

WAI 2200

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I, Te Kenahi Teira, of Wellington, state:

INTRODUCTION

1. My full name is Te Kenahi Teira. I am of Ngāti Raukawa.
2. I am a Deputy Chief Executive, Kaihautu, at Heritage New Zealand Pouhere Taonga. I have been in this role since 2001. Prior to that I was the Principal Maori Officer at the Palmerston North City Council in the Planning Unit.
3. I provide this evidence with the authority of Heritage New Zealand in order to provide information relevant to Te Kārewarewa Urupā which has been raised in this inquiry. My evidence seeks to explain and clarify Heritage New Zealand's purpose, role and activities, as well as to illustrate the work that has been done by Heritage New Zealand in the area of Te Kārewarewa Urupā.
4. I note that I give this evidence on the basis of knowledge I personally hold as well as from information I have obtained from Heritage New Zealand records.

SCOPE OF EVIDENCE

5. My evidence addresses:
 - 5.1 the operation of Heritage New Zealand under the relevant legislation, including organisation and resourcing; commitment to and observance of Te Tiriti o Waitangi; and archaeological policy;
 - 5.2 a summary of the primary features of the legislative provisions regarding the protection of wāhi tapu and archaeological sites and the listing of wāhi tapu and wāhi tupuna under the Heritage New Zealand Pouhere Taonga Act 2014 (**"the Heritage New Zealand Act"**);
 - 5.3 Heritage New Zealand's *Kōiwi Tangata/Human Remains Guidelines* and the consultation undertaken with Māori in the drafting of these guidelines;
 - 5.4 Heritage New Zealand's knowledge of the history of the Kārewarewa Urupā and Ngārara West A14B1;

- 5.5 New Zealand Historic Places Trust's prosecution under s99 of the Historic Places Act 1993 of Payne Sewell Limited and Higgins Contractors Limited; and
 - 5.6 responds to evidence outlining aspirations for further protection of Kārewarewa Urupā.
6. Evidence about the events leading to Archaeological Authority 2017/316 being granted on 18 October 2016 (and events subsequent) are to be addressed in a separate brief of evidence of Kathryn Hurren, Archaeologist Poutairangahia, who has direct knowledge of those events.

OPERATION OF HERITAGE NEW ZEALAND UNDER THE RELEVANT LEGISLATION

7. I set out the following information about Heritage New Zealand and the legislation under which it operates by way of information which 'sets the scene' for Heritage New Zealand's dealings with Kārewarewa Urupā. This information will be relevant to the Tribunal's consideration of the Crown's conduct – both alleged acts and omissions – over the past 20 years or so in relation to the Urupā.

Organisation and Resourcing

- 8. Heritage New Zealand is a Crown Entity and operates under the Heritage New Zealand Act which came into force on the 20th of May 2014, replacing and repealing the Historic Places Act 1993.
- 9. Heritage New Zealand is the same body as the New Zealand Historic Places Trust (NZHPT), which operated under the Historic Places Act 1993. (The predecessor to the New Zealand Historic Places Trust was the National Historic Places Trust established under the Historic Places Act 1954.) Heritage New Zealand is an autonomous Crown entity under the Crown Entities Act 2004, as was the New Zealand Historic Places Trust.
- 10. Before 1989, the Department of Internal Affairs was the responsible department for the Historic Places Trust. From 1989 until the Ministry for

Culture and Heritage was created in 1999, the Department of Conservation administered Heritage New Zealand.

11. The Historic Places Act was reviewed by the Ministry for Culture and Heritage, resulting in a range of reforms to Heritage New Zealand's governance arrangements and to improvement of archaeological consenting processes. In early 2011, Heritage New Zealand ran a nationwide series of information hui for iwi explaining the key policy decisions on archaeological consenting processes. As noted above, the Heritage New Zealand Act then came into force on 20 May 2014.
12. While the Ministry for Culture and Heritage is the department responsible for administering both the Protected Objects Act 1975 and the Heritage New Zealand Act, operation of the Heritage New Zealand Act is carried out by Heritage New Zealand.
13. The purpose of the Heritage New Zealand Act is "to promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand",¹ and is the same purpose as that of the Historic Places Act.
14. The governance and functions of Heritage New Zealand and Māori Heritage Council are set out in **Appendix I**.

Te Tiriti o Waitangi

15. Section 7 of the Heritage New Zealand Act sets out the various ways in which the Act recognises and respects the Crown's responsibility to give effect to the Treaty of Waitangi (Te Tiriti o Waitangi), including by providing:
 - 15.1 for the appointment, in consultation with the Minister of Māori Affairs, of at least 3 members of the Board of Heritage New Zealand who are qualified for appointment having regard to their knowledge of te ao Māori and tikanga Māori;²

¹ Heritage New Zealand Act 2014, s 3.

² Heritage New Zealand Act 2014, s 10.

- 15.2 that Heritage New Zealand has functions that relate to wāhi tūpuna, wāhi tapu, and wāhi tapu areas and has the powers to carry out those functions, including the power to be a heritage protection authority under Part 8 of the Resource Management Act 1993;³
- 15.3 that Heritage New Zealand has the power to delegate functions and powers to the Māori Heritage Council;⁴
- 15.4 for the functions and powers of the Māori Heritage Council to ensure the appropriate protection of wāhi tūpuna, wāhi tapu, wāhi tapu areas, historic places, and historic areas of interest to Māori;⁵
- 15.5 for the power of Heritage New Zealand to enter into heritage covenants over wāhi tūpuna, wāhi tapu, and wāhi tapu areas;⁶
- 15.6 for the measures that are appropriate to support processes and decisions relating to sites that are of interest to Māori or to places on Māori land;⁷
- 15.7 the power for the Māori Heritage Council to enter, or to determine applications to enter, wāhi tūpuna, wāhi tapu, and wāhi tapu areas on the New Zealand Heritage List/Rārangi Kōrero (discussed further below), and to review or remove such entries;⁸
- 15.8 for a power for the Council to make recommendations to relevant local authorities in respect of wāhi tapu areas entered on the New Zealand Heritage List/Rārangi Kōrero under Part 4 and a duty on local authorities to have particular regard to such recommendations;⁹ and

³ Heritage New Zealand Act 2014, ss 13 and 14.

⁴ Heritage New Zealand Act, s 22.

⁵ Heritage New Zealand Act, ss 27 and 28.

⁶ Heritage New Zealand Act, s 39.

⁷ Heritage New Zealand Act, ss 46, 49, 51, 56, 57, 62, 64, and 67.

⁸ Heritage New Zealand Act, ss 66, 68, 69, 70, 72 and 78.

⁹ Heritage New Zealand Act, s 74.

- 15.9 for requirements for the Māori Heritage Council (and in section 82, the Minister of Māori Affairs) to be consulted in certain circumstances relating to the New Zealand Heritage List/Rārangi Kōrero and the Landmarks List respectively.¹⁰

Archaeological Policies

16. Heritage New Zealand promotes, to iwi/hapū, the use of the archaeological policies/provisions in the Heritage New Zealand Act, as a tool to assist Māori in their kaitiaki role. It is unlawful for any person in New Zealand to damage or destroy an archaeological site whether or not it is recorded, unless that person has an authority from Heritage New Zealand to do so. The legislative provisions are described in detail in **Appendix II**.
17. The Heritage New Zealand Act's archaeological provisions offer some of the strongest protection for heritage in the western world. It is important to note however that these provisions only pertain to archaeological resources (ie tangible places – pā, midden, pits, rock art, koiwi, hāngi) and not to other non-archaeological traditional and ancestral places (ie natural features, maunga, springs, flora).
18. Prosecution under the Heritage New Zealand Act can result in a criminal conviction as well as a fine.¹¹ There are a range of options besides prosecution that can be used to help manage archaeological sites. For example, in some cases it is preferable to work with the owner to agree a heritage covenant, site management plan, or other mitigation.
19. It is possible for any person who is 'directly affected' by the decision on an archaeological authority to appeal against that decision or the conditions to the Environment Court. Many iwi/hapū have utilised this tool and lodged appeals with the Court and through mediation have ensured that their concerns are heard and considered.

¹⁰ Heritage New Zealand Act, ss 75 and 82.

¹¹ The penalty for the offence of modifying or destroying an archaeological site without the authority of Heritage New Zealand has been increased by the Heritage New Zealand Act. The maximum penalty for destruction is a fine not exceeding \$150,000 for a natural person and \$300,000 in the case of a person other than a natural person, and for modification a fine not exceeding \$60,000 in the case of a natural person and \$120,000 in the case of a person other than a natural person.

20. Under the authority process the onus is on applicants to undertake mandatory consultation with iwi/hapū.¹² While not a veto right, consultation for the authority process means the applicant sharing information, in particular the archaeological assessment with iwi/hapū, giving the latter the opportunity to meet face to face on the site, having a meaningful discussion, considering each other's concerns and recording the views expressed by all parties.
21. Consultation involves all iwi/hapū that might have an interest in a site. Heritage New Zealand adopts a "layers of history" approach and considers that any hapū/iwi who has had an interest in a site should be consulted, not only the current holder of mana whenua. Heritage New Zealand's interest in consultation is ascertaining the Māori values of the archaeological resource to assist in the decision-making process. The relevant Māori Heritage team's role is to check that the appropriate iwi/hapū have been satisfactorily consulted.
22. It is also mandatory for an assessment of the Māori values of the archaeological resource and the effects of the proposal on those values to be provided by the applicants. This may take the form of a signature or an email from iwi/hapu for a simple application to a fully researched Cultural Impact Assessment involving a more complex ancestral landscape.
23. For each application, the Māori Heritage team will provide a summary of the details of the consultation undertaken, assessment of the Māori values of the archaeological resources affected and an assessment of the effects of the proposal on those values from the information provided. This will be incorporated into the Archaeologist's report to the decision maker/s.
24. Authority applications which relate to sites of interest to Māori must be decided by the Māori Heritage Council as a result of a delegation of the decision-making power by the Board. The Māori Heritage Council will consider the summary of information, weigh up the archaeological and Māori values of the site and the recommendations from staff and will make a decision whether to grant or decline an authority application.

¹² Heritage New Zealand Act, section 49.

25. Heritage New Zealand recognises that some iwi/hapū, including some involved in the current inquiry, dislike the authority process for a number of reasons. These reasons include Heritage New Zealand making decisions affecting their taonga, an expectation that developments can always be stopped through the authority process and a perception that archaeological values seem to carry more weight than the Māori values. The Māori Heritage team's response is to urge iwi/hapū to participate in the proposal at the early planning stage and to ensure that their views are expressed and recorded.
26. Heritage New Zealand certainly does not consider the iwi consultation process to be a "tick the boxes" processes, as I understand some claimants have asserted. Heritage New Zealand does, however, respect decisions by iwi or affected Māori to not engage with applicants. After the internal assessment process is undertaken (as described by Kathryn Hurren in her evidence), we then have the application assessed as to whether the applicants have made sufficient attempt to engage with the iwi. Heritage New Zealand has both supported applicants to engage with affected iwi/hapū as well as helped iwi/hapū to respond.

SUMMARY OF LEGISLATION PROTECTING WĀHI TAPU

27. Relevantly for the consideration of the claims made in relation to Kārewarewa Urupā, the current legislative and policy protections for wāhi tapu are contained within the Heritage New Zealand Act.
28. In broad terms this legislation provides a system whereby:
 - 28.1 any modification or destruction of "archaeological sites"¹³ must be authorised by Heritage New Zealand;¹⁴
 - 28.2 there are significant fines for destroying or modifying archaeological sites (including those wāhi tapu and wāhi tupuna which are also archaeological sites) without authorisation;¹⁵

¹³ The meaning of "archaeological sites" is defined in section 6 of the Heritage New Zealand Act.

¹⁴ Heritage New Zealand Act 2014, s 42.

¹⁵ Heritage New Zealand Act 2014, s 85.

- 28.3 the Heritage New Zealand Act requires Heritage New Zealand to compile the 'New Zealand Heritage List/Rārangi Kōrero'.¹⁶ Sites of importance to Māori can fall under all these categories. The purpose of the New Zealand Heritage List/Rārangi Kōrero is to inform members of the public about these places, to notify owners and to be a source of information about places entered on the List for the purposes of the Resource Management Act.¹⁷ The protection of listed places relies on the Resource Management Act with scheduling, policies and rules within the applicable district plan.
29. The definitions of the various terms are set out in section 6 of the Heritage New Zealand Act and include:
- 29.1 A "historic place" can be land, or a building or structure (or a combination of both) "that forms a part of the historical and cultural heritage of New Zealand". "Historic area" is an "inter-related group of historic places".
- 29.2 A "wāhi tapu" is defined as "a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense". A "wāhi tapu area" means land that contains one or more wāhi tapu.
- 29.3 Wāhi tūpuna is a new addition under the Heritage New Zealand Act. "Wāhi tūpuna" is defined as "a place important to Māori for its ancestral significance and associated cultural and traditional values". The rationale for the inclusion of wāhi tūpuna was there was no category under the 1993 Act for places of significance to Māori for which the primary characteristic is ancestral connection.
30. The criteria and other requirements for inclusion on New Zealand Heritage List/Rārangi Kōrero are set out in sections 66 and 68 of the Heritage

¹⁶ Heritage New Zealand Act 2014, s 65.

¹⁷ Listing does not directly protect a wāhi tapu or place any legal restrictions on it. However it acts as a flag to owners, developers or purchasers of the land of the wāhi tapu's presence and that Heritage New Zealand has recognised its significance. This then enables iwi/hapū, Heritage New Zealand, local authorities and owners of the place to discuss options and long-term management. Listing is also the only mechanism available to iwi/hapū to provide for the management of a wāhi tapu of non-archaeological origin on private land.

New Zealand Act. The criteria include the importance of the place to tangata whenua and the extent to which the place forms part of a wider historical and cultural area. It is important to note that an application needs to satisfy at least one criterion; it is not necessary to meet all criteria.

31. An entry on the New Zealand Heritage List/Rārangi Kōrero indicates that a site has heritage value. The effect of entering on this list is the Resource Management Act requires a territorial authority to have regard to any relevant entry on the New Zealand Heritage List/Rārangi Kōrero when preparing or changing its district plan. In the recent review of the District Plan for the Kāpiti Coast District Council, Heritage New Zealand offered to submit in support of listing the Kārewarewa Urupā as well as other sites in the region but did not get support from Te Ātiawa ki Whakarongotai to do this.
32. I note that Kārewarewa Urupā is not presently listed on the New Zealand Heritage List/Rārangi Kōrero. This is because there has been no application made to include it. The Act does not allow for entry of a site onto the List without an application. I note that other sites in the region, including the Takamore wahi tapū site, have been listed.
33. I note that there is no cost involved in getting a site listed on the New Zealand Heritage List/Rārangi Kōrero.
34. While the Kārewarewa Urupā is not presently listed on the New Zealand Heritage List/Rārangi Kōrero, it does have recorded archaeological sites on it. The significance of this is that there are two different systems and process and there are other protection mechanisms contained in the Resource Management Act for recorded archaeological site. Unfortunately Heritage New Zealand received no support from Te Ātiawa ki Whakarongotai for engaging with those protection mechanisms through the Resource Management Act.

HERITAGE NEW ZEALAND'S KOIWI TANGATA/HUMAN REMAINS
GUIDELINES AND THE CONSULTATION UNDERTAKEN WITH
MĀORI IN THE DRAFTING OF THESE GUIDELINES

35. I note that from page 93 of the appendices to Matua Paora Ropata's brief of evidence¹⁸ a copy of a letter from NZHPT dated 9 October 2008 together with the then draft *Koiwi Tangata/Human Remains Guidelines* sent to iwi around the motu appears. NZHPT, in developing this set of guidelines, sought comments from interested parties and incorporated these into the final set of guidelines.
36. I have been unable to find whether Te Ātiawa/Ngātiawa ki Kapiti provided any feedback on the draft guidelines however the invitation to do so was clearly made.
37. A copy of the current *Koiwi Tangata/Human Remains Guidelines*, published 25 August 2014, is attached as **Appendix III**.
38. The *Koiwi Tangata/Human Remains Guidelines* provide advice for a culturally responsible mechanism for the management of koiwi tangata/human remains that have been either uncovered through accidental discovery or deliberately excavated/exhumed in emergency response situations, or as a result of natural processes e.g. coastal erosion. In the majority of cases it will be found that these koiwi tangata/human remains are Māori in origin, so the Guidelines have a deliberate focus in that direction, and recognise the kaitiaki role that iwi play in determining what happens in the management of the discovery of koiwi tangata/human remains.
39. The guidelines are intended to:
 - 39.1 set out best practice procedures for external stakeholders e.g. tangata whenua (at iwi, hapū or whanau level), Government agencies (e.g. the Department of Conservation, Te Arawhiti, etc) territorial local authorities, police, the general public, etc;
 - 39.2 provide internal direction to Heritage New Zealand staff for the management of koiwi tangata/human remains;

¹⁸ Wai 2200, #F01(a)

- 39.3 ensure compliance with New Zealand legislation, and
 - 39.4 provide advice and direction on customary practice and protocols (tikanga and kawa), while recognising that individual iwi and hapū will have their own particular practices.
40. I do note the mandatory requirement for consultation with tangata whenua if a Māori cemetery or urupā is the subject of an excavation.¹⁹ Heritage New Zealand acknowledges the difficulties associated with being satisfied that appropriate and sufficient consultation with tangata whenua has taken place. I understand an example of this has been raised in this Inquiry over Mary O’Keeffe, an archaeologist engaged by the Waikanae Land Company, believing appropriate and sufficient consultation had been undertaken by speaking to Mr Les Mullens and Mr Benjamin Ngaia of Te Ātiawa/Ngātiawa ki Kapiti. I understand Ms O’Keeffe is giving evidence herself about this.
41. The Guidelines are considered by Heritage New Zealand as a starting place for discussion. Each hapū and iwi have their own tikanga and Heritage New Zealand respects those different tikanga.
42. I note that Matua Paora Ropata, in his Brief of Evidence, is critical of the Guidelines as he says they ‘do not go far enough to ensure the protection of [their] sacred sites and ensuring tikanga practices are followed.’²⁰ I need to stress, the Guidelines are only a starting point; some iwi don’t have their own guidelines or accidental discovery protocol or iwi management plans. For those iwi, the Guidelines act as the starting place for dealing with those issues.
43. For example, while tikanga is a part of the Resource Management Act process, Heritage New Zealand has to put the tikanga as a general condition in all authorities, in support of the iwi.

¹⁹ See section 9 on p22 of the Guidelines.

²⁰ Brief of Evidence of Paora Tuhari Ropata: Wai 2200, #F01 at [123].

KĀREWAREWA URUPĀ

Location and ownership history

44. Te Kārewarewa Urupā is described by tangata whenua as being located “within an old dune belt at the confluence of the Waikanae River and the old course of the Waimeha Stream”.²¹

45. I note that in her Local Government Issues Report to the Tribunal, Suzanne Woodley records that WW Carkeek, in his 1966 publication, ‘the Kapiti Coast: Maori History and Place Names of the Paekakariki-Otaki District’, recorded, in relation to Kārewarewa Urupā, that:²²

The exact location of Kārewarewa is not known but according to Mere Pomare it was on the northern side of the Waikanae River.

46. Ms Woodley states the urupā is located on Ngarara West A14B1 block.²³

47. I have read the information about Kārewarewa Urupā recorded in Suzanne Woodley’s report²⁴ and I do not take issue with any of the matters of fact stated by Ms Woodley about the history of the partitioning of the original Ngarara West A14 block, the circumstances of the sale of the A14B1 block in 1970 to the Waikanae Land Company, nor the designation change (from cemetery to residential zoning) in 1970. I have no knowledge of historical evidence which would suggest this account is wrong however I do note for the record that I am not a historian and have not researched these matters further. What I can say, however, is that I have read about the battle of Kuititanga in the wider vicinity of Waimea and I know it to be of great significance.

48. Heritage New Zealand, and the Crown generally, is unable to be certain as to which part (or parts) of the original Ngarara West A14 block the Kārewarewa Urupā sits. What I mean by this is that assuming it is correct that Ngarara West A was the site of significant fighting in the 19th century and bodies were

²¹ Brief of Evidence of Paora Tuhari Ropata: Wai 2200, #F01 at [62]. See also Cultural Impact Assessment Te Kārewarewa Urupā, Te Ātiawa ki Whakarongotai Charitable Trust, 9 Nov 2015 at p 576 of Brief of Evidence of Mahina-a-rangi Baker dated 22 January 2019.

²² Wai 2200, #A193, p622.

²³ Ibid, p623.

²⁴ Wai 2200, #A193, pp621 – 660.

buried were they fell,²⁵ it could be that the Urupā in fact extends beyond just block A14B1. However, the historical records discussed by Ms Woodley in her report as well as the information contained in the Cultural Impact Assessment prepared by Mahina-a-rangi Baker for Te Ātiawa ki Whakarongotai Charitable Trust (dated 9 November 2015) would indicate that the Urupā is wholly contained within Block A14B1.²⁶ See also the Partition Orders reproduced at pp 3-8 of the Appendices to Paora Ropata's Brief of Evidence.²⁷

49. According to the historical records, Ngarara West Block A14B1 was originally a 20 acre block. I am unable to determine which part of Block A14B1 is shown in the aerial photograph of the undeveloped part of the block which is at page 72 of the Appendices to the brief of evidence of Paora Ropata.²⁸ I also cannot identify how big the undeveloped piece of the block is; that is, what portion of the original Block remains undeveloped.
50. I understand the title to the whole of the undeveloped block is owned by the Waikanae Land Company. None of the land is in Crown ownership. It appears that none of the block ever has been in Crown ownership. I note the evidence of Matua Paora Ropata recites the history of the block and records the sale of the block on 15 October 1969 to the Waikanae Land Company at paragraph [84].

Heritage New Zealand's awareness of Kārewarewa urupā, the prosecution of Payne Sewell Limited and Higgins Contractors Limited in 2000, and current protections over the site

51. To the best of my belief and knowledge, NZHPT were first made aware of the Tamati Place site being the site of the Urupā (even if not, at that time, known to NZHPT as the "Kārewarewa urupā") when the kōiwi were uncovered in 2000. It is not uncommon for a site to only be brought to the attention of Heritage New Zealand when archaeological material is encountered in the

²⁵ See Cultural Impact Assessment Te Kārewarewa Urupā, Te Ātiawa ki Whakarongotai Charitable Trust, 9 Nov 2015, at pp 576-596 of Brief of Evidence of Mahina-a-rangi Baker dated 22 January 2019; at page 580: '*In accordance with Christian protocols which were followed at the time, the deceased were buried where they fell...*'

²⁶ Cultural Impact Assessment Te Kārewarewa Urupā, Te Ātiawa ki Whakarongotai Charitable Trust, 9 Nov 2015, at pp 576-596 of Brief of Evidence of Mahina-a-rangi Baker dated 22 January 2019 and in particular Figures 8 and 9 on pages 591 and 593 respectively.

²⁷ Wai 2200, #101(a), pp 3-8.

²⁸ Wai 2200, #F01.

course of a development, that is, *after* the granting of a resource consent. I am aware that there are three subdivisions on the Kapiti Coast at the moment, the development of which have been stopped due to middens being found post resource consent granting. None of these sites were previously known to Heritage New Zealand. All three of these developments had the standard “stop if you find something” clause in their consents and of course there are the statutory protections afforded by the Heritage New Zealand Act. There is, of course, still no substitute for talking with Heritage New Zealand prior to works.

52. I have been asked how Heritage New Zealand (and its predecessor, the New Zealand Historic Places Trust) both historically and currently protects the Kārewarewa urupā. It is only through the archaeological authority process that we can protect the site. This is because neither the iwi nor anyone else has engaged Heritage New Zealand to use any other procedure (as set out at paragraphs 31 to 34 above). For example, the iwi could have requested the part of the area to be reserved and they could have requested that from the land owner itself. There is also no heritage covenant over the site either.
53. Following the disturbance of the land by Payne Sewell Limited and Higgins Contractors Limited in 1999-2000, Heritage New Zealand commenced the prosecution of those companies, as recorded by Ms Woodley in her report to the Tribunal.²⁹ The outcomes of the litigation is covered by Ms Woodley’s report.
54. I note that Matua Paora Ropata has included in the appendices to his brief of evidence (#F01) some correspondence from the early 2000’s between NZHPT and Kapakapanui, as well as Mary O’Keeffe, Archaeologist. I note particularly the letter from NZHPT to Ms O’Keeffe dated 3 May 2001 (at page 87 of Matua Ropata’s appendices) which clearly records NZHPT’s view that the area then proposed for development ‘is part of a known Maori cemetery’ and that ‘invasive testing of this area is inappropriate’. I can confirm that Heritage New Zealand maintains this view.

²⁹ Wai 2200, #A193, pp645 – 654.

OTHER FORMS OF HERITAGE PROTECTION POTENTIALLY AVAILABLE FOR KĀREWAREWA URUPĀ

55. The relief sought by claimants in relation to Kārewarewa urupā is:

Wai 1018	<p>No specific remedy sought in the Amended Statement of Claim although a generalised remedy may apply to Kārewarewa, namely:</p> <p>357(e): The restoration of the claimants' rangatiratanga to the extent that the Crown meaningfully engages with Ngātiawa to discuss matters of cultural significance.</p>
Wai 1945	<p>75(o): A recommendation that the Crown buys back the Kārewarewa site so that it might be returned to Te Āti Awa ki Waikanae.</p> <p>75(p): A recommendation that the Crown buys back the land on which the Ngarara urupā³⁰ was located so that it might be returned to Te Āti Awa ki Waikanae, and the designation as an urupa be restored.</p>

56. I also note that Matua Paora Ropata, in his written answers to questions from the Crown,³¹ said that the Kaumatua requested a survey be undertaken of the original Ngarara West A14 Section B No. 1 block and that four memorial poles be erected, one at each corner of the original rectangular Urupā. I understand Kathryn Hurren's brief of evidence is appending a copy of Mary O'Keeffe's 'Tamati Place – archaeological issues' report from March 2012. At page 3 of that report is an aerial photograph showing the boundaries of the original Ngarara West A14 Section B No. 1 block overlaying the development as it was in 2010. As can be seen from that photograph, the four corners of the block are likely to be situated within privately owned real estate – potentially in some people's backyards or where a house now sits. While the general vicinity of the four corners could potentially be marked with such pou, I note that many iwi

³⁰ I understand that Counsel for the Wai 1945 claimants has confirmed to Crown counsel that the reference to 'Ngarara urupa' in the Statement of Claim is a reference to Kārewarewa Urupa; that is, they are one and the same.

³¹ Wai 2200, #F01(b) at [23].

use this method of marking and interpreting their heritage. It is a form of interpretation that is culturally appropriate.

57. In terms of the Crown meaningfully engaging with Ngātiawa to discuss matters of cultural significance, I believe that the provisions of section 7 of the Heritage New Zealand Act, and the provisions of the Act referred to in section 7, ensures this will happen.
58. With respect to the request that the Crown buy back the site so it might be returned to Te Āti Awa ki Waikanae, as noted above the Crown does not own any of the land contained in block A14B1, and never has. The remaining undeveloped land area is owned by the Waikanae Land Company. I understand section 6(4A) of the Treaty of Waitangi Act prevents the Tribunal from making any recommendations for the Crown to acquire private land. I do note that in the case of two other places, including the Orakau Battle site and an urupa at Kaiwi, the Crown has purchased land. Therefore, in the course of Treaty settlement negotiations, presumably this could be an option for the remaining undeveloped land at Tamati Place.
59. I take the opportunity to point out the following additional protections that may be afforded a site such as Te Kārewarewa Urupā under the provisions of the Heritage New Zealand Act:

National Historic Landmarks/ Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu List

60. As discussed above, under the Heritage New Zealand Act, Heritage New Zealand must establish and maintain a list of places of outstanding national heritage value, to be called the National Historic Landmarks/Ngā Manawhenua o Aotearoa me ōna Kōrero Tūturu.³² The Minister determines whether a place is entered on this list, on recommendation of Heritage New Zealand (following a public submission process). The Landmarks List will help to set national priorities for heritage conservation and recognise New Zealand's most important historic landmarks. Before being entered on the Landmarks List, Heritage New Zealand must be satisfied the place is

³² Heritage New Zealand Act 2014, s 81.

subject to “appropriate legal protection” (as determined on a case by case basis, but which may include for example reserve status, or being subject to a heritage covenant) and has a risk management plan. The Waimea Pa and the Battle of Kuititanga are matters of national significance.

Heritage Covenants

61. Heritage covenants are a protection mechanism under section 39 of the Heritage New Zealand Act, entered into with the owner of any historic place (including archaeological sites), historic area, wāhi tupuna, wāhi tapu or wāhi tapu area, to provide for the protection, conservation and maintenance of the place or area. Each covenant will be binding based on its specific terms but they generally ensure that the place is not demolished and that certain features are protected from modification or alteration. Heritage covenants are usually registered on the legal title to land and run in perpetuity. They are a long-term tool of protection for heritage places but require owner consent which limits their applicability to a number of situations.

Taonga Tūturu Protocols

62. The Treaty settlement process has provided an important mechanism by which the Ministry for Cultural and Heritage has been able to establish formal relationships with settled iwi. The Crown has negotiated around 64 Taonga Tūturu protocols since 1998.
63. The purpose of the protocols is to establish formal relationships between the Crown (through the Ministry for Cultural Heritage) and various iwi regarding newly found taonga tūturu and the export of taonga tūturu under the Protected Objects Act. Since they were first developed, the content of the protocols has expanded to include other matters such as:
 - 63.1 historic graves and memorials in a protocol area;
 - 63.2 consultation on historical publications relating to an iwi; and
 - 63.3 notification of ministerial appointments that the Minister for Arts, Culture and Heritage makes.

64. The protocols outline how the Ministry will engage with the post-settlement governance entity, and provides for their input into the decision-making processes. The aim is to establish a working relationship that supports the administration of the Protected Objects Act and the Heritage New Zealand Act, consistent with the principles of the Treaty of Waitangi.
65. Once Te Ātiawa ki Kapiti has settled its historical Treaty grievances with the Crown, establishing a Taonga Tūturu protocol may be a further protection mechanism available for Te Kārewarewa Urupā.
66. I note that the responsibility for managing matters related to Taonga Tūturu protocol lies with the Ministry for Culture and Heritage, not Heritage New Zealand.



Te Kenehi Teira
Deputy Chief Executive / Kaihautu
Heritage New Zealand Pouhere Taonga

5 July 2019

