

**IN THE WAITANGI TRIBUNAL
KE MUA I TE TARAIPUNARA**

WAI

UNDER

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

A claim by Te Ao o te Rangi Apaapa on behalf of himself, his hapu Ngāti Hinerangi o Raukawa and the hapū at Tangata Marae

STATEMENT OF CLAIM
Dated: 30 August 2023

Counsel acting: Linda Thornton
Ara Moana Law
Barristers and Solicitors
P O Box 475
Waiuku 2341
Auckland
Ph: 021 130 9972
Linda@aramoanalaw.com

MAY IT PLEASE THE TRIBUNAL

1. This claim is brought by Te Ao o Te Rangi Apaapa on behalf of himself and his hapū of Ngāti Hinerangi o Raukawa and the hapū at Tangata Marae, Okauia.
2. Ngāti Hinerangi hold mana whenua in their rohe. They have maintained ahi kā since their tupuna Kōperu and his grandsons Tangata and Tokotoko settled Ōkauia and the surrounding land, known today as Matamata Piako. Te Weraiti is their tupuna maunga and maunga tapu. Koiwi of their Rangatira are buried on the Te Weraiti, in particular in the notable rocky outcrop on the ridgeline.
3. The Ngāti Hinerangi rohe is known as Te Rohe o Koperu. It extends from the Matamata region in the west, north to Manawaru then to Waipuna, from Waipuna eastward to Waiorongomai south of Te Aroha then to the Tauranga Moana, following the coastline south to the Wairoa River in the south-east, then west to Hinuera, from Hinuera to Te Tapui in the south west and north to Peria near Matamata. The sacred maunga of Ngāti Hinerangi include Pukekohatu, Wahine Rock (called Nga Tamahine e Rua), Motutapere, Mount Eliza, Te Hanga, Waianuanu, Te Weraiti, Whenua a-Kura, Te Ara Pohatu and Te Tapui. The major ancestral rivers are Waihou, and Te Wairoa. The sacred waterfalls are Te Wairere and Te Ariki.
4. The claimant and the people he represents are Māori and they meet the jurisdictional requirements of the section 6 of The Treaty of Waitangi Act 1975. They bring this statement as kaitiaki for the lands and waters surrounding Te Weraiti, seeking a finding that the Crown and local government actions have breached the Treaty of Waitangi/te Tiriti o Waitangi causing profound prejudice to them; they seek recommendations for ending that breach and restoring their rohe to environmental health.

Te Tiriti and its Principles

5. As alleged below, claimant alleges numerous breaches of Te Tiriti, Articles II and III and their principles. The claim specifically rests on numerous Crown breaches of the important Tiriti principles of tino rangatiratanga, active protection, equity, and partnership and options, among others.

Kāwanatanga and Rangatiratanga

6. When Māori signed Te Tiriti o Waitangi,¹ they did not relinquish their authority to govern themselves. Rather, they agreed to share power and authority—with Māori and the pākehā kāwanatanga to have different spheres of influence, but operate with equal authority within their respective sphere.² Specifically, the Crown promised to recognise and protect tino rangatiratanga in exchange for the acceptance of kāwanatanga—the authority to govern settlers.³
7. The Crown’s right of kāwanatanga was limited,⁴ requiring that the Crown acknowledge rangatiratanga as Māori control over their own affairs and to manage them in a way that aligns with Māori tikanga, customs and values.⁵ When spheres of authority overlap, kāwanatanga and rangatiratanga must strike a balance, achieved through cooperation and according to the circumstances.⁶
8. There is no basis for unilateral action when operating in areas where spheres of authority overlap.⁷ In areas where the spheres may not only overlap but may operate in tension, it is essential that the Tiriti partners must negotiate to balance their respective

¹ When used in this claim, the term Te Tiriti refers to the Maori version of te Tiriti o Waitangi; the term The Treaty refers to the English version, and the treaty refers to both texts together, or the event as a whole, as in *Tino Rangatiratanga me te Kāwanatanga* (Wai 1040, 2022) at 3.

² Waitangi Tribunal *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wai 1040, 2014) at 527–528.

³ Id at 523

⁴ Waitangi Tribunal *Tū Mai Te Rangī! Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 26.

⁵ *Te Whānau a Waipareira Report* at p 15

⁶ *Whaia te Mana Motuhake Report*, at p 26

⁷ Id. At 29

authorities. When the Crown is making policy decisions that affect a sphere where Māori exercise authority, the Crown has a duty to collaborate with Māori in exercising their respective authorities,⁸ but the Crown has an obligation to respect and even protect tikanga in Māori affairs.

Crown duties under the treaty

9. Some of the important duties of the Crown has duties under the treaty are:

Active protection and equity

10. Active Protection relates to the duty of the Crown to actively protect Māori interests under Article 2 to the fullest extent practicable.⁹
11. Among other things, under the principle of active protection, the Crown has an obligation to actively protect tino rangatiratanga; in the modern context this is iwi, hapū or other rōpu having the right to decision-making power over their affairs.
12. Rangatiratanga is the right of Māori to retain their full tribal autonomy, the right to exercise authority and control over their lands, culture and all other things of value.¹⁰
13. In areas where there is great disparity of treatment, the Crown must commit resources and attention to reducing such disparities.
14. Under the principle of Active Protection, the Crown also has an obligation to preserve and maintain taonga under Article 2. Taonga is not limited to physical resources and extends to tikanga, to spiritual beliefs and to metaphysical and intangible resources central to tikanga.¹¹

⁸ Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 58

⁹ *New Zealand Maori Council v Attorney-General (Lands)* [1987] 1 NZLR 641 per Cooke P at [37].

¹⁰ Waitangi Tribunal, *Report on the Allocation of Radio Frequencies* (Wai 26, 150, 1990) at 237.

¹¹ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC).

Partnership

15. Partnership arises through the balance of *kāwanatanga* and *tino rangatiratanga*; it describes a relationship where the parties are equal and each must respect the other's authority and status.¹² Because the current relationship suffers from an imbalance in favour of the Crown, it is the Crown's responsibility to make sure that Māori are not disadvantaged by the power imbalance.¹³

Redress

16. Correlative to the Crown's obligation to comply with *te Tiriti*, and to protect *iwi* and *hapū*, Māori have a right to redress for historical breaches of *Te Tiriti* that have caused harm and prejudice to them.¹⁴

International Human Rights Instruments

17. In addition to treaty principles, international human rights instruments protect Maori interests:
18. The United Nations Declaration on the Rights of Indigenous People (UNDRIP) was endorsed by New Zealand in 2010. It was described by the Wai 262 Tribunal as "(p)erhaps the most important international instrument ever for Māori people."¹⁵ While not binding, it is of 'major and lasting importance where maximum compliance is expected'.¹⁶ The Tribunal has previously confirmed that interpretation and application of *Tiriti* principles are informed by UNDRIP.¹⁷
19. Specific provisions of UNDRIP that are significant to this claim are:

¹² At 27.

¹³ *Napier Hospital and Health Services* report, *supra*, at xxv and 54.

¹⁴ Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on the South Island Claims*, vol 1 p 5.

¹⁵ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) at 233.

¹⁶ *Whaia te Mana Motuhake*, *supra*, n 5, at 34.

¹⁷ At 44.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 29

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.

States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take

place in the lands or territories of indigenous peoples without their free, prior and informed consent.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented

Article 32

Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights.

Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

The Claim

20. This claim asserts that by its acts, omissions, and policies, the Crown has constructed kāwanatanga systems that have subjected Māori to profound and pernicious deprivation of the management and control of their traditional lands, waters and resources by denying Māori their rights and obligations of tino rangatiratanga, kaitiakitanga, and whanaungatanga, leaving them without a voice in determining the management and control of their rohe whenua. In addition, these kāwanatanga systems have permitted the degradation of the environment in te Rohe o Koperu, resulting in loss of mana and impairing cultural practices.
21. In allowing a quarrying operation on Te Weraiti, a maunga tapu of Ngāti Hinerangi, the Crown has breached its obligations under Article 2 of te Tiriti o Waitangi/Treaty of Waitangi to actively protect the taonga of Māori. The Crown has also breached the treaty principles of Rangatiratanga, Partnership, and Redress.
22. The Crown has unilaterally and in breach of the treaty principle of partnership, enacted the Resource Management Act 1991 and its predecessor statutes, as well as the Local Government Act 2002, and allowed and facilitated Matamata Piako District Council (MPDC) planning policies and bylaws, and Waikato Regional Council (WRC) Plan and Policy along with the National Policy Statements, which have created the statutory and regulatory background the kawatananga uses to manage and control Ngāti Hinerangi lands, waters, and other taonga in Te Rohe o Koperu.
23. These national, regional and local laws, regulations and policies have operated to the detriment of Ngāti Hinerangi, while benefitting tauwi commercial interests.

24. Te Tiriti o Waitangi has been breached through at least these four actions:
- a. Without consulting Ngāti Hinerangi, the Matamata-Piako District Council drafted its District Plan to permit quarrying on Te Weraiti;
 - b. Thereafter, the Matamata-Piako District Council drafted a development control plan that was used to allow permitted quarrying within the District Plan;
 - c. The Waikato Regional Council granting the resource consents which failed to identify and protect the tapu of Te Weraiti;
 - d. The Waikato Regional Council failed to act in its implementation of the Resource Management Act 1991 to protect wāhi tapu sites within its Regional Plan; and
 - e. The Waikato Regional Council has failed to adequately monitor and has refused enforce compliance with the operation of the consents issued.
25. As a result of these breaches, Ngāti Hinerangi’s cultural foundations and sites of significance have been harmed by the environmental degradation arising from the operation of the quarry on Te Weraiti.

Ngāti Hinerangi people and places

26. Ngāti Hinerangi hold mana whenua in their rohe, Te Rohe o Kōperu. They have maintained ahi kā since their tupuna Kōperu and his grandsons Tangata and Tokotoko settled Ōkauia and the surrounding land, known today as Matamata Piako. Te Weraiti is their tūpuna maunga and maunga tapu. Located in the Kaimai ranges, Te Weraiti sits above the Matamata township. Koiwi of their Rangatira are buried on the mountain, in particular in the notable rocky outcrop on the ridgeline. Te Weraiti is visible from

Ngāti Hinerangi's four marae at the base of the mountain, including Tangata Marae.

27. From Te Weraiti, the Mangapiko stream carries the water that gives life to Ngāti Hinerangi hapū and marae in the valley below. Several other waters, the Putangi stream and the Ahimate river, also flow from Te Weraiti and surrounds.
28. The mauri of the Mangapiko is significant to the mauri of Ngāti Hinerangi marae. It flows from Te Weraiti, past the four marae, Tangata, Tamapango, Hinerangi Tawhaki and Te Ōhakī, as well as alongside a significant urupā.
29. Nestled on the bank near the current marae was the original Hinerangi marae. In Tangata Marae's traditional knowledge, the wairua of their deceased travel the path of the Mangapiko from Te Weraiti to the Waihou and beyond to Hawaiki.
30. Te Weraiti also is a source of a tapu clay substance known as kōkōwai. Kōkōwai is used by Ngāti Hinerangi for cultural purposes. The extraction process affects the clay's utility for Ngāti Hinerangi use.
31. Various important wāhi tapu sit alongside its banks, including a pool traditionally used for bathing and healing by tohunga.
32. Historically, the Mangapiko provided an abundance of freshwater foods such as kōura, tūnā, and fresh watercress. The numbers of food sources has dropped dramatically over the years. The scarcity of kai means the lack of an accessible resource and loss of significant practice of gathering kai. The loss of practice obstructs the process of handing down intergenerational knowledge, resulting in a severe disconnect for Tangata Marae and their relationship to the awa and to their culture.
33. The Mangapiko and its tributaries are vital to Ngāti Hinerangi for providing food and fresh water for the all the Marae and their people.

The history of Crown conduct – Quarrying

34. For the last 60 years, with government consents, Te Weraiti has been quarried by Matamata Metal Supplies (MMS). The quarry is extracting and processing aggregate rock for constructing roads, houses, and for urban development infrastructure. The quarry operation features three distinct land uses: the quarry pit, haul road, and processing and stockpiling area. The consents permitted the extraction of rock to be processed in an onsite Lamella Plant.
35. Over the years, the quarry's extraction of aggregate from Te Weraiti has gradually removed a significant portion of the hillside, affecting the visual appearance and topography of the maunga. The quarry site had protruding rock bluffs alongside one of the tributaries for the Mangapiko. The continual expansion of the quarry has increased the negative effects on the Mangapiko's natural environment.
36. In 2019, on MMS's application, WRC's hearing panel granted the resource consents for the quarry expansion and to divert water from the Mangapiko for the quarry operations. The consents included four discharge permits, one land use consent and two water permits.
37. Due to the sediment from the quarrying, the water quality of the Mangapiko has deteriorated. The Mangapiko no longer provides provide fresh drinking water and tūnā, watercress, cockabullies and kōura. Sedimentation also contributes to stream erosion, changing the flow of the waterways, destroying the natural habitat of freshwater fish and benthic species. The natural and cultural environment of Ngāti Hinerangi has experienced negative impacts.
38. As more fully alleged below, the quarry settlement ponds have had higher concentrations of suspended solids in ponds A and B than was permitted in the resource consents. In sampling in 2018, pond A had 1520mg/L of suspended solids which is significantly

higher than the requirements of their original resource consents to not exceed 100g/L. Additionally, as more fully alleged below at [63, et seq.], an investigation conducted by the Environmental Law Initiative has found numerous examples of breaches of the total suspended solid limits.

Turbidity

39. The runoff from the quarry processes discharges to land from the settlement ponds and increases the turbidity in the Mangapiko. High turbidity increases the suspended solid concentration in the water which decreases the visual range of organisms. The impact of loss of visual range is a reduction of interactions within and between species causing a decrease in species reproductive rates.

Cultural impacts of quarrying on Te Weraiti

40. As a result of quarrying on Te Weraiti, the ability to source kai and water as well as use the Mangapiko for cultural practices has deteriorated. The loss of freshwater resources has diminished the Mangapiko's capacity to support the cultural practices of Ngāti Hinerangi; the water is simply not clean and clear as required for cultural uses.
41. Because the contamination of the Mangapiko water interferes with and limits the exercise of cultural practices, it has also hampered the intergenerational transfer of Ngāti Hinerangi's culture and traditions. There is a significant emotional burden associated with the loss of ability to practice their culture.
42. Ngāti Hinerangi continue to be affected by the disconnection from their land. Ngāti Hinerangi cannot access kōkōwai nor the sites of significance on Te Weraiti with the quarry operating. The inability to access kōkōwai is another strong feature of their culture that Ngāti Hinerangi is unable to practice and pass on to the next generation due to quarrying on Te Weraiti.

43. Ngāti Hinerangi are affected by the loss of these processes and opportunities that reinforce individuals' connection with their land and awa. The degradation of the natural environment creates a negative trajectory for Ngāti Hinerangi's culture. These effects undermine their greater cultural wellbeing.

Manipulation of Planning process

44. The Matamata Piako District Plan leaves Te Weraiti at considerable risk because it allows for potential loopholes to be exploited through its District Control Plan, more fully described below. Minor earthworks and prospecting can occur as permitted activities, and more serious earthworks can occur with a resource consent. When requiring a resource consent, it can be processed without having to notify Tangata Marae.

Matamata-Piako District Council failed to recognise Ngāti Hinerangi wāhi tapu

45. Despite numerous opportunities to do so in the past years since at least 1994, and especially after 2019, in breach of the protections required under Article 2 of Te Tiriti o Waitangi, the Matamata-Piako District Council has failed to recognise and acknowledge Ngāti Hinerangi wāhi tapu in its District Plan or other planning processes, despite being required to do so under its own planning requirements. The failure to recognise and acknowledge Ngāti Hinerangi's wāhi tapu resulted in it Te Weraiti being overlooked as a tapu site in the processing of consents to quarrying and thus not provided protections necessary and appropriate to wāhi tapu.

Adoption of a permissive Development Control Plan

46. The Matamata-Piako District Council developed a Development Control Plan [DCP] as a controlling part of the District Plan. As such, the DCP regulations took precedence over the District Plan provisions. The DCP regulations govern Okauia No.1 Block, one of the blocks the quarry occupies. Activities established by the DCP

in different areas of Okauia No. 1 block are Farming, Quarry within Farming, Conservation, and Network Utilities uses.

47. As a result of definitions, DCP applies to the respective activities, prospecting, and excavation and removal/extraction of 1000m³ at any one time is permitted in the Farming area. This area is outside of and in addition to the Quarry area, the Conservation area, and the Quarry area within the Farming Area. The result is that despite the appearance that only farming is permitting in the Farming area, in fact, consistent extraction is permitted in the farming area, leaving Te Weraiti vulnerable to uncontrolled extraction in addition to that which is allowed within the Quarry area under the consent.
48. The DCP designation permitting minor earthworks and prospecting at Te Weraiti Conservation Area fails to actively protect Māori interests in this site. Regardless of whether the earthworks and prospecting are classed as minor within the DCP, the mauri of Te Weraiti continues to be degraded. As tangata whenua kaitiaki of the mauri of Te Weraiti, is it Tangata Marae's opinion that the awa and her people are diminished by the effects of quarrying. This is so regardless of the scale of the earthworks conducted. The distinction of earthworks and prospecting as 'minor' as used in the DCP is incompatible with the tikanga of Tangata Marae.

Matamata-Piako District has refused enforcement against unpermitted overburden from the quarry.

49. At some time before 2017, evidence of quarry overburden deposited in an area not covered by the existing or pending consent was revealed and became the subject of a complaint to the MPDC. The land upon which the overburden was deposited was Department of Conservation land. Overburden was deposited without consent, lease or license from DoC. Overburden was not included in any of the planning documents or consent

applications. Despite the deposition of the overburden without consent or permission, it was accepted by DoC, never was made the subject of an application for consent, nor was it required to be removed.

50. MPDC has declined to prosecute MMS for breaches of consent requirements, despite the acknowledgement that this overburden site was established without proper resource or planning consents.

Waikato Regional Council has breached Te Tiriti

51. Although Waikato Regional Council's Regional Plan contains provision for identification and protection of wāhi tapu sites, Te Weraiti is not marked as a site of significance or a wāhi tapu site within its public database.¹⁸
52. Although WRC has implemented a number of policies and methodologies to increase its understanding of sites and coastal areas that are significant to tangata whenua, the WRC documentation does not reflect the existence of Ngāti Hinerangi, nor does it include any aspect of Ngāti Hinerangi culture, heritage sites, or historic areas in its Regional Plan or Regional Policy Statement.
53. Despite these policies and implementation methods, and as a direct result of the failure to include Te Weraiti, it has not been recognised as a place of significant cultural value to mana whenua.
54. The failure to recognise Te Weraiti as a wāhi tapu site in the manner envisaged by the Regional Plan and Regional Policy Statement had a material effect on the resource consent decision making process and the decision to grant these consents.
55. By omitting such areas of cultural significance evidently within the Regional Plan, the Regional Plan breaches the principle of active

¹⁸ Waikato Regional Council Maps, Iwi Information.
<<https://waikatomap.waikatoregion.govt.nz/Viewer/?map=ad99a09be104440ea676cca7cdce3b2a>>.

protection because failing to list identified wāhi tapu sites means that taonga are less likely to be preserved and maintained. The lack of a clear schedule of cultural sites also makes it more difficult for the Regional Council to recognize and provide for the matters of national importance in s6(e) and s6(f) of the RMA.

WRC's 2019 consent process breached Te Tiriti

56. In 2019, WRC heard applications for resource consents for quarry expansion and diversion of water from the Mangapiko for quarry operations. The hearing panel granted the resource consents that included four discharge permits, one land use consent and two water permits.¹⁹
57. The panel's findings stated that the application should be granted after it had Section 104 of the RMA requires consent authorities (subject to Part 2 and section 77M) to have regard to:²⁰
- 1) *Any actual and potential effects on the environment of allowing the activity; and*
 - 2) *Any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - 3) *Any relevant provisions of*
 - i. *A national environmental standard*
 - ii. *Other regulations*
 - iii. *A national policy statement*
 - iv. *A new Zealand coastal policy statement regional policy statement or proposed regional policy statement*
 - v. *A plan or proposed Regional Plan and*

¹⁹ Decision of the hearing commissioners, at 15.1.

²⁰ Resource Management Act 1991, s 104.

- 4) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
58. Having had regard to Part 2, the matters contained in sections 5-8 of the RMA should have been considered by the decision-makers. However, such regard was not had to the heritage provisions under section 6 of the RMA.
59. Section 6 states the matters of national importance that decision makers must recognise and provide for. Relevant to this application are subsections (e) and (f) which state:
- e. the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga;*
- f. The protection of historic heritage from inappropriate subdivision, use, and development.*
60. Section 2 of the RMA defines historic heritage as:²¹
- a. Those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:*
- i. Archaeological*
 - ii. Architectural*
 - iii. Cultural*
 - iv. Historic*
 - v. Scientific*
 - vi. Technological and*
 - 1) includes-*
 - (i) Historic sites, structures, places, and areas; and*
 - (ii) Archaeological sites; and*
 - (iii) Sites of significance to Māori, including wāhi tapu; and*

²¹ Resource Management Act 1991, s 2.

(iv) *Surroundings associated with the natural and physical resources.*

61. The planning instruments listed under s104 also include a number of provisions relevant to the protection of a site of significance for Māori. These include the provisions in Chapter 2.3 of the Waikato Regional Plan and 10.2 of the Regional Policy Statement, both of which concern the identification of sites of cultural significance to Māori.
62. The evidence submitted to the hearing Panel on behalf of the applicant, and accepted by the Panel, indicated that Te Weraiti was not identified as a place of significance to tangata whenua in any of the relevant planning instruments, the New Zealand Archaeological Associated database or the Heritage New Zealand Pouhere Taonga schedules.
63. In addition, the Panel decided that a cultural impact assessment to consider tangata whenua's interests in Te Weraiti was not required, deciding instead that the information in the limited notification process, provided to the panel was sufficient. The failure to conduct a cultural impact assessment constitutes a failure to act in partnership with Tangata Marae because the consent conditions which purported to avoid, remedy or mitigate cultural impacts were not informed by the relevant cultural information. Additionally, conducting a cultural impact assessment could have made the Panel aware of the significance of Te Weraiti, and would have allowed the Panel to turn their minds to the relevant factors in s104 of the RMA.

Post-consent conditions breached but not enforced

64. Despite WRC asserting there were no breaches of consent specific or general conditions, Environmental Law Initiative (ELI) conducted an investigation and found the following breached of conditions of AUTH12391804.01;

- 1) Stormwater and process water discharge from the quarry site not to exceed 100 gm /m³;
 - 2) Aluminium - testing for Aluminium was not done by WRC because the consent holder has substituted use of cationic emulsion (with the WRC's knowledge), potentially toxic to fish life;
 - 3) Sampling procedures required after rainfall in excess of 15 mm/24 hrs for suspended solids concentration, turbidity, pH and dissolved aluminium at specific points, to be reported monthly not done.
65. In addition, the General Conditions, Schedule 1 required a biological monitoring report to be compiled and submitted, which was done by the consent-holder's contractor for dry weather flow conditions, indicating moderate to probable severe pollution, not supportive of the report's conclusion that dry weather summer effects of the quarry operation were minor or non-existent.
66. ELI obtained an independent report by freshwater expert Dr Mike Joy who concluded that based on inadequacy of the monitoring plan, the missing information on water quality and flocculants, it is impossible for the report to convey any certainty of the impact on aquatic ecosystems.
67. Following ELI's submission of its investigation to WRC in April 2022, WRC conducted its own site compliance audit to examine the level of compliance of the consent holder.
68. The WRC's site audit found the following issues of non-compliance in the consent conditions:
- 1) Missing flow records from at least 4 sampling points required by Condition 2;
 - 2) Samples for 2020-2021 were not taken within required 4 hr time-frames required by Condition 3;

- 3) A new Quarry Management Plan reflecting compliance with all required monitoring procedures, methodologies and contingency plans are fully provided;
 - 4) A new Environmental Management Plan is required to provide that adaptive management protocols and contingency measures are included;
 - 5) An updated Chemical Treatment Management Plan to cover (a)-(f) of Condition 23;
 - 6) An updated Chemical Treatment Management Plan ensures that CrystalFloc Cationic Emulsion flocculant is covered;
 - 7) That the 2021-2022 annual report provided to the Regional Council includes: a) all daily rainfall records; b) flow monitoring data; and c) dust monitoring data, and
 - 8) All data to date for 2023 is complete and accurate.
69. Assessing compliance on a scale ranging from Significant non-compliance to Full Compliance, the WRC assessed the consent holder's compliance with AUTH123918.04.01 at Significant Non-compliance. It assesses compliance with General Conditions, Schedule 1 at Significant Non-compliance.
70. Despite these assessments, and in breach of its Treaty duties of active protection and redress, WRC declined to require a review of consent conditions.

Relief sought

71. Claimant seeks:
- 1) A finding that this claim is well founded;
 - 2) Recommendations that the MPDC and WRC consider the quarry operations in light of the obligations of active protection, partnership, rangatiratanga, and redress of grievances and permit the quarry operation only if it can be done

in compliance with those Treaty obligations
relevant to Tangata marae and surrounds;

- 3) Such other and further relief as to the Tribunal
seems just and proper.

Dated: 30 August 2023



Linda Thornton
Counsel for Te Ao o te Rangi Apaapa

cc: Crown Law