IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE ROTORUA-NUI-A-KAHUMATAMOMOE ROHE

CIV

UNDER	the Judicial Review Procedure Act 2016; the NZ Bill of Rights Act 1990; and the Declatory Judgments Act 1908
IN THE MATTER	of an application for Judicial Review of a decision of the Rotorua District Council to submit the Rotorua District Council (Representation Arrangements) Bill to Parliament
BETWEEN	ROBERT LEE Rotorua Software Developer **(**Applicant)
AND	ROTORUA DISTRICT COUNCIL Rotorua Local Authority (Respondent)

Statement of Claim

28 April 2022

FILED BY APPLICANT

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Statement of Claim

1. This Statement of Claim is pursuant to Part 30 of the High Court Rules and is in support of an Application for Judicial Review.

Background:

2. Since 2013 a majority of Elected Members of Council have had some affiliation with, or sympathy with Ngāti Whakaue in particular and Te Arawa in general.

3. In the 2016 and 2019 Local Government Elections the Rotorua District Council ("the Council") representation arrangements were:

   (a) 1 x Mayor elected at large; and

   (b) 10 x Councillors elected at large (10AL).

4. On **1 March 2021** Parliament enacted the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021.

5. On **21 May 2021** the Council decided to establish a Māori Ward.

Consultation Process:

6. The decision to establish a Māori Ward coincided with a 6-yearly representation review for the Council required under sections 19H and 19J of the Local Electoral Act 2001 ("LEA").

7. The Council held five Forums for Elected Members starting on **23 June 2021**. All of the Council's "Elected Members' Forums" are considered informal, public-excluded meetings that are not subject to Local Government Official Information and Meetings Act 1987 ("LGOIMA") requests.

8. Eight different possible models were considered before being whittled down to the following three options by August 2021.

   (a) a 3 seat Māori Ward and 7 seat General Ward **(3M:7G)**

   (b) a 3 seat Māori Ward, 7 seat General Ward and 1 Councillor elected

"At Large" **(3M:6G:1AL)**. Voters in both the Māori and General Wards would be able to vote for the "At Large" seat;

(c) a 2 seat Māori Ward, 4 seat General Ward and 4 seat "At Large" Ward **(2M:4G:4AL)**.

9. These options were then reduced to the **2M:4G:4AL,** which alone was notified and put out for public consultation. The public were not given other options to choose from. This is characteristic of this Council and it's propensity for predetermining decisions.

10. The Council received 169 submissions.[1] Despite not being presented with options, the **3M:7G** option was by far the most popular with 45% support. Only two submissions supported or were neutral on the Councils "initial proposal' - **2M:4G:4AL**.[2]

11. On 19 October 2021 Council held a representation hearing where submitters were invited to make their case orally. 35 elected to do so. All but one of the submissions were eventually disregarded by Council.

12. The only submission that Council took notice of was from three leaders representing four Ngāti Whakaue corporate entities[3] ("Ngāti Whakaue corporate submission") who argued for a new **1M:1G:8AL** model.

13. Ngāti Whakaue is the largest and most influential hapu in the Te Arawa iwi with assets worth around $1 Billion. It sold the Pukeroa Oruawhata Block to the Crown in 1889 to establish the Rotorua township.

14. The feature of Ngāti Whakaue's **1M:1G:8AL** model that distinguished it from earlier proposed models was later described as "voter parity". This means that voters in the Māori Ward would have the same number of votes as those in the General Ward, notwithstanding the disparity of numbers of voters between the two wards (21,700 & 55,600).

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1 https://www.lgc.govt.nz/assets/Uploads/Rotorua-District-Council-determination-2022.pdf#page=20

2 https://www.rotorualakescouncil.nz/repository/libraries/id:2e3idno3317q9sihrv36/hierarchy/Meetings/Strategy%2C%20Policy%20%26%20Finance%20Committee/2021-11-16/Agenda%20Strategy%2C%20Policy%20%26%20Finance%20Committee%20Meeting%2016%20Nov%202021.pdf#page=2

3 https://www.youtube.com/watch?v=5w9tqrR25tk&t=3245s

15. After their presentation Mayor Chadwick asked the Ngāti Whakaue submitters:[4]

> *Are you in code suggesting we move to co-governance?*

16. The reply came from Ana Morrison who replied:

> *Yeah, we are challenging the Council to think deeply about how you could represent co-governance in the arrangements that you have within the mandate, the legislative mandate. Yes we are encouraging and telling the Council to give expression to that. The example we have proposed is our view and so yes we would definitely look towards Council going down that co-governance path.*

Strategy Policy and Finance Committee

17. On **16 November 2021** the Council's Strategy Policy & Finance ("SP&F") Committee met to consider a Staff Report entitled "Your Choice – 2022 Representation Review – Decision making" which summarised the public's submissions.[5]

18. In this case the Agenda recommended that the SP&F Committee adopt Ngāti Whakaue's **1M:1G:8AL** model.

19. This illustrates how this Council routinely operates. Council Staff who draft agendas and reports make predetermined "recommendations" that Elected Members are expected to consider and vote upon. The Elected Members are not usually presented with a range of options with advantages and disadvantages.

20. Cr Tania Tapsell asked why this particular model had been recommended.

21. The explanation provided by the *Deputy Chief Executive – District Leadership and Democracy* ("DCE DLD")[6] was that she had been so "directed" at a [publically-excluded informal] Elected Members' Forum.

22. A representative of Te Tatau o Te Arawa left the meeting in protest

4 https://www.youtube.com/watch?v=5w9tqrR25tk&t=3619s
5 https://www.youtube.com/watch?v=-u9-ZvqEMyQ
6 https://youtu.be/-u9-ZvqEMyQ?t=2914

describing the Council's decision-making process as "insulting" and a "farce";[7]

Council Meeting

23. On **19 November 2021** the Rotorua District Council met to consider the recommendation from the SP&F Committee.[8]

24. Cr Yates was immediately permitted by the Mayor to table five motions that effectively set aside the published agenda and became the “Substantive Resolution”.

25. Despite protestations from Crs Kai Fong, Macpherson and Tapsell, Councillors were prevented from considering any other options.

    The “Substantive Resolution” was:

    That Council:

    > *1. Confirm its commitment and ongoing support for Māori wards as made by Council on 21 May 2021;*
    >
    > *2. Affirm that voters on the Māori electoral roll should not be permanently locked into a minority and should have equal opportunity as those on the general roll to vote for a Council they consider will best represent their interests (voter parity);*
    >
    > *3. Affirm the electoral system for Rotorua should honour the Rotorua Township Agreement (1880)* [also known as The Fenton Agreement] *and meet the principles of Te Tiriti o Waitangi;*
    >
    > *4.a. Agree that the ideal representational model for Rotorua would comprise;*
    >
    > *(i) 1 Mayor elected at large*
    >
    > *(ii) 1 Māori ward with 3 seats (Te Ipu Wai Taketake ward)*
    >
    > *(iii) 1 General ward with 3 seats (Te Ipu Wai Auraki ward)*

7 https://www.rnz.co.nz/news/national/455872/insulting-te-arawa-rep-leaves-meeting-over-governance-model-proposal

8 https://www.youtube.com/watch?v=7zGicxZq2rk

(iv) 4 "At large" seats

(v) A Rotorua Lakes Community Board

(vi) A Rural Community Board

b. Note that the preferred model (see 4a above) is not currently enabled under the current Local Electoral Act, Council instructs the Chief Executive to pursue the necessary statutory reforms, or other means, by which the preferred model can be adopted by Council at the earliest possible time, including if possible, prior to the 2022 election.

5. a. Notwithstanding 4 above, for the purposes of meeting the requirements of the Local Electoral Act agree an interim representation model comprising;

- *1 Mayor elected at large*
- *1 Māori ward with 1 seat (Te Ipu Wai Taketake ward)*
- *1 General ward with 1 seat (Te Ipu Wai Auraki ward)*
- *8 "At large" seats*
- *A Rotorua Lakes Community Board*
- *A Rural Community Board*

b. Note that the interim model (see 5a above) falls short of Council's preferred model however preserves the principles of voter parity (see 2 above)

26. The 4th motion, which sought statutory reform, went beyond all submissions, including the sole submission that sought "co-governance" through "voter parity", being Ngāti Whakaue's submission. They had only proposed that Council work "*within the mandate, the legislative mandate",* rather than seek statutory reform.

27. The 5th motion was the recommendation from the SP&F Committee.

28. Neither the 4th nor the 5th motions had been publicly notified or consulted on, which is contrary to the Council's statutory duty to consult[9] and the Council's Significance and Engagement Policy.[10]

29. The Council's meeting process was manipulated and predetermined such that Councillors were prohibited from considering various other representation models simultaneously and instead were constrained in their deliberations to only considering whether or not to adopt Cr Yates' motions. Only if Cr Yates motions failed would Elected Members have been permitted to debate other models and only then sequentially, not simultaneously.

30. The Council decided to adopt all five of Cr Yates' motions with varying majorities.

Local Government Commission

31. However, on **8 April 2022** the Local Government Commission issued a determination that set aside the Council's "interim" 1M:1G:8AL model and ruled that for the 2022 and 2025 elections:[11]

> *3. The Council will comprise the mayor and 10 councillors elected as follows:*
>
> *a. 3 councillors elected by the electors of the Te Ipu Wai Taketake Māori Ward*
>
> *b. 1 councillor elected by the electors of the Rotorua Rural Ward*
>
> *c. 6 councillors elected by the electors of the Te Ipu Wai Auraki General Ward.*

Local Bill introduced to Parliament

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9 s 82 of the Local Government Act 2002

10 https://www.rotorualakescouncil.nz/repository/libraries/id:2e3idno3317q9sihrv36/hierarchy/our-council/agendas-and-minutes/livestream/documents/2021/strategy-policy-and-finance-committee/A4%20-%20Significance%20%20Engagement%20Policy.pdf

11 https://www.lgc.govt.nz/assets/Uploads/Rotorua-District-Council-determination-2022.pdf

32. Pursuant to the 4th motion, on **29 March 2022** List MP Tamati Coffey introduced the Rotorua District Council (Representation Arrangements) Bill ("the Bill") into Parliament which provides for a **3M:3G:4AL** model. He stated:[12]

> "I move, *That the Rotorua District Council (Representation Arrangements) Bill be now read a first time.* I nominate the Māori Affairs Committee to consider the bill, and, at the appropriate time, I will move an instruction to the committee that it report back to the House by the end of May."

Wherefore:

33. The Applicant:

    (a) does not challenge the decision to establish a Māori Ward in paragraph 1; and

    (b) notes that the Local Government Commission has already set aside the 5th Motion.

34. The Applicant seeks urgent injunctive relief in relation to Motions 4.a and 4.b (together "the Decision") to set aside the decision and enjoin the Respondent from pursuing legislative reform through Parliament on the grounds that:

    (a) the process was PROCEDURALLY UNFAIR because:

        (i) the Decision was **predetermined**; and

        (ii) the majority of Elected Members were **biased** in favour of the four Ngāti Whakaue corporate entities whose submission is uniquely reflected in the Substantive Motion; and;

    (b) it is ILLEGAL because:

        (i) the majority of elected members had an **improper purpose** of seeking to rig the election to effectively secure

12 https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20220406_20220406_20

permanent control of Council on behalf of Ngāti Whakaue / Te Arawa;

(ii) the Council did not follow the statutory **principles of consultation** for either the **1M:1G:8AL** or **3M:3G:4AL** models;

(iii) the **3M:3G:4AL** model is a limitation on our rights and freedoms as set out in the **New Zealand Bill of Rights Act 1990** that cannot be demonstrably justified in a free and democratic society;

(iv) the Fenton Agreement 1880 and the Treaty of Waitangi / Te Tiriti were **irrelevant considerations**;

PROCEDURAL UNFAIRNESS

First Cause of Action - Predetermination

35. The Council meeting at which the Decision was made was predetermined by the Mayor by allowing Cr Yates' "Substantive Resolution" and ruling that Councillors were not permitted to consider any other options / models / amendments as detailed above.

36. The Applicant therefore seeks a declaration that the Decision was predetermined and therefore requests that the Decision be set aside.

Second Cause of Action - Bias

37. In his opening speech to Parliament List Member of Parliament Tamati Coffey recited a brief history of Rotorua which included:

> *That led to a working group in 2012 being formed to try and get that true representation. What happened was that Te Arawa in 2014 proposed what they called the Te Arawa partnership board, otherwise known as Te Tatau o Te Arawa. The Rotorua Lakes Council resolved by majority decision to adopt a version of the model. So what does it do? At the moment, Te Tatau o Te Arawa have appointed representatives from Te Arawa on all of the committees within council. What's more than that, they actually get*

voting rights and full participation rights in that as well. It's a commitment to working in partnerships.

38. In order for this to have been possible it was necessary for a Mayor to be elected who was supportive of the working group's agenda and for that Mayor to be supported by a majority councillors.

39. In **2013** the $1 billion corporate entities of Ngāti Whakaue in particular and Te Arawa ("Ngāti Whakaue / Te Arawa") in general effectively captured the Council when former Labour MP the Hon. Steve Chadwick, a staunch advocate of tribal interests, was elected Mayor. She was supported by a majority of Te Arawa-affiliated councillors including: Merepeka Raukawa-Tait, Trevor Maxwell, Charles Sturt, Dave Donaldson, Tania Tapsell, and Janet Wepa (6 out of 12 councillors, plus the Mayor).

40. In **2016** Ngāti Whakaue / Te Arawa retained control of Council when Chadwick was re-elected together with a majority of Te Arawa-affiliated councillors including: Tania Tapsell, Merepeka Raukawa-Tait, Trevor Maxwell, Dave Donaldson, Charles Sturt and (5 out of 10 councillors, plus the Mayor).

41. In **2019** Ngāti Whakaue / Te Arawa once again retained control of Council when Chadwick was re-elected together with a majority of Ngāti Whakaue / Te Arawa-affiliated councillors including: Tania Tapsell, Mercia Yates, Merepeka Raukawa-Tait, Dave Donaldson, Trevor Maxwell plus a 19-year old of Chinese descent who has invariably voted with the Ngāti Whakaue / Te Arawa-affiliated councillors.

42. Given that a majority of the Elected Members of Council are affiliated with Ngāti Whakaue / Te Arawa and given that they:

    (a) disregarded all public submissions, including that by Te Tatau o Te Arawa, except the Ngāti Whakaue corporate submission;

    (b) disregarded all previously proposed representation models except the one proposed in the Ngāti Whakaue corporate submission;

    (c) adopted "co-governance" and "voter parity" as principles as

proposed in the Ngāti Whakaue corporate submission;

(d) treated the Fenton Agreement and Te Tiriti as a relevant consideration as proposed in the Ngāti Whakaue corporate submission; and

(e) adopted the "ideal" model that even exceeded the wishes in the Ngāti Whakaue corporate submission;

it is likely that *a fair-minded and informed observer, having considered the facts, would conclude there was a real possibility that the Council was biased*.[13]

43. The otherwise perplexing actions of this Council, to give those enrolled on the Māori Roll 2.6 times the voting power as those on the General Roll, appears to be only explicable by the majority of incumbent Elected Members attempting to gerrymander or rig the election in favour of their tribal communities of interest.

44. The essence of the Decision is that the majority of incumbent Elected Members who are affiliated with Ngāti Whakaue / Te Arawa wish to secure for themselves a permanent majority on Council – power in perpetuity.

45. The Applicant therefore seeks a declaration that a majority of the decision-makers were presumptively biased and therefore requests that the Decision be set aside.

ILLEGALITY

Third Cause of Action - Improper Purpose

46. The second Motion of the "Substantive Resolution" reveals an improper purpose for The Decision:

> *2. Affirm that voters on the Māori electoral roll should not be permanently locked into a minority and should have equal opportunity as those on the general roll to vote for a Council they consider will best represent their interests (voter parity);*

13 Porter vs Magill [2002] 2 AC 357 (CA & HL).

47. Given that those enrolled on the Maori Roll comprise 28% of the total electoral population, it is improper to attempt to give that community of interest 2.6 times the voting power of those on the General Roll to achieve "voter parity".

48. If the Elected Members did not wish to be " *permanently locked into a minority"* they could have retained the 2019 status quo of 10 Councillors elected "At Large" and not had a Maori ward at all. That would have been the proper and lawful way to achieve that purpose.

49. A common perception in Rotorua is that, after almost nine years of the Council making decisions in the best interests of Ngāti Whakaue / Te Arawa, that the rest of the Rotorua voters are ready for change and that Rotorua's reputation has been shredded, particularly as a tourist destination. It appears that many of the incumbent Elected Members have expended much of their political capital.

50. The improper purpose of the Bill is to "rig" or gerrymander the election so that Ngāti Whakaue / Te Arawa can retain permanent control of the Council without any effective public accountability.

51. Should the pressure-release valve of free and democratic elections be welded closed in Rotorua, significant harm to the whole community is likely to follow. Ngāti Whakaue / Te Arawa do not represent the whole Rotorua community.

52. The Applicant therefore seeks a declaration that the Decision was born out of an improper purpose and therefore requests that it be set aside.

Fourth Cause of Action - Decision was unlawful because it not follow the statutory principles of consultation

53. Section 76AA of the Local Government Act 2002 ("LGA") requires the Council to develop a Significance and Engagement Policy.

54. Section 82 of the LGA sets out the Principles of Consultation.

55. The Council violated both its' *Significance and Engagement Policy* and the principles of consultation set out in s 82 of the LGA.

56. The Applicant therefore seeks a declaration that the process followed by Council was flawed and therefore requests that the Decision be set aside.

Fifth Cause of Action - Decision was unlawful because it is an unjustified limitation on our rights and freedoms

57. The New Zealand Bill of Rights Act 1990 (NZBORA) sets out New Zealanders' rights and freedoms that *may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*[14]

58. This proposed law in the Bill would be an unjustifiable limitation on Section 12 of NZBORA which provides that:

> **12 Electoral rights**
>
> Every New Zealand citizen who is of or over the age of 18 years—
>
> (a) has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and
>
> (b) is qualified for membership of the House of Representatives.

59. Although this section explicitly refers to general elections, the application of a purposive interpretation[15] of the section permits a more broad interpretation that includes local government elections. It would be both an absurdity and repugnant to the purposes of the Act to limit citizens' right to equal suffrage only to general elections.

60. The "plus or minus 10%" rule of the LEA[16] provides gives statutory authority to the principal of equal suffrage outside of NZBORA.

61. This proposed law in the Bill would be an unjustifiable limitation on Section 19 of NZBORA which provides that:

> **19 Freedom from discrimination**
>
> (1) Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.

14 Section 5 of the New Zealand Bill of Rights Act 1990
15 Section 5 of the Interpretation Act 1999
16 Section 19V of the Local Electoral Act 2001

> (2) Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.

62. In the Report of the Attorney-General on the Bill the Hon. David Parker stated:

> I have concluded the Bill limits s 19 (freedom from discrimination) and, on the information available to me, cannot be justified under s 5 of the Bill of Rights Act.
>
> …
>
> This 3-3-4 model proposed in the Bill would result in an arrangement whereby the number of elected Māori ward members and general ward members would not be proportionate to the respective Māori Electoral Population (MEP)1 and General Electoral Population (GEP).2 This is because the Bill proposes that all electors in the District will be represented by the same number of members on the Council, even though that number of members represented on the Council is not proportionate to the Māori and general electoral populations in Rotorua (MEP of 21,700 and GEP of 55,600).
>
> This arrangement is not consistent with the Local Electoral Act 2001 (LEA). Schedule 1A of the LEA sets out a formula for calculating the number of Māori ward members for local councils which allows for the number of Māori ward members to be proportionate to the MEP. Clause 12(3)(a) of the Bill provides that cl 10, which contains the new representation arrangements, applies despite such provisions of the LEA.
>
> In a representative democracy, it is important to maintain approximately the same level of representation for everyone. The proposed arrangements in the Bill would make the number of council members for the Māori ward disproportionately higher than the number of council members for the general ward in comparison to their respective populations. As the disadvantaged group is those on the General roll, changing representation arrangements away from proportional representation therefore creates a disadvantage for non-Māori as they cannot in future elect to change rolls.

63. A declaration is sought that the Bill would limit New Zealanders' rights and freedoms which cannot be justified under s 5 of NZBORA.

64. The Applicant therefore seeks a declaration that the Bill presented to

Parliament would limit New Zealanders' rights and freedoms and this limitation cannot be justified under s 5 of the Bill of Rights Act and therefore requests that the Decision be set aside.

Sixth Cause of Action – Irrelevant considerations

Voter Parity is an irrelevant consideration

65. The 2nd Motion states that Council:

> *2. Affirm that voters on the Māori electoral roll should not be permanently locked into a minority and should have equal opportunity as those on the general roll to vote for a Council they consider will best represent their interests (voter parity);*

66. "Voter parity" appears to be a construct of the Rotorua District Council that attempts to address the "problem" that if the formula in the Local Electoral Act is followed those enrolled on the Māori Roll would have 3 votes while those on the General Roll would have 7 votes.[17]

67. This is because the number of seats in the Māori ward is proportional to the number of voters in enrolled on the Māori Roll in relation the total number of voters on both the Māori and General Rolls.

68. In this case 28% of voters in the Rotorua District are enrolled on the Māori Roll (21,700) while 72% of voters are on the General Roll (55,600).

69. The two models described in the Resolution at paragraphs 4 and 5 both implement "voter parity" in that those on the Māori Roll would have the same number of votes as those on the General Roll notwithstanding that there are about 2.6 times the number of voters on the General Roll.

70. "Voter Parity" is the antithesis of "equal suffrage".

71. The Applicant therefore seeks a declaration that "voter parity" is an irrelevant consideration for a local government representation model and therefore requests that the Decision be set aside.

The Fenton Agreement is an irrelevant consideration

17 Section 2, Schedule 1A of The Local Electoral Act 2002

72. The second decision in the Resolution states that Council:

> *3. Affirm the electoral system for Rotorua should honour the Rotorua Township Agreement (1880) ...*

73. The Fenton Agreement[18] was signed in 1880 between Native Land Court Judge Francis Dart Fenton, on behalf of the Crown, and 295 members of Ngāti Whakaue. The Crown was to lease Ngāti Whakue land on the Pukeroa Oruawhata Block where the township of Rotorua is today to European settlers on behalf of Ngāti Whakaue.

74. It appears that Chief Judge Francis Dart Fenton, acting on behalf of the Crown, entered into the Fenton Agreement in the utmost of good faith as demonstrated by:

    (a) the government passing the Thermal Springs District Act 1881 to give effect to the agreement;

    (b) Governor Gordon endorsing or ratifying the Fenton Agreement in February 1882;

    (c) an auction taking place in Auckland that was reported as "a remarkable success" by Judge Fenton and others. Ngāti Whakaue were reportedly "feeling buoyant", anticipating an annual rental income of almost 3,000 pounds.

75. For various reasons including an economic downturn, the Tarawera eruption of 1886 and the unattractive proposition to lease rather than purchase land, meant that the Fenton Agreement failed. Many who had entered into leases failed to take them up.

76. Instead in 1889 the Crown purchased 3,020 acres known as the Pukeroa Oruawhata Block from Ngāti Whakaue for £8,250 in a properly conveyed transaction.

77. A group of Ngāti Whakaue people later complained about "the smallness of the price paid by the Crown in 1889" and about "monies collected by the Crown from leasees for the rentals between the years 1880 and 1889 that

18 A handwritten and transcribed version is provided in the Bundle

they claimed had not been accounted for.

78. In 1948 a Royal Commission of Enquiry found that: "no wrong or injustice was done, and therefore there is no case for compensation". Notwithstanding the Crown made an offer to settle the matter fully and finally for £16,500. This offer was eventually accepted by Ngāti Whakaue in 1953.

79. In 1993 Ngāti Whakaue entered into another settlement agreement between "The Minister of Justice on behalf of the Crown and Pukeroa-Oruawhata Trustees and the proprietors of Ngāti Whakaue Tribal Lands Inc, for and on behalf of the people of Ngāti Whakaue". Relevantly, Paragraph 12 of the Agreement states:

> *With the exception of paragraph 10 above and that aspect of the gifted lands claim described in paragraph 21 below,* ***Ngāti Whakaue agree that this settlement will be full and final settlement of*** *the informally amended claim Wai 94, set out in paragraph 4 above,* ***and any other claims whether legal or Treaty based arising from any alleged Crown Acts or omissions since 6 February 1840 that relate to t****he Rotorua High School endowment (as outlined in paragraph 4(a) above),* ***to any land within the Pukeroa-Oruawhata Block,*** *the railway line land, or the land known as the Patetere Block,* ***or that relate to the Fenton Agreement of 1880, or the Thermal Springs Districts Act 1881****, as outlined in paragraph 4(b) to paragraph 4(e) above.*
>
> (emphasis added)

80. The Applicant therefore seeks a declaration that the Fenton Agreement is an historical document that does not give rise to any ongoing obligations and is therefore an irrelevant consideration for a local government representation model and therefore requests that the Decision be set aside.

Te Tiriti is an irrelevant consideration

81. "Te Tiriti" was invoked 5 times during the first reading of this bill. The words "co-govern" or "co-governance" were also used 18 times.

82. The genesis of this bill was on 19 October 2021 when Tupara Morrison, one of the three leaders representing four Ngāti Whakaue corporate entities, appeared before the Council as part of the Rotorua District Council's representation review. He invoked Te Tiriti o Waitangi and the Fenton Agreement as justifications for co-governance saying:[19]

> *Just making it clear that mana whenua should and should always have had equal status in the local authority government decisions and for us that means fifty fifty role in all decisions government decisions and decision-making bodies in our rohe* ***which is consistent with our rights under Te Tiriti o Waitangi*** *and reflective and reciprocal in light of our generosity and trusts set out in our Rotorua Township Agreement and we would welcome a korero with Council outside of this representation review in relation to that.*
>
> (emphasis added)

83. Co-governance is a modern construct arising in New Zealand following Dr Pita Sharples signing New Zealand up to the United Nations Declaration on the Rights of Indigenous Peoples in **2010**. It is therefore not possible that the signatories of Te Tiriti could have contemplated co-governance in 1840.

84. As Mr Coffey explained in his Opening Statement during the first reading Parliament:

> *The Treaty of Waitangi guarantees us as Māori tino rangātiratanga and the mana motuhake to be able to make decisions about what we want, how we want to be represented. I'd like to say that we would have already had that, but we haven't, and that's why we're here now. It's part of a larger conversation, because there are councils all around the country right now that are talking about the idea of co-governance. It's a very important kaupapa. I know that many councils will also this year be asking themselves the same questions: what is the ideal situation for us?*

19 https://www.youtube.com/watch?v=5w9tqrR25tk&t=3245s

85. Mr Coffey is apparently alluding to Ko te Tuarua (Article 2) of Te Tiriti which uses the term "tino rangātiratanga" which states:[20]

> *Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu-ki nga tangata katoa o Nu Tirani te* ***tino rangatiratanga*** *o o ratou wenua o ratou kainga me o ratou taonga katoa.*
>
> (emphasis added)

86. The English version states:

> *Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties*

87. The phrase ***tino rangātiratanga*** does not speak of co-governance but rather governance, or "absolute authority" by all New Zealanders over their own property. It is, in essence, a restatement of property rights as recognised in British common law.

88. The Applicant therefore seeks a declaration that Te Tiriti is an irrelevant consideration for a local government representation model and therefore requests that the Decision be set aside.

Costs and Reasonable Dispersements

89. The Applicant seeks:

    (a) an award of compensation for breach of NZBORA;

    (b) an award of costs; and

    (c) reasonable dispersements incurred in the preparation of this claim.

Dated 28 April 2022

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20 Schedule 1 of The Treaty of Waitangi Act 1975

Robert Lee

Applicant

CHRONLOGY

Applications	Party	Decisions