination or at least required to provide further information about which Native Land Court minute books he consulted. She submitted further that the matter was 'not a simplistic debate about Punakiao's rights versus those of Taraia II'. Rather, the marriage of Punakiao to Taraia II 'signified a merging of interests and that their union is best characterised as one of strengthening existing relationships between those descendants that live on either side of the Ruahine Range. The marriage did not separate those rights, it unified them.'[95]

64. Ms Sykes agreed with Meredith that he had found no 'new information of substance'. She stressed that this was a reason why 'the tangata whenua evidence that has been provided on this issue should be preferably considered by the Tribunal'. She submitted that Ngāti Hinemanu me Ngāti Paki's lack of participation in early Crown purchasing (and thus absence from that limited historical record) did not mean they did not have customary interests in those lands. She rejected any suggestion that they were 'not able to take advantage of descent to customary lands and interests from a wahine rangatira [such] as Punakiao' as 'simply a misapplication of Tikanga Māori and a demeaning of the status of Māori women'. Regarding Pouwharekura, Ms Sykes submitted that 'Punakiao is a descendant from this whakapapa', and Pouwharekura interests remain unsettled in the Heretaunga Tamatea settlement. In conclusion, Ms Sykes urged us to proceed to step three of our process.[96]

Our preliminary opinion

65. As foreshadowed, our task is relatively narrow, and dictated by the Heretaunga Tamatea Claims Settlement Act 2018 – do Ngāti Hinemanu have customary interests in the Kāweka and Gwavas CFL lands derived specifically from Punakiao?

66. We recognise at the outset that the forests are relatively near Ngāti Hinemanu areas of interest in Pātea. They are very close to our inquiry boundary and several blocks on or towards the eastern edge of our district – like Awarua o Hinemanu, Te Kōau, Aorangi Awarua, and Awarua 1A – were variously awarded to Ngāti Hinemanu.[97] Whereas there is a lack of evidence about Ngāti Hinemanu customary interests in some of the blocks

[94] Wai 2180, #3.2.940 at [5]-[9]
[95] Wai 2180, #3.2.941 at [11]-[13]
[96] Wai 2180, #3.2.941 at [18]-[35], [46]
[97] Tau and Fisher related how Awarua o Hinemanu was awarded to Ngāti Hinemanu in 1992 in part because of the prior award of these neighbouring or nearby titles to Ngāti Hinemanu. Wai 2180, #O2(a), pp 187-188

that contain the CFL lands, therefore, we know that Ngāti Hinemanu interests based on descent from Punakiao lay nearby.

67. In addition, we also acknowledge that the point highlighted by Dr Gilling to Tau and Fisher – 'the absence of evidence is not evidence of absence'[98] – is an argument well made. We accept that the historical record is imperfect, and that Native Land Court testimony – to the extent it was written down – is often an unreliable guide to customary rights and interests. Much will depend on the context, and the circumstances. Who was giving evidence? What was their motive, if any? Was that evidence internally consistent? Was it corroborated by the evidence of both friendly and hostile witnesses? Was the evidence consistent across several title investigations and partition hearings?

68. Even so, we are unable to accept the submission that, in the absence of this documentary evidence, we are required to adopt the line of evidence set out by the Ngāti Hinemanu me Ngāti Paki witnesses. Both Tau and Fisher, on the one hand, and Meredith, on the other, warned against taking oral tradition at face value. Tau and Fisher explained that they had attempted to cross-reference oral traditions with other forms of evidence to apply adequate scrutiny. They quoted Tā Tipene O'Regan's remark that such critique is 'the only weapon we have to defend the integrity of the Māori memory'.[99] In a similar vein, Meredith remarked that the idea that kōrero tuku iho was somehow more authentic than documentary records was 'misguided'.[100]

69. We note in this regard the late Professor Alan Ward's 1989 explanation of how Tribunal researchers approached their assessment of the historical evidence produced for the Ngāi Tahu inquiry:

> All evidence is of worth, including the very rich accumulation of recorded oral evidence adduced in this claim. All of it discloses something of the understandings of the people who created the record at the time they created it. But no evidence is privileged in the sense that it is simply taken at face value. All is under scrutiny and tested against other evidence, as far as possible, for corroboration or substantiation. It is hazardous to build an edifice of doctrine or interpretation upon a single text.[101]

To be clear, we acknowledge the importance of oral traditions and their fundamental relevance to tribal narratives. That said, we are also obliged to test claimant arguments carefully. Richard Steedman's evidence also demonstrated that the oral tradition in this case is in any event contested.

70. The circumstances remind us somewhat of a claim considered by the Mohaka ki Ahuriri Tribunal in its 2004 report. A claimant group called Ngāi Taane in northern Hawke's Bay disputed they were part of Ngāti Pāhauwera and asserted their own independent rights to redress, including the return of CFL land. Ngāti Pāhauwera witnesses denied any knowledge of Ngāi Taane and an independent historian could find no documentary references to them. Counsel for the Ngāi Taane claimants submitted that this absence

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[98] Wai 2180, #4.1.21, p 94
[99] Wai 2180, #O2(a), p 12, quoting Tipene O'Regan, 'Old Myths and New Politics: Some Contemporary Uses of Traditional History', in *New Zealand Journal of History*, vol 26, no 1 (1992), p 24.
[100] Wai 2180, #O2(k) at [13]
[101] Wai 27, #T1, p 4. See also Richard Boast on the centrality of whakapapa and oral traditions in the context of historical narratives and rights and interests in resources: 'The Native Land Court and the Writing of New Zealand History', in *Law & History*, vol 4, no 1 (2017), p 145.

of evidence was 'inconclusive in and of itself' and invited the Tribunal to decide matters based on oral evidence alone. The Tribunal declined to do this, concluding that 'the evidence for Ngai Tane having existed as a cultural and political entity distinct from Ngati Pahauwera in our inquiry district is slight'.[102]

71. There is of course no dispute as to Ngāti Hinemanu or Ngāti Paki's existence, to valid claims to land derived from descent from Punakiao, or indeed to Ngāti Hinemanu's customary interests in the Kāweka or Gwavas CFL lands. But the evidence that Ngāti Hinemanu's rights in these CFL lands derive specifically from Punakiao is similarly slight. It is essentially speculative and based on oral testimony that is disputed by other claimants.

72. In its stage one report, the Te Paparahi o Te Raki Tribunal also confronted a claimant contention that was not supported by documentary evidence. Rima Edwards said that Henry Williams had put a first draft of te Tiriti to rangatira at Waitangi in early February 1840 that had them ceding their 'mana' rather than 'kawanatanga'. The chiefs had rejected this and, when Hobson died in 1842, asked for this draft to be buried with him. Archival experts could find no written evidence to support the claim, but Mr Edwards's counsel submitted that the oral evidence was 'potentially more informative and reliable' than William Colenso's written account. Another claimant counsel referred to it as 'the *best* evidence … we have heard' (emphasis in original). The Tribunal, however, did not agree with these submissions.[103]

73. Tau and Fisher were commissioned to carry out their research because of their expertise in these matters. Likewise, we asked Meredith to review their work because he too is similarly qualified. Collectively, these experts could not find evidence that corroborated the claimants' assertions. They did not dismiss the possibility of rights to the CFL lands derived from Punakiao existing, and we do not do so either. We remain open to the possibility that such rights exist. But concluding that they do exist based on the available evidence was not a step they were prepared to take, and nor is it an option available to us.

74. The most logical individual to have pursued a Heretaunga-based claim because of descent from Punakiao would have been Winiata Te Whaaro, but he did not do so. There may well have been political reasons why he did not make any claims in Heretaunga – to protect and enhance his claims to land in Pātea – but the fact remains that he did not make them. Furthermore, when he did eventually make a claim to Ruataniwha North it is not clear on what basis he made the claim. Tau and Fisher surmised that it would have been because of his Ngāti Pouwharekura whakapapa from his father, and Meredith concurred in this assessment. If they are correct, the difficulty for the claimants is that Ngāti Pouwharekura are a Heretaunga hapū. Either way, however, the matter is speculative.

75. The Ngāti Hinemanu me Ngāti Paki claimants raised issues to do with the merging of rights, the diminished status and use of female tūpuna, boundary fluidity, and so on. We considered these positions carefully in arriving at our conclusions. However, none of

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[102] Waitangi Tribunal, *The Mohaka ki Ahuriri Report* (Wellington: Legislation Direct, 2004), pp 531-532
[103] Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wellington: Legislation Direct, 2014), pp 506-508

them assisted the claimants with the core issue that the legislation has permitted us to look at. As we have explained, our jurisdiction here is narrow. We also note that, while the purported naming of a wharekai after Punakiao appeared to suggest recognition of her mana in Heretaunga, this understanding proved to be incorrect.

76. Ms Sykes submitted that the Supreme Court's 2011 decision in the *Haronga* case was relevant. She said it required the Tribunal to inquire into whether every claim before it is well-founded or not, and the Tribunal could not defer inquiry as a means of evading such a decision. If we found that Ngāti Hinemanu me Ngāti Paki had customary rights in the CFL lands, she submitted, then this would provide a 'powerful basis from which to make inquiry into the well-founded claims aspect of the CFAA [Crown Forest Assets Act] text'. Since He Toa Takitini had already 'settled claims on the basis of Te Tiriti breach in those lands, then that same finding is highly likely to be one of equal application to the present claimants from NHNP'.[104]

77. We disagree that *Haronga* is relevant to our current deliberations. We have not been establishing whether the Ngāti Hinemanu me Ngāti Paki claims against the Crown are well-founded, but undertaking the prior step of considering whether the claimed Ngāti Hinemanu me Ngāti Paki customary interests derived from Punakiao exist in the first place. We are not at a stage in our process where this caselaw needs engaging.

78. The omission of Ngāti Pouwharekura under the Heretaunga Tamatea settlement is not a matter we are able to consider. We note that Crown evidence was that the hapū were likely to be covered by the claimant definition.[105] Whether that is a correct position is a matter for Ngāti Pouwharekura to pursue. Mr Watson, for example, did not consider the matter necessarily closed, commenting that his clients who descend from Winiata Te Whaaro 'continue to reach out to their whanaunga, including those who associate with the Ngāti Hinemanu me Ngāti Paki Heritage Trust, to progress the recognition of Ngāti Pouwharekura interests'.[106] That recognition would clearly involve the Heretaunga Tamatea settlement only, however, and have no implications for Pātea.

79. Our conclusion, based on the evidence before us, is that there is insufficient evidence to sustain the Ngāti Hinemanu me Ngāti Paki claim to a customary right in these CFL lands that is derived from Punakiao. There is therefore little prospect of us making a binding recommendation for the return of the ringfenced share of the company holding the CFL lands and accumulating rentals to them. In saying this we acknowledge that we have not been able to undertake an exhaustive investigation, but we have done as much as our resources have permitted. We note in any event that the Crown reserved the 10 per cent share pending the future settlement of Ngāti Hinemanu me Ngāti Paki claims, so the possibility remains that the Crown and Pātea claimants may yet negotiate a settlement involving it.

80. In accordance with our four-step process, this opinion is preliminary. Parties are therefore invited to make submissions on both its content and the next steps in our process by **30 April 2024**.

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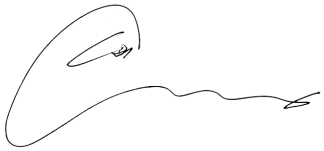
[104] Wai 2180, #3.2.801(a) at [14]-[28]
[105] Wai 2180, #A29 at [35]
[106] Wai 2180, #3.2.939 at [5]

The Registrar is to distribute this preliminary opinion to all parties on the notification list for Wai 2180, the record of inquiry for claims in the Taihape: Rangitīkei ki Rangipō District Inquiry.

DATED on this 16th day of February 2024



Justice L R Harvey
Presiding Officer

Dr Monty Soutar
Member

Professor Tā Pou Temara
Member

Dr Paul Hamer
Member

WAITANGI TRIBUNAL