

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

**WAI 745/1308
WAI 2561**

IN THE MATTER OF

Te Tiriti o Waitangi Act 1975

AND

IN THE MATTER OF

The Ngatiwai Deed of Mandate

AND

IN THE MATTER OF

a claim filed by Paki Pirihi on behalf of Patuharakeke Trust Board and a claim filed by Ngawaka Pirihi and others on behalf of the owners of Pukekauri 1B1, 1B2, 1B3, 1B4 and 1B5 and Takahiwai 4C, 4D1, 4E, 7A, 7B2 and 7C

**BRIEF OF EVIDENCE OF JARED PAKI PITMAN
Dated the 22nd day of August 2016**

TAMATEKAPUA LAW

PO Box 10081
Dominion Road
Auckland
Telephone: (09) 620 6240
Facsimile: (09) 620 6250

Counsel: K Dixon/A Castle

KO MANAIA TE MAUNGA
KO WHANGAREI TE RERENGA PARAOA TE MOANA
KO TAKAHIWAI TE MARAE
KO RANGIORA TE WHARE HUI
KO PATUHARAKEKE TE HAPU

Introduction

1. My name is Jared Paki Pitman. On 2 December 2015 I provided an affidavit in support of the application by the Wai 745 and Wai 1308 claimants for an urgent inquiry into the Crown's recognition of the Ngatiwai Trust Board ("**NTB**") Deed of Mandate ("**DOM**")¹ ("**my affidavit**"). That affidavit focussed primarily on the following issues:
 - The historical relationship between Ngatiwai and Patuharakeke;
 - The mandated authority of the Patuharakeke Te Iwi Trust Board ("**PTB**") over matters affecting Patuharakeke hapu;
 - The non-consent of the claimants to be included in the NTB DOM; and
 - The impact of the Crown's recognition of the NTB DOM on the inter-tribal relationship between Ngatiwai and Patuharakeke.
2. That evidence was provided in my capacity as a member of Patuharakeke hapu and as a trustee on the PTB. On 28 May 2016 I was appointed Chairperson of the Patuharakeke Te Iwi Trust Board ("**PTB**"). I am also a member of the Patuharakeke Claims Progression Committee ("**PCPC**") which is a sub-committee of the PTB. The PCPC is specifically tasked with progressing the Wai 745 and Wai 1308 Waitangi Tribunal claims and dealing with all matters that affect them.
3. I provide this brief of evidence not for the purpose of duplicating what is already on the record, but rather to summarise my previous evidence in light of the Tribunal's

¹ Wai 2561, #A8.

Statement of Issues that was released on 20 July 2016² and to provide further evidence as to the rangatiratanga of Patuharakeke.

4. In providing this evidence I wish to respond particularly to the following two issues:
 - *Issue 8: What is the relationship between the claimant's hapu that are listed in the NTB deed of mandate and the marae listed in section 14 of the NTB deed of mandate?*
 - *Issue 3: To what extent, if any, did the Crown actively protect the position of hapu and the ability for hapu to exercise tino rangatiratanga?*
 - a. *Did the hapu referred to in the NTB deed of mandate support and/or consent to that mandate?*
 - b. *Does the NTB deed of mandate provide for representation of hapu?*

Patuharakeke Hapu Rangatiratanga

5. The Tribunal have asked at issue 3 to what extent, if any, did the Crown actively protect the position of hapu and the ability for hapu to exercise tino rangatiratanga?
6. Myself and others have previously addressed the strong whakapapa connection between Patuharakeke and Ngatiwai. It is essential to differentiate whakapapa connection from a relationship with a board or incorporation that has been constituted to deal with fisheries assets, especially in the context of this urgency claim. Patuharakeke identity is an identity grounded in mana tupuna, mana whenua and broad inter-tribal connection. Connection is intrinsic to any tribe's identity and survival. We hold our ancestral connections with our whanaunga sacred and approach them with the sanctity and respect they deserve.
7. The Crown does not respect our connections in the same way. Through NTB and other neo-tribal institutions they continue to facilitate the manipulation of our whakapapa to validate their defunct Large Natural Grouping Policy. In doing so the Crown continues to breach their duty of active protection guaranteed to us by Te Tiriti o Waitangi. They

² Wai 2561, #1.4.1.

also breach the sanctity of mana tupuna and whanaungatanga. They appear unconcerned by this, steadfast in their quest to achieve the quickest and cheapest subjugation of Patuharakeke rangatiratanga, and hapu rangatiratanga in general.

8. Patuharakeke has exercised its rangatiratanga since the inception of the tribes name, through to post-treaty settler-government resistance, then on to Wiki Te Pirihi's involvement in Te Kotahitanga Maori Parliament in the late 19th century and the various Patuharakeke land petitions that followed. Much of that evidence has already been traversed and is on the record. Patuharakeke rangatiratanga has endured the test of time and further evolved to reflect the present day conditions.
9. For the benefit of the Tribunal, I wish to provide evidence as to how Patuharakeke rangatiratanga and autonomy is exercised today. From my perspective Patuharakeke rangatiratanga is most evident today in its internal relationships, organisational structures and decision making processes.
10. The Takahiwai marae reservation is vested in the Takahiwai Marae Trustees ("**TMT**") who discharge the duties associated with that trusteeship on behalf of Patuharakeke. The Takahiwai Marae Committee ("**TMC**") is an active arm of the marae trustees that care for the day-to-day running of the marae facilities and associated administration on behalf of Patuharakeke.
11. The PTB is charged with engaging broad functions relating to the advancement of the health, wealth, education, employment and cultural wellbeing of the Patuharakeke people on behalf of Patuharakeke. The PTB, through its PCPC, is charged with managing the WAI 745 and WAI 1308 claims on behalf of Patuharakeke. Attached and marked as Appendix "A" to this evidence is a letter from the TMT to the PTB confirming their continued support of the PTB in the progression of the Wai 745 and Wai 1308 claims.
12. Many members of our hapu have roles that span two or more of the aforementioned structures. There is a high level of confidence within the hapu that each organisational structure will discharge the duties associated with its functions to the best of its ability. Each structure is very clear on their functions and responsibilities.

13. In this context I describe the relationship between PTB (the representative body dealing with hapu claims) and the TMT and TMC (representative bodies dealing with marae functions and responsibilities) as reciprocal, practical, and effective.
14. These decision making structures all have their origins in legislation imposed by the government. Patuharakeke have adapted these structures to their advantage in response to the modern day conditions that affect the hapu. In no way do any of these structures supersede the hapu rangatiratanga and autonomy that belongs to Patuharakeke. That is something separate.
15. One might see the use of these structures as a contemporary expression of Patuharakeke rangatiratanga. To me, they are the tools of the day to ensure that tribal administration complies with imposed legislation, allowing the hapu to participate in modern society.
16. Patuharakeke rangatiratanga is not static like legislation, nor is it subject to the whims or agendas of the government of the day. It lives, breathes and evolves. I often see our hapu rangatiratanga expressed when there is a dysfunction in relation to one of our adopted organisational structures, or an external issue that could affect Patuharakeketanga on some level. That is when Patuharakeke will gather together in its collective form, within our whare hui for hui aa hapuu.
17. This process of tribal decision making is ancient, it doesn't care who is chair or secretary or trustee of anything. It's guided and overseen by our rangatira, our kaumaatua, and our taumata. It invites input from all perspectives within the tribe but is governed by our tikanga and whanaungatanga, not legislation. Patuharakeke can form a hapu view and approach to any given challenge at any given time through this process. Tribal consensus is the usual result. This is the tino rangatiratanga I have seen Patuharakeke exercise from a young age. It has true continuity and evolves, maintains and reinforces Patuharakeke rangatiratanga, autonomy and identity.
18. The Tribunal have asked at issue 8 what the relationship is between the claimants hapu and the marae that are listed in the NTB DOM.

19. From the marae aatea outside of our wharehui Rangiora we look out to the peaks of Manaia that dominate the vista to the east. We follow Manaia's steep sloping decent to where the land meets the harbour waters of Whangaarei Te Terenga Paraoa. These same waters ebb and flow within the estuaries and wetlands of the Takahiwai flats. The urupa is the next feature that meets the eye, the place where generations of Patuharakeke now rest. So when we stand and look to the east our whakapapa is lined up right before our eyes, our identity is visible in a glance.
20. Our marae complex is a hive of activity. Our Kohanga Reo, wharekai and wharehui are constantly busy with the mahi of the day. The facilities themselves cater for a wide range of activity. The place lives and breathes. Our whare hui is in constant use by Patuharakeke for manaaki manuhiri, tangihana, kawē mate and waananga. The marae is used to host marriages of Patuharakeke people and memorial services on ANZAC day. PTB, TMC and TMT all hold our general meetings within the whare and hui often with each other and amongst ourselves on a range of issues. Hui aa hapuu are more and more frequent these days. This is partly because of the need for increased hapu-wide discussion on matters to do with treaty claim evidence and settlement issues, issues impacting our physical environment and relationship building with other hapu and the local community.
21. I would therefore describe the relationship between Patuharakeke as a people and our marae as functional and reciprocal. We care for the place and it cares for us. In terms of pepeha, whakapapa and Patuharakeketanga our marae is the physical space that spiritually calibrates Patuharakeke.
22. The Tribunal have asked at issue 3(b) whether the NTB DOM provides for the representation of hapu. The fact that the NTB does not adequately represent hapu, including Patuharakeke, has been covered in evidence filed on the record for Wai 745 and Wai 1308. However, I do wish to highlight for the Tribunal the fact that there is currently no representative for Patuharakeke on the NTB.

23. Attached as Appendix "A" to our counsels Submissions in Reply dated 11 March³ is a letter dated 10 March 2016 from Bronwyn Mackie, Chairperson of the Takahiwai Marae Committee ("**TMC**"), to the Chair of the NTB. This letter put the NTB on notice that the TMC had withdrawn Grant Haswell Ngawaka Pirihi and his alternative Leonard Namana from the NTB effective immediately. There has been no representative of Takahiwai marae on the NTB since that date. I am not aware that the TMC have received a response to that letter from the NTB.
24. In the absence of a representative of a Takahiwai marae representative, there is **no** representation of Patuharakeke on the NTB at all. The fact that a marae committee can withdraw their representative and be left without any representation whatsoever illustrates just how inadequate and limited any "representation" is that the NTB and the Crown argue exists for hapu.
25. The Wai 745 and Wai 1308 claimants have the support of the TMC, as evidenced in Mr Mackie's letter and also in the supporting affidavit provided by Mr Mackie as the Chair on 12 February 2016.⁴ In that affidavit Mr Mackie confirms that the TMC have never given the NTB a mandate *"to represent Patuharakeke's interests in anything especially to Waitangi treaty settlements."*
26. Mr Mackie also confirms in his affidavit that *"the PTB has been mandated and charged with pursuing the settlement of Patuharakeke treaty claims on behalf of Patuharakeke hapu."*
27. I am of the view that the TMC have never placed a representative on the NTB for the purpose of being a Trustee on a Board that intends to settle the historical grievances of Patuharakeke. It is clear that once this appeared to be the case any representative of the Takahiwai marae was removed by the TMC. The letter from Mr Mackie to the NTB also highlights the TMC's upset at how the representative's position, Mr Pirihi, had been abused by the NTB.

³ Wai 2561, #A54(a).

⁴ Wai 2561, #A41.

28. I fail to see how the Crown can view this as adequate representation for our hapu. Despite this the NTB remain committed to settling our historical grievances, the claims that we have been working tirelessly to progress for many years without their help.
29. PTB remains as the only mandated authority for Patuharakeke.

Consent of Patuharakeke

30. The Tribunal has asked at issue 3(b) whether hapu referred to in the NTB DOM support and or consent to that mandate. There is already substantial evidence that has been filed and will be filed alongside this brief on behalf of the claimants if Wai 745 and Wai 1308 which addresses the fact that Patuharakeke have never consented to the inclusion of their historical claims in the NTB DOM.
31. To the contrary, Patuharakeke have consistently made their opposition known to both the Crown and the NTB. Patuharakeke have never relied on the NTB to progress our treaty claims. The PTB have been charged with doing so and have effectively done this for many years, including appearing before the Tribunal, the High Court and the Environment Court, just as we are here today before this Tribunal in an attempt to protect our claims.
32. It is insulting that the Crown, as a Treaty partner, have blatantly ignored the mandate of the PTB and have instead recognised the NTB DOM in the absence of any reliable evidence showing that Patuharakeke consent or support it.

Conclusion

33. In recognising the NTB DOM, the Crown has breached the Treaty principle of partnership and the duty to actively protect the rangatiratanga of hapu, including Patuharakeke.
34. It is imperative that any mandating process upholds the rangatiratanga of hapu and as this has not been the case with respect to the mandate of the NTB, it must end

here. I seek a recommendation from this Tribunal that the NTB mandate be revoked completely and that the Crown undertake a mandating process whereby they adhere to their obligations under the Treaty of Waitangi/Te Tiriti o Waitangi.

Dated this 22nd day of August 2016 at Whangarei

A handwritten signature in black ink, appearing to read 'Jared Pitman', is centered on the page.

Jared Paki Pitman