BEFORE THE INDEPENDENT HEARINGS COMMISSIONERS
UNDER THE DELEGATED AUTHORITY
OF THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER OF	the Resource Management Act 1991 (**the Act**)
AND	
IN THE MATTER OF	a further submission (FS #205) on the proposed Inclusionary Housing Variation to the Queenstown Lakes Proposed District Plan under Schedule 1 of the Act

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STATEMENT OF EVIDENCE OF THEO BUNKER AND LORRAINE ROUSE

Dated: 19 December 2023

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
Solicitor: R A Murdoch
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1 INTRODUCTION

1.1 Our full names are Lorraine Margaret Rouse and Rangi Theodore (Theo) Bunker.

1.1 We are two of the approximately 2,000 beneficial owners of the Hāwea/Wānaka – Sticky Forest site located to the north of the main Wānaka township (the **Site**). The Site is approximately 50ha and is located within the takiwā of the Ngāi Tahu Whanui, as defined in the Te Rūnanga o Ngāi Tahu Act 1996.[1]

1.2 The Site is to be transferred to the beneficial owners in accordance with the Ngāi Tahu Claims Settlement Act 1998 as redress for grievances relating to the South Island Landless Natives Act 1906 (**SILNA**) which were committed against identified individuals whose whakapapa is, in the main, linked to Ngāi Tahu.

1.2 Ngāi Tahu and the Ngāi Tahu Whanui are each defined as the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri, and Kai Te Ruahikihiki.[2] We are descendants of Kāti Irakehu.

1.3 We lodged a further submission in respect of the submission made by Te Arawhiti on the notified Inclusionary Housing Variation (**Variation**) to the proposed Queenstown Lakes District Plan (**PDP**).[3]

1.4 In summary, while we support the provision of more affordable housing in the district in principle, we agree with Te Arawhiti that it is not appropriate to *require* an affordable housing contribution as part of that any future development of the Site, given its the unique whakapapa (and in particular, its specific role as Treaty redress land). For that reason (as detailed further below), we request that any residential development of the Site is exempted from the Variation.

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1 Te Rūnanga o Ngāi Tahu Act 1996, section 5.
2 Ngāi Tahu Claims Settlement Act 1998, section 9.
3 Further submission 205.

2 THE SITE

2.1 The Site sits on an elevated ridge between the residential neighbourhoods of Peninsula Bay and Beacon Point to the west, Kirimoko to the south west, and Northlake further to the east.[4] Dublin Bay and the Stevensons arm of Lake Wānaka lie to north of the Site, with the Lake Wānaka Outlet to the Clutha / Mata-Au located to the north east of the Site. Over half of the Site is covered with plantation forest.

2.2 The Site is currently landlocked; however, two independent commissioners have recently recommended a change to the Northlake Structure Plan which would enable the provision of vehicle and infrastructure access to the Site.[5] That recommendation was approved by Queenstown Lakes District Council (**QLDC** or **Council**) in November 2023.

PDP Zoning and the Appeal

2.3 The Site is zoned Rural under the Operative Queenstown Lakes District Plan.[6] The notified PDP proposed the continuation of that zoning, with the northern half of the Site to be included within the Dublin Bay Outstanding Natural Landscape (**ONL** or **Dublin Bay ONL**). That zoning was upheld by Independent Commissioners appointed on behalf of QLDC during the first instance hearings.[7]

2.4 That decision is currently the subject of an Environment Court appeal in relation to its zoning under the PDP (the **Appeal**).[8]

2.5 We are the appellants in that matter.

2.6 The hearing of that Appeal was held in late November – early December 2023. As at the present date, the hearing is adjourned

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4 Statement of Evidence – Dean Chrystal, 22 September 2022 (**Chrystal EIC**), at [4.1] – [4.4]; Statement of Evidence – Nikki Smetham, 22 September 2022 (**Smetham EIC**), at sections 5 and 6.

5 Queenstown Lakes District Council, *Recommendations following the hearing of submissions and further submissions on proposed Private Plan Change 54 – Northlake Special Zone,* 13 October 2023.

6 Chrystal EIC, at [4.5].

7 Independent Commissioners' decision regarding the Upper Clutha Planning Maps (Sticky Forest) – Report 16.15, 27 March 2018.

8 ENV-2018-CHC-069

pending the provision of closing legal submissions which will likely occur in early 2024.

2.7 If our Appeal in respect of that matter is successful, then approximately half of the Site would retain its current Rural zoning (which also forms part of the Dublin Bay Outstanding Natural Landscape). Most of the southern half of the Site would be rezoned to enable residential development.

2.8 It is however important to note that none of the parties to the Appeal have sought the retention of the Rural zoning across the entire Site. Consequently, even if the position of another party to the Appeal is preferred by the Court, then some level of development would still be enabled at the Site.

3 THE VARIATION

3.1 On the basis that at least part of the Site will be rezoned for residential development through the Appeal, we understand that:

(a) The notified provisions of the Variation would, if approved:

(i) then apply to that part of the Site; and

(ii) require the provision of an affordable housing contribution as part of any residential development on the Site.

(b) Where that affordable housing contribution is not provided, the consenting pathway for any residential development on the Site would become more difficult/complex.

Further Submission

3.2 We lodged a further submission in support of Te Arawhiti's original submission on the Variation.

3.3 As set out in that further submission, we support Te Arawhiti's opposition to the application of the Variation to any residential development enabled on the Site on the basis that it would compromise the Site's function as Treaty redress land intended to provide an "economic base" for the beneficial owners.

3.4 The unique whakapapa of the Site and how it came to inherit that specific function was described in detail in the unchallenged evidence of Dr Terry Ryan which was admitted by the consent of all parties during the Appeal. That evidence is attached as **Appendix A** to this statement. Dr Ryan's evidence was described by the Environment Court as "plainly authoritative and unimpeachable" on those matters.[9]

3.5 In summary, it outlines:

(a) The origins of our relationship to the Site, which can be traced back to the failures of the Crown in the 19th century to honour promises made concerning the provision of "ample reserves for the present and future wants of [Ngāi Tahu]" as part of consideration for acquiring some 13,551,400 acres of land from Ngāi Tahu, comprising most of Canterbury, Westland and Otago (including the Site).

(b) The role of SILNA as a failed attempt to provide some fulfilment of that promise to "landless natives" (including our tipuna) through the allocation of land which might *enable them to live economically productive lives.* That allocation never transpired.

(c) The accounting of the ongoing grievances relating to the SILNA lands in the Ngāi Tahu claim (Te Kerēme) and the settlement of Te Kerēme in 1997/98, and the particular implications of that for the Site.

3.6 Dr Ryan's evidence concludes:

> *"…the circumstances which led to the passage of SILNA were characterised by what Ngāi Tahu leader Tame Parata described in 1906 as "Ngāi Tahu's cry to be provided with land", land that was promised "for the present and future wants" of the tribe in exchange for the extensive purchases carried out by the Crown in the mid-19th century.[10] For the Appellants and the other descendants of those original recipients, this land and realising its economic potential is the only available way to answer that cry."*

3.7 Our involvement in the PDP process, including via the Appeal, has focussed on securing a planning framework for the Site which will best enable fulfilment of its intended function – to provide for the economic

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9 [2022] NZEnvC 254.

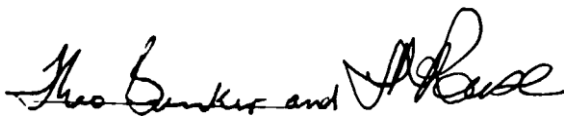
10 Tame Parata, 4 September 1906, NZPD, Volume 137, page 323, cited in Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at page 19.

support and maintenance of the beneficial owners and their descendants. As noted above, it seems inevitable that at least some form of development opportunity on the Site will be enabled as part of the Appeal; should that occur, we would be closer to "answering that cry" than we are currently.

3.8 However, should the Variation be applied to residential development of the Site, it would further erode any economic potential otherwise enabled by the rezoning. In light of the Site's unique whakapapa and the significant effort and expense incurred to date toward securing that more enabling planning framework in response to that whakapapa, that outcome is, in our opinion, perverse and unfair.

3.9 For that reason, we support Te Arawhiti's opposition to the application of the Variation to the Site, and seek that it (and any residential development enabled on it) is exempted from the provisions of the Variation.

DATED this 19th day of December 2023



Theo Bunker and Lorraine Rouse

APPENDIX A

BEFORE THE ENVIRONMENT COURT
AT CHRISTCHURCH

I TE KŌTI TAIAO O AOTEAROA
ŌTAUTAHI ROHE

ENV-2018-CHC-069

IN THE MATTER OF	the Resource Management Act 1991 (*RMA*)
AND	
IN THE MATTER OF	an appeal under clause 14 of the First Schedule of the RMA in relation to Stage 1 Topic 16 of the Proposed Queenstown Lakes District Plan
BETWEEN	**R T BUNKER AND L M ROUSE**
	Appellants
AND	**QUEENSTOWN LAKES DISTRICT COUNCIL**
	Respondent

STATEMENT OF EVIDENCE OF DR TERRY RYAN ON BEHALF OF THE APPELLANTS

(**Whakapapa**)

Dated: 22 September 2022

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
Solicitor: L J Semple
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MAY IT PLEASE THE COURT:

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

Tēnā tatou katoa

He mihi tēnei ki ou tatou tīpuna i rārangi ingoa nai i roto e SILNA lands

Kāore kē rātou i tae atu i a rātou moenga roa!

Kia tatou te rangimārie

Tēnā koutou, tēnā tatou katoa

We need to complete this work so these tīpuna can now finally rest in peace.

1.1 My name is Dr Terry Ryan. For over 30 years', I have been the Kāwai Kaitiaki of Ngāi Tahu Whakapapa (an acknowledged authority on the contemporary whakapapa of the Ngāi Tahu people).

1.2 In 1974, I was engaged by the Ngāi Tahu Māori Trust Board to build the whakapapa records of the tribe. I continued that work through to 1992 when a formal whakapapa unit within the Ngāi Tahu Māori Trust Board was established. I was appointed as the director of that unit (Kaitaunaki Whakapapa) at Te Rūnanga o Ngāi Tahu, a role which I remained in until August 2020 when I retired.

1.3 In 1994, I was awarded a Member of the Most Excellent Order of the British Empire (MBE) by Her Majesty the Queen for "services to the Maori community of the South Island". I also received an honorary Doctorate of Science Degree from the Lincoln University in 2001 for my contributions to genealogy.

1.4 I have specific knowledge of the unique context surrounding the land that is the subject of this appeal (the *Site*). That context specifically concerns the identification and setting aside of this land under the Ngāi Tahu Claims Settlement Act 1998 (*Claims Act*) as redress for grievances relating to the South Island Landless Natives Act 1906 (*SILNA*) which were committed against identified individuals whose whakapapa is, in the main, linked to Ngāi Tahu.

1.5 In 1996, I was employed by the Ngāi Tahu Māori Trust Board to begin compiling a list of the descendants of those identified individuals who have inherited both the burden of those grievances and the promise of redress (the *successors*). Following settlement of the Ngāi Tahu claim, the Whakapapa Unit of Te Rūnanga o Ngāi Tahu (of which I was a director) provided assistance to the Māori Land Court in the continued progression of that work. I am cognisant of, and acknowledge, that the Appellants in these proceedings are among those descendants.

Code of conduct

1.6 I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014. I have complied with the Code of Conduct in preparing this evidence and will continue to comply with it while giving oral evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

2 SCOPE OF EVIDENCE

2.1 My evidence is presented on behalf of the Appellants.

2.2 Broadly, my evidence describes the unique context that lead to this Site being involved in the Claims Act and the manner in which this history anchors the relationship between the Appellants and their fellow successors and the Site.

2.3 In particular, it addresses:

(a) The history of SILNA as it relates to the Site, including the grievances it sought to address, the nature of the commitments made under it, and the subsequent failure on the part of the Crown to realise those commitments.

(b) The subsequent recognition by the Crown of that failure and the redress that it then committed to providing with respect to the Site through the Claims Act.

2.4 In preparing this evidence, I have reviewed and relied upon the following documents:

(a) A series of Waitangi Tribunal reports, including the 1991 Report on the Ngāi Tahu claim, and some of the evidence on which that Report is based.

(b) Various primary sources, including a series of reports presented to the House of Representatives in the late 1800s and early 1900s.

(c) The Ngāi Tahu Deed of Settlement (1997).

2.5 The full citations for these documents are included as footnotes in this statement.

3 THE SITE

3.1 The Site that is the subject of this appeal is located within the takiwā of the Ngāi Tahu Whanui, as defined in the Te Rūnanga o Ngāi Tahu Act 1996.[1]

3.2 Ngāi Tahu's settlement of Te Waipounamu began over 800 years' ago, with the arrival of the Uruao waka, which carried Waitaha – the first people of Te Waipounamu.[2] The sixteenth and seventeenth centuries saw the arrival of the two other peoples, Ngāti Mamoe and Ngāi Tahu, which would eventually forge together through warfare, intermarriage and political alliances to become the Ngāi Tahu Whanui. The traditions of each of these founding peoples are embedded into the landscapes of the Ngāi Tahu rohe. Ngāi Tahu and the Ngāi Tahu Whanui are each defined as the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri, and Kai Te Ruahikihiki.[3]

3.3 The Appellants are descendants of Kāti Irakehu.

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1 Te Rūnanga o Ngāi Tahu Act 1996, section 5.

2 O'Regan, T. (1989) *The Ngāi Tahu Claim,* in I. H Kawharu (ed), *Waitangi. Māori and Pākeha Perspectives of the Treaty of Waitangi,* Auckland, 1989, p 235; cited in Ward, A (1989) *A Report on the Historical Evidence – The Ngāi Tahu Claim,* Wai 27, doc T1. May 1989, at 27.

3 Ngāi Tahu Claims Settlement Act 1998, section 9.

4 "LANDLESS" TIPUNA

4.1 The origins of the Appellants' relationship to the Site can be traced back to the 1870s to claims made by H.K Taiaroa, a House of Representatives member for Southern Māori, that the promises of reserves and other conditions of the Crown's significant land purchases within Te Waipounamu had not been fulfilled.[4]

4.2 For the purposes of this evidence, the most significant of these purchases was the Kemp's purchase, signed in 1848 between the Crown and a number of Ngāi Tahu chiefs. It resulted in the Crown's acquisition of some 13,551,400 acres of land from Ngāi Tahu, comprising most of Canterbury, Westland and Otago (including the Site).[5] Part of the consideration for the acquisition was a total purchase price £2,000, and an expressed intention to "set apart ample reserves for the present and future wants of [Ngāi Tahu]".[6] Contrary to the instructions issued to the Crown's negotiators, the allocation of those reserves were not defined until after the deed was signed.[7] As such, negotiations about what constituted "ample reserves" and where those reserves would be were postponed until after the tribe had already lost its leverage, namely the ability to refuse sale of the land at all.[8]

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4 Refer, for example, the Report of the Committee on Middle Island Native Affairs (1872), Wellington, New Zealand, 1872. Session I, H – 09. Accessed via: https://paperspast.natlib.govt.nz/parliamentary/AJHR1872-I.2.3.3.9. Statement by HK Taiaroa MHR on the report by Judge Fenton on the petition of the Ngāi Tahu tribe (1876), Wellington, 1876. Session I, G-07B. Accessed via https://paperspast.natlib.govt.nz/parliamentary/AJHR1876-I.2.2.3.13.

5 Refer https://ngaitahu.iwi.nz/our_stories/kemps-deed-1848/. The Waitangi Tribunal report states that this figure is closer to 20,000,000 acres. The exact location of the land acquired by the Crown was a matter of contention during the Waitangi Tribunal hearings. As recorded in the Ngāi Tahu Claim 1991, Ngāi Tahu maintain that the central part of the South Island (including the area in and around the Site) was never included within the original purchase agreements with the Crown, refer to Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 1, at pages 6 and 7.

6 Ward, A (1989) *A Report on the Historical Evidence – The Ngāi Tahu Claim,* above n2, pages 133 – 137, referencing inter alia, Wai-27 Document #L9, Volume 1, 68, *Supporting Paper to: the Evidence of Dr Donald M Loveridge,* accessed via: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_158545329/Wai%2027%2C%20L009%20vol%201.pdf. Refer also Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 2. GP Publications, Wellington New Zealand, published in 1991, at pages 387 – 389; 401 – 410, and section 8.8.

7 Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question. Presented to both Houses of the General Assembly by Command of His Excellency, Wellington, New Zealand. Session I – 1888, G-01. Accessed via: https://paperspast.natlib.govt.nz/parliamentary/appendix-to-the-journals-of-the-house-of-representatives/1888/I/1780, at page 4.

8 Governor Grey to Lieutenant-Governor Earl Grey, 24 March 1849, W. Wakefield to Lieutenant-Governor Eyre, 25 April 1848; W Wakefield to Secretary of the New Zealand Company 29 February 1848. Refer also Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question, above n7, page 3. Refer Ward, A (1989) *A Report on the Historical Evidence – The Ngāi Tahu Claim,* above n2, pages 133 – 137.

4.3 Critically, for Ngāi Tahu, the allocation of reserves that finally followed (some 6,359 acres) fell considerably significantly short of what it believed was promised.[9]

4.4 In response, Taiaroa and others from Ngāi Tahu campaigned in Parliament and in the Native Land Court for an investigation into the various purchases carried out by the Crown for land in the South Island including Kemp's purchase.[10] This eventually lead to the appointment of two Royal Commission inquiries into the matter, conducted in 1887 and 1891. Those inquiries concluded that as a result of the land purchases and other factors associated with the European settlement of Te Waipounamu, Ngāi Tahu as a tribe and as a collective of individuals had been left without a sufficient land base to sustain themselves.[11] In particular, they concluded that:

(a) The Crown representatives appointed to negotiate what would become the Kemp's purchase from Ngāi Tahu were clearly instructed to provide "ample reserves for the present and future wants of [Ngāi Tahu]" as part of the consideration for the acquisition of land.[12]

(b) On "Imperial authorities", the settlement of such lands would have not been allowed to deprive the tribe of resources, without providing for them in some other way advantages that were entirely equal to what was lost. Furthermore, all dealings with the tribe for those lands had to be conducted on the same principles of sincerity, justice and good faith.[13]

(c) Examination of the circumstances connected with the acquisition of territory from the tribe proved beyond doubt that none of those principles/instructions were observed.[14]

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9 Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question, above n7, at page 4. Refer also Ward, A (1989) *A Report on the Historical Evidence – The Ngāi Tahu Claim,* above n2, page 161.

10 Refer Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3. GP Publications, Wellington New Zealand, published in 1991, page 957 – 958.

11 Deed of Settlement between Te Rūnanga o Ngāi Tahu and Her Majesty the Queen in right of New Zealand (1997), section 15 – preamble A and B.

12 Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question, above n7, at page 3.

13 Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question, above n7, at page 4; Mackay, A. (1891) Report by Mr Commissioner Mackay relating to the Middle Island Native Claims, at page 4.

14 Mackay, A. (1887) Report by Mr Commissioner Mackay on Middle Island Native Land Question, above n7, at page 6; Mackay, A. (1891) Report by Mr Commissioner Mackay relating to the Middle Island Native Claims, above n13, at page 4.

(d) The remaining land held by the tribe was insufficient to maintain the owners on it. In particular, of the extensive surveys undertaken by the Commission:

(i) 90 percent of those Ngāi Tahu individuals surveyed possessed either no land or insufficient land.

(ii) Of the 10 percent who owned more than 50 acres, few could make a living due to the inferior quality of the soil or the scattered manner in which the lands were situated.[15]

(e) The Commission's investigations essentially identified that the tribe's economic condition was far from satisfactory. While the Commission did not observe any cases of "entire destitution", that was, according to the reports, "*attributable in great measure to the compassionate disposition of the Natives towards each other under circumstances of this kind, and many persons who ought to be relieved by the Government, in conformity with the understanding to that effect when their land was ceded, are maintained by their relatives, which has the effect of keeping them all in poor circumstances*".[16]

4.5 In response to these findings, the Crown appointed a further Commission in 1893 to compile a list of Māori throughout Te Waipounamu who were either "landless" or "insufficiently provided for", and to assign sections of land to them.[17] As that exercise progressed, it became increasingly clear to the Commission however that most of the land that had been provided by the Crown for assignment to such individuals was unsuitable for any profitable occupation – an observation which was shared by various members of Parliament during the eventual passage of SILNA.[18]

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15 Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10 page 986, referencing: Mackay, A. (1891) Report by Mr Commissioner Mackay relating to the Middle Island Native Claims, above n13 at page 4.

16 Mackay, A. (1891) Report by Mr Commissioner Mackay relating to the Middle Island Native Claims, above n13 at pages 4 and 5.

17 Refer Mackay, A; Percy Smith, S (1897), (Interim) Report relative to the setting apart of land for landless Natives in the South Island. Presented to both Houses of the General Assembly by Command of His Excellency, Wellington, New Zealand. Session II, 1897, G-01, page 1. Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, page 987.

18 Mackay, A; Percy Smith, S (1905), (Final) Report relative to the setting apart of land for landless Natives in the South Island. Presented to both Houses of the General Assembly by Command of His Excellency, Wellington, New Zealand. Session I, 1905, G-02 at page 1.

4.6 Notwithstanding this, the lengthy allocation exercise was completed in 1905. Of most relevance to these proceedings, the allocation provided for around 1,658 acres of land at Manuhaea, or "the Neck" between Lakes Wānaka and Hāwea,[19] as a permanent reserve for 50 individuals (the *Hāwea/Wānaka Block*).[20]

4.7 A full list of those individuals is included as **Appendix A** to my evidence. Among those individuals included the tīpuna of the Appellants, namely:

(a) Ms Nare Nohomoke Hokianga from Akaroa, who is Mr Bunker's grandmother.

(b) Mr Peni Hokianga from Akaroa, who is Mr Bunker's great-grandfather.

(c) the Te Raki whānau, to whom Ms Rouse has whakapapa connections.

4.8 The allocation listing also recommended that transfer of that site and other land blocks identified should be effected through legislation entitled the South Island Landless Natives Act (*SILNA*). For the reasons that follow however, the land at Manuhaea was never transferred.

South Island Landless Natives Act 1906

4.9 SILNA was eventually passed in 1906, and authorised the setting aside/reservation of land for "landless Natives", defined as "*Māoris in the South Island who are not in possession of sufficient land for their support and maintenance, and includes half-castes and their descendants*." Records of the Parliamentary debates at that time provide evidence of the view (at least among law-makers) that the

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19 Manuhaea was – and remains – an area of significance for Ngāi Tahu. Before the 1830s, it was the main kāinga nohonga at Hāwea, occupied by Te Raki and his whānau, the tipuna of a number of successors, including the original Appellant to these proceedings, Mike Beresford. Manuhaea was famous for a small lagoon behind the lake which was renowned for tuna. In his notebooks, H K Taiaroa recorded that other foods gathered there also included birds such as weka, kākāpō, kiwi, kea, kākā, kererū, and tūī. There were also potato, turnip and kauru gardens. Referenced in Fisher, M. (2020) *Historical report on Fenton fishery entitlements: Manuhaea, Korotuaheka and Awakokomuka,* November 2020. The area was raided in the mid-1830s, but continued to be a place of importance for Ngāi Tahu even after Te Puoho's raid as a mahinga kai and kāinga nohoanga, especially tuna: Refer Atholl Anderson, *Te Puoho's Last Raid*, 20-22.

20 Historical records refer to 57, then 53 individuals. The latest number recorded by the Māori Land Court is 50. The earlier records mistakenly recorded the same people more than once, accounting for the higher numbers.

transfer of the blocks under SILNA was intended at least to some extent as a partial response to recognised grievances held by Ngāi Tahu for promises unfulfilled by the Crown concerning the tribe's landholdings.[21] For their part, Ngāi Tahu leaders, concerned that the grants under SILNA would be the only settlement redress received from the Crown, consistently maintained that provision of those lands should not prejudice the wider claims of the tribe in respect of those grievances.[22]

4.10 As a related point I note that the specific purpose for which lands were to be set aside under SILNA was the subject of a more recent investigation and commentary by the Waitangi Tribunal. In its report issued in 2005, it expressed the view that:

> *…the evidence supports the interpretation that the SILNA lands….were granted originally with the intention that the owners would be able to derive a measure of economic support from them. And not just sufficient to prevent their becoming destitute, but to enable them to live economically productive lives.*[23]

4.11 As indicated above, however, owing to its "remoteness, ruggedness" and "complete unsuitability", it is unlikely that much of the land originally allocated for transfer under SILNA would have ever lived up to that aspiration.[24] For this reason, the Waitangi Tribunal in its 1991 report recorded that it was "*unable to escape the conclusion that, to appease its conscience, the Crown wished to appear to be doing something when in fact it was perpetrating a cruel hoax*".[25]

The Hāwea/Wānaka Block

4.12 In terms of the Act's provisions, before the allocated land could be reserved for the intended recipients, it had to be gazetted, first

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21 For a summary of these records, refer Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090. Legislation Direct, Wellington, New Zealand, published in 2005, pages 17 – 20.

22 Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at pages 18, 86 and 87.

23 Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at page 89.

24 Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at page 89. Refer also Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, pages 991 – 992.

25 Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, page 1000.

temporarily and then permanently not more than six months after the first gazettal.

4.13 However, despite the Hāwea/Wānaka Block having been allocated to the 50 individuals through the listing process, it was never formally served and gazetted in accordance with that process. From records available, the primary reason for this appears to have been the existence of a pastoral run (secured via a lease) which was in place over the land, and would not expire until 1916.[26] In its review of the matter including the relevant historical records, the Waitangi Tribunal concluded that "had the land not been leased, it would have been gazetted".[27]

4.14 In addition, before any further progress could be made SILNA was repealed in 1909 by the Native Land Act, with the intention to consolidate all legislation affecting "Māori land" into one law. As the Waitangi Tribunal observed, one consequence of this "*was that the particular purpose of the SILNA lands was lost sight of, and no provision was made for continuing SILNA's unique vesting provisions*".[28]

4.15 Despite various attempts, the SILNA scheme was not replicated, and the Hāwea/Wānaka Block along with a number of others which were similarly allocated but not yet formally reserved, were left without titles being issued, and remained as Crown land.

4.16 As acknowledged by the Crown in the Deed of Settlement, for the intended recipients of those blocks (including the tīpuna of the Appellants), "*the failure to allocate these lands served to exacerbate the earlier Crown failure to set aside sufficient lands within the purchase areas to provide an economic base…*".[29]

5 REDRESS – FULFILLING THE ORIGINAL COMMITMENT

5.1 Following the repeal of SILNA, Ngāi Tahu undertook an "unremitting search for redress" from the Crown throughout the 20th century to

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26 A summary of those records is included in: Waitangi Tribunal (1995) *Ngāi Tahu Ancillary Claims Report 1995,* Wai 27, GP Publications, Wellington New Zealand, published in 1995, pages 63 – 65.

27 Waitangi Tribunal (1995) *Ngāi Tahu Ancillary Claims Report 1995,* Wai 27, above n26, at page 65.

28 Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at page 20.

29 Deed of Settlement between Te Rūnanga o Ngāi Tahu and Her Majesty the Queen in right of New Zealand (1997), section 15.2, Preamble B.

honour its obligations under Treaty of Waitangi/Te Tiriti o Waitangi, including in relation to the various land purchases, and its promises made under SILNA.[30] The Crown's response to these efforts prior to 1991 were described by the Waitangi Tribunal as a "record of prevarication, neglect and indifference."[31]

5.2 As stated in the Tribunal's report on the substantive Ngāi Tahu claim (Te Kerēme) which was first lodged with the Tribunal in 1986 under the Treaty of Waitangi Act 1975:

> *Time and time again, Ngāi Tahu were rebuffed by the Crown. Yet another unproductive inquiry would be called for. Decade after decade have passed. Generation after generation of Ngai Tahu, largely landless, impoverished, their rangatiratanga unprotected, have sought relief with little success.*[32]

5.3 The claim lodged in 1986 outlined a series of major grievances held by the tribe in relation to a series of alleged breaches of the Treaty of Waitangi/Te Tiriti o Waitangi by the Crown. After two years of hearings, the Tribunal reached its findings in relation to the claim (which was subsequently amended on a number of occasions), which are detailed in a substantial, three-volume report. Those findings were presented to the Minister of Māori Affairs in 1991, and provided the basis for settlement negotiations to commence between the Crown and Ngāi Tahu. Those negotiations eventually led to the preparation and execution of the Deed of Settlement in 1997 and the Claims Act the following year.

SILNA and the Settlement

5.4 The implications of the Crown's various land purchases and the operation of SILNA for "landless" Ngāi Tahu are discussed at length in the Tribunal's report, some of which has been outlined earlier in my evidence. In summary, the Tribunal found "*the Crown's policy and the legislative implementation of the policy in relation to landless*

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30 Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991, Wai 27, Volume 3,* above n10, section 22.1.

31 Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, section 22.2.9.

32 Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, section 22.2.11

Ngāi Tahu to be a serious breach of the Treaty principle requiring to act in good faith."[33]

5.5 In recognition of that finding (which the Crown accepted), redress for that breach was sought through the settlement negotiations between the tribe and the Crown. The outcome of those negotiations as they related to the outstanding SILNA blocks (of which there were four) is detailed in section 15 of the Deed of Settlement which identifies:

(a) The form of redress agreed in respect of each block.

(b) The successors of that redress.

(c) The processes through which those successors are identified and the redress options are selected.

(d) The key elements of the legislation to implement the chosen redress (the Claims Act).

The Hāwea/Wānaka substitute land

5.6 The Deed of Settlement recognised the Neck as the original Hāwea/Wānaka Block intended, under SILNA, to be allocated to 50 individuals as their economic base. However at the time of settlement, that Block was again subject to a long-term pastoral lease and was determined to be unavailable for allocation. As such, through negotiated settlement of an ancillary claim, Ngāi Tahu and the Crown agreed to "substitute" the original Block for the block of land which is the subject of these proceedings (the *Site*).

5.7 Critically, unlike the other blocks, the Deed of Settlement provides no further mechanism for the successors (including the Appellants) to seek an alternative block in lieu of the Site. Pursuit of an alternative block would therefore require the re-opening of negotiations between Te Rūnanga o Ngāi Tahu and the Crown, a prospect which I consider to be highly unlikely.

5.8 Consequently, without reopening those negotiations, the Site is the only opportunity for redress for the Crown's failure to provide those

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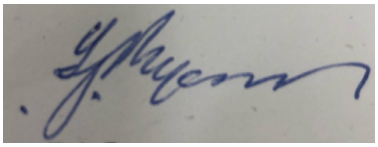
[33] Waitangi Tribunal (1991) *The Ngāi Tahu Report 1991,* Wai 27, Volume 3, above n10, page 1000.

50 Ngāi Tahu individuals with land that could, in the words of the Tribunal, "*enable them to live economically productive lives"*.

5.9 That that redress has been provided by way of the transfer of land rather than simply the transfer of money or any other resource is, in my opinion, significant. Land was, and remains, critical to the mana of Ngāi Tahu.

5.10 As my evidence has set out, the circumstances which led to the passage of SILNA were characterised by what Ngāi Tahu leader Tame Parata described in 1906 as "*Ngāi Tahu's cry to be provided with land*", land that was promised "for the present and future wants" of the tribe in exchange for the extensive purchases carried out by the Crown in the mid-19th century.[34] For the Appellants and the other descendants of those original recipients, this land and realising its economic potential is the only available way to answer that cry.



Dr Terry Ryan
22 September 2022

[34] Tame Parata, 4 September 1906, NZPD, Volume 137, page 323, cited in Waitangi Tribunal (2005) *The Waimumu Trust (SILNA) Report,* Wai 1090, above n21, at page 19.

Appendix A – Original Owners

Original Grantees of the Hāwea-Wānaka SILNA Block

Note: Abode refers to the place of residence for the individual as listed in the Native Land Register, for the Wanaka Block 1895. The original grantees at no 26 to 28 below are the same persons as no 32-34. They were recorded twice in error. Therefore, the correct number of Original Grantees for the Hāwea-Wānaka SILNA Block is 50.

No	Surname	First Name	Abode	
1	TE ARATUMAHINA	Tini	Kaiapoi	
2	TE ARATUMAHINA	Puake	Kaiapoi	
3	RAKI	Ruti	Kaiapoi	
4	RAKI	Ria	Kaiapoi	
5	RAKI	Te Ipu	Kaiapoi	
6	RAKI	Toihi	Kaiapoi	
7	RAKI	Purua	Kaiapoi	
8	RAKI	Akiha	Kaiapoi	
9	RAKI	Hamuera	Kaiapoi	
10	RAKI	Wekipiri	Kaiapoi	
11	RAKI	Apeta	Kaiapoi	
12	RAKI	Hiria	Kaiapoi	
13	WHATAKIORE	Hamuera	Kaiapoi	
14	WHATAKIORE	Jane		
15	WHATAKIORE	Tawara		
16	TE IPUKOHU	Wi Pukere	Kaikoura	
17	SPRING	Toria	Kaikoura	
18	SPRING	Takihi	Kaikoura	
19	SPRING	Eparaima	Kaikoura	
20	SPRING	Tuteahuka	Kaikoura	
21	SPRING	Peti Korako	Kaikoura	
22	MAUHARA	Henare	Moeraki	
23	WETERE	Tatana	Waitaki South	
24	KIRIHOTU	Irihapeti		
25	HARIHONA	Amiria Wi	Akaroa	
~~26~~	~~HOKIANGA~~	~~Ani~~	~~Akaroa~~	No 26-28: see note above
~~27~~	~~HOKIANGA~~	~~Nare Nohomoke~~	~~Akaroa~~	
~~28~~	~~HOKIANGA~~	~~Hira or Miriama~~	~~Akaroa~~	
29	HOKIANGA	Kerehoma	Akaroa	
30	HOKIANGA	Hana	Akaroa	
31	HOKIANGA	Peni	Akaroa	
32	HOKIANGA	Ani	Akaroa	

No	Surname	First Name	Abode
33	HOKIANGA	Nare Nohomoke	Akaroa
34	HOKIANGA	Hira or Miriama	Akaroa
35	RANGIMAKERE	Eruera	Port Levy
36	RANGIMAKERE	Kehaia	Port Levy
37	RANGIMAKERE	Rena	Port Levy
38	WAAKA	Tamati	Wairewa
39	WAAKA	Teone	Wairewa
40	KAPITI	Timaima	Waihao
41	KAKAU	Tihema Te Urukaio	Cambridge
42	TAUKORO	Hoani	Waikouaiti
43	TAUKORO	Rawiri	
44	WAKENA	Teoti	
45	TE PAINA	Rora	Oraka
46	MAHAKA	Riki	
47	MAHAKA	Pere	
48	TE WETI	Riria	Waihao
49	KOU	Hana (Pikamu)	Arowhenua
50	TE KATI	Anaha	Kaikoura
51	HAURAKI	Hira	
52	TORIA	Irihapeti	
53	WAKA	Mere	