

**IN THE WAITANGI TRIBUNAL
WELLINGTON**

WAI-

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF The Maori Community Development Act Claim, being a claim by Cletus Maanu Paul and Sir Edward (Taihākurei) Durie co-chairs of New Zealand Māori Council and chair of Mataatua and Raukawa District Māori Councils respectively; Desma Kemp Ratima, chair of the Takitimu District Māori Council and chair of the New Zealand Māori Council's Wardens Committee; and Anthony Toro Bidois chair of the Te Arawa District Māori Council and co-claimant for Ngāti Rangiwewehi on Taniwha Springs in the New Zealand Maori Council's Water Claim (Wai 2358), on behalf of the New Zealand Māori Council and Māori generally

STATEMENT OF CLAIM
(Maori Community Development Act Claim)
Dated: 27 September 2013

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Claimants

1. Cletus Maanu Paul and Sir Edward (Taihākurei) Durie co-chairs of New Zealand Māori Council (“NZMC”) and chair of Mataatua and Raukawa District Māori Councils respectively;
2. Desma Kemp Ratima, member of the NZMC, chair of the Takitimu District Māori Council and chair of the NZMC’s Wardens Committee; and
3. Anthony Toro Bidois chair of the Te Arawa District Māori Council and co-claimant for Ngāti Rangiwewehi on Taniwha Springs in the NZMC’s Water Claim (Wai 2358)

on behalf of the NZMC and Māori generally

Summary of the Claims and basis for them

4. There are three claims. They concern the Crown’s consultation process for the reform of the NZMC and Wardens, the Crown’s administration of the Māori Wardens, and the Crown’s timing of the consultations.
5. **The first claim** refers to the Crown’s consultation process for the reform of the NZMC and the Māori Wardens established under the Māori Community Development Act 1962. The process commenced in September 2013 and is ongoing.
6. The claim is that this is a Crown led and controlled process for the reform of Māori institutions which are of such significance as to call for direct Crown and Māori negotiations. The process adopted is claimed to be inconsistent with the principles of the Treaty of Waitangi.
7. In particular it is claimed that although the NZMC and the Wardens have limited powers of self-government, they have constitutional significance as the only bodies officially recognised to develop self-governance for Māori communities and to promote national Maori policy development. The NZMC and Wardens have also to be seen in the context of the history of Crown-Māori negotiations on self-government rights and in this century, the recognition of self-governing rights in the UN Declaration on the Rights of Indigenous peoples.
8. The process adopted by the Crown fails to recognise or respect this history and the significance of the Declaration as a statement of rights protected by the Treaty.

9. The prejudice to Māori is that the Crown process threatens the loss of official recognition for the functions of the NZMC and the Wardens, and diminishes the role of the NZMC and the Wardens.
10. **The second claim** refers to the Māori Wardens Project established by the Crown in 2007 to support and develop the capacity of the Wardens constituted under the Māori Community Development Act 1962.
11. The claim is that in administering the Project, the Crown acted inconsistently with the principles of the Treaty by diminishing or excluding the authority of the NZMC to administer the Wardens in terms of the Act.
12. The prejudice has been:
 - 12.1. to confuse the warranting of wardens, resulting in frustration for Māori Councils and Committees, and in Māori operating as wardens without warrants or with invalid warrants;
 - 12.2. to compromise the wardens' kaupapa, that they are authorised by and accountable to their communities and are independent of the Police;
 - 12.3. to compromise the capacity of the NZMC and the Wardens to exercise self-government and to maintain community self-government into the future.
13. **The third claim** is that the timing of the consultations was and is prejudicial to the NZMC's business, for the benefit of Māori, especially in relation to the NZMC's conduct of the Water Claim (Wai 2358). It is claimed that the timing demonstrates a lack of good faith towards the NZMC, and that good faith is required in terms of the Treaty.
14. The prejudice has been:
 - 14.1. to confuse the Māori community as to the capacity of the NZMC to lead the water claim;
 - 14.2. to create uncertainty amongst co-claimants, advisers and persons contributing to costs;
 - 14.3. to frustrate co-claimants who have planned for many years to protect their water rights.
15. **The relief sought** in respect of all claims, is

- 15.1. findings in support of the claims; and
 - 15.2. recommendations for a Treaty compliant process for the reform of the Māori Community Development Act.
16. **The focus** of the claim is the principle of rangatiratanga, as informed by the United Nations Declaration on the Rights of Indigenous Peoples.

The basis for the claims: attached statements

17. The attached statements provide the basis for the claims and should be read as part of this claim document.

The Claims

18. The claimants are Māori and claim for themselves, the groups named opposite their names above and for Māori generally.
19. They claim that they, their groups and all Māori are prejudiced by:
- 19.1. the acts of the Crown in seeking the reform of the NZMC and the Māori Wardens through the process of public consultations and submissions which is currently in play
 - 19.2. the acts of the Crown in administering the Māori Wardens from 2007 in a manner inconsistent with the Māori Community Development Act 1962
 - 19.3. the acts of the Crown in failing to defer proposals for the reform of the NZMC and the Wardens
20. They claim that the acts of the Crown in seeking the reform of the NZMC and the Wardens through the current consultation process is inconsistent with the principles of the Treaty having regard to the historical Crown-Māori relationship and principles of self-government involved, and having regard to the principles of the UN Declaration on the Rights of Indigenous Peoples. They claim that Māori are prejudiced by the diminution of their indigenous rights and the prospective loss of official recognition for the NZMC's current function in promoting Māori policy.
21. They claim that the acts of the Crown in administering Māori Wardens is contrary to the principles of the Treaty as informed by the UN Declaration in that they are unlawful and diminish the authority of the NZMC to

undertake that function and are prejudicial to Māori in that they subvert an important aspect of Māori self-governing rights.

22. They claim that the timing of the consultations was contrary to the principles of the Treaty of Waitangi in that the decision was not made in good faith in the circumstances and was prejudicial to the NZMC in undermining its business.

23. The NZMC seeks findings in its favour, recommendations on how the Crown and Māori might proceed in a Treaty compliant manner, and a specific recommendation for the phased return of the administration of the Wardens to the NZMC, pending final resolution.

Research

24. The Claimants seek to discuss with the Crown and the Tribunal, two items of research assistance. It would assist if Tribunal, Crown and claimants could agree upon:

24.1. An historian, to comment on the history of the NZMC and the Wardens as contained in the attached statements.

24.2. An expert on the interpretation of the UN Declaration on the Rights of Indigenous Peoples and its application to the issues in this claim, acting in an advisory role.

25. The claimants seek leave to amend the statements below in light of the expert, historical commentary.

Signed by:



Cletus Maanu Paul



Sir Edward (Taihākurei) Durie



Desma Kemp Ratima



Anthony Toro Bidois

STATEMENTS ON THE BASIS FOR THE CLAIM

1. The statements below provide the basis for the claims and should be read as part of this claim document.

Interpretation

2. In these statements, unless the context otherwise requires:

“Claimants” means those named as claimants above.

“District Council” means a District Māori Council under the Māori Community Development Act 1962.

“Kaupapa Māori” means the principles by which Māori seek to develop appropriate Māori policy.

“Māori Council” or “Council” means, according to the context, either or both

- the national body called the New Zealand Māori Council, and
- the Māori Council system of Māori Committees, District Māori Councils and the New Zealand Māori Council.

“Māori Warden” means a Māori Warden under the Māori Community Development Act 1962.

“Minister” means the Minister of Māori Affairs.

“Ministry” means the Ministry of Māori Development also called Te Puni Kōkiri.

“Self-government” is presented as an aspect of self-determination.

“Tikanga Māori” means Māori law, or that which Māori see as right, correct or proper conduct in particular circumstances.

And

“MCDA” is short for the Māori Community Development Act 1962.

“NZMC” is short for the New Zealand Māori Council.

“NZMWA” is short for New Zealand Māori Wardens Association.

Background to the NZMC and the claim on the propriety of the consultations

Introduction to the Consultation issue

3. The Crown consultation on the future of the NZMC began from Crown proposals in 2007 to shift the administration of the Māori Wardens from the NZMC to a separate administration. When the NZMC asserted that the Wardens should stay where they are, the Crown went on to propose the reform of the NZMC, and thus, its prospective removal.

4. The NZMC views the Māori Council system as the end-product of a Māori search for self-government, with the Wardens as part of the self-government system. It considers that the first step in the NZMC's reform is for Māori, and not the Crown. The NZMC's position is that Māori should address the NZMC's performance first and whether it should be replaced or improved. The provision for Māori self-government should not be tied to a discussion on the wardens but rather, the discussion on the wardens should be tied to the larger question of Māori autonomy. Once Māori have settled on a policy for Māori self-government, and the location of the wardens within that policy, then and only then should Māori engage with the Crown on the question of official recognition.
5. The remainder of this section concerns the historical role of the NZMC. While the historical role of the wardens is pertinent to this section, it is dealt with in the next section. This is because the wardens' history is also relevant to the second issue about the Crown's presumptive administration of the Wardens itself.

Council History

6. The Māori Council system, which contributes to Māori self-government, came about as a result of a history of Māori efforts to establish and gain recognition for a formal governance structure for Māori. The history begins with Māori initiatives from the 1840's to adapt the customary Runanga (or hapū and iwi councils) to form Committees and Councils to regulate local conduct and manage local disputes. From the 1850s national movements had developed, as in the appointment of the Māori King and the introduction of Māori Parliaments. The national movements were opposed by Governor Sir George Grey. However, following the outbreak of the first Taranaki War in 1861, he accepted a form of local self-government with the formalisation of the "Runanga system". Later, as the Governor gained the upper hand in the Wars, official recognition for the Runanga ceased as well, although the Runanga continued to operate in the communities.
7. The Kīngitanga and Te Kotahitanga o Te Tiriti o Waitangi continued to seek official recognition for both local and national self-government structures, with the continuation of Māori Parliaments. While not moving from their opposition to a national Māori voice, in 1900 Government eventually agreed to reinstate official recognition for local, tribal self-government. The push was led by Sir James Carroll of the Liberal Party, the first Māori knight. His initiatives followed a conference with Te Kotahitanga and had the support of the Young Māori Party led by Pomare, Ngata and Buck. The result was the passage of the Māori Councils Act 1900, providing for local self-government through marae committees and tribal executives, with power to appoint community officers, including wardens. It is from that Act that the

present New Zealand Māori Council (“NZMC”) derives its name and its role as a state-recognised form of Māori self-government.

8. The new Māori Councils met with Te Kotahitanga at Waiomatatini in 1902, where Te Kotahitanga agreed to merge with the Maori Council general conferences.¹
9. Notable features of the 1900 statute were:
 - 9.1. the provision for local community or hapū self-government;
 - 9.2. the lack of a national government structure, as earlier sought by Te Kotahitanga;
 - 9.3. the appointment of officers by the community, to undertake functions for the community.
10. For lack of funding, several Councils ceased to operate from the 1930s, but the structure was revived towards the end of that decade, to constitute the basis for the Māori War Effort Organisation. At the end of the war, there was then a call to revive the NZMC structure.
11. The revival came through the first Labour Government which re-established the Māori Council system under the Māori Social and Economic Advancement Act 1945.
12. Significant features were:
 - 12.1. The revival of the structure of Marae Committees representing hapū and of Tribal Executives representing the iwi;
 - 12.2. The lack of provisions for the District Councils and a national body, such as had supported the Māori War Effort Organisation and which had provided a basis for the Māori Battalion structure as well. Prime Minister Fraser was opposed to anything that might lead to “Māori Nationalism” like the nationalism experienced in Ireland.
13. Nonetheless the Māori Council continued to urge its re-structuring as a national organisation for the development of national Māori policy. There was no compelling support for the proposals from either the Labour or National governments of the 1940s and 1950s but in the 1950s the need for the expression of a national Māori view, independent of political allegiance,

¹ Richard S Hill *State Authority, Indigenous Autonomy: Crown-Māori Relations in New Zealand/Aotearoa 1900-1950* (Victoria University Press, Wellington, 2004) at 53.

became apparent from a number of issues which emerged during Māori urbanisation. These included:

- 13.1. responses to the government administration of Māori Land under the Māori Affairs Act 1953 by which large, land consolidations compelled small farmers to abandon their holdings;
 - 13.2. responses to the Town and Country Planning Act 1952 and housing lending policies which prevented Māori from building on their ancestral lands, compelling them to move to town;
 - 13.3. pepper-potting housing policies to prevent “Māori ghettos” in urban areas;
 - 13.4. issues of official, racial discrimination, as in the support of the Labour Government under Sir Walter Nash for the exclusion of Māori from the 1960 All Blacks tour of South Africa;
 - 13.5. issues of racial elimination through the assimilation policies espoused in the Hunn Report of 1960.²
14. The need for a co-ordinated response was increasingly apparent. District Councils were established by amendments to the Act in 1952 and they met together in 1953. The meeting proposed to form a Dominion Māori Council of Tribal Executives as a body to consult with the Government. The proposal was revived in 1959 at a meeting of the District Councils led by Major Reiwhati Vercoe and Mr Claude Anaru of the Waiariki District. As a result, a provisional council operated from 1960. Its first task was to set up and to raise funds for the Māori Education Foundation.³
15. In the public arena, debate on the issues mentioned fuelled the protests of the dispossessed moving to the urban areas, very much led by younger, more sophisticated Māori, such that the era began what became known as the Māori protest years. The protest movement encouraged governments to respect the more conservative bodies like the provisional council. The provisional council was staffed by ageing traditional leaders, invariably of distinguished pedigree and distanced from the needs of urban Māori, because they were mainly farmers on large land holdings. They were not affected by the minimum holdings set by local authorities under the Town and Country Planning Act which contributed so much to urbanisation.

² J. K. Hunn *Report on the Department of Maori Affairs* (Government Printer, Wellington, 1961).

³ W N Panapa “The Maori Education Foundation” (1961) 36 Te Ao Hou 10 and Whanganui Educational Advancement Committee “Education” (1964) 47 Te Ao Hou 51.

16. So it was that the second National government which formed in 1960 came to recognise a national voice for Māori, in a consolidating and amending statute which affirmed the District Councils and officially provided for the New Zealand Māori Council. This may have been for no greater reason than that it was politically convenient at the time rather than that it was a matter of constitutional significance in recognition of indigenous peoples' rights. The original name of the Act as the Māori Welfare Act 1962, obscured any nationalistic sentiment. The later changing of the name to the Māori Community Development Act was an improvement but still well short of expressing the significance of having an officially recognised, national body to propose Māori policy.

17. Nonetheless, whether by accident or design, Māori had finally obtained an officially recognised national Māori organisation, with powers, albeit limited, to promote policies for Māori development. It happened the year before the centenary of Governor Grey's endeavour to put an end to Māori, national self-government through the invasion of the Waikato.

18. Following the passage of the 1962 Act, the NZMC met for the first time at Wellington on 28 June 1962, where it was dubbed as the "NZ Council of Tribal Executives". Sir Turi Carroll, nephew of Sir James Carroll, who founded the Māori Council system in 1900, was elected as the first chair. It was said in *Te Ao Hou*, the Maori Magazine of the day "For the first time, all the canoes are united: the tribes speak with a single voice".⁴

19. In keeping with the historical sequence, the NZMC attended thereafter at Waitangi, reinforcing the NZMC's support for the Treaty, and thereafter at Ngaruawahia, on the centenary of the Waikato invasion, reinforcing support for the principle of self-government represented by the Kīngitanga. Amongst the many matters the NZMC was then dealing with were the effects of the Town and Country Planning Act on rural Māori Housing, the protection of Urupa from desecration, the conservation of sea-foods, and the law affecting Māori Land.⁵

20. There were nonetheless questions of whether the new national organisation was truly an independent body, or:
 - 20.1. a body through which the National Government could present a compliant Māori view from the traditional leadership, in response to the growing but youthful Māori protest movement in the cities; or

⁴ *Te Ao Hou* "N.Z. Council of Tribal Executives" (1962) 40 *Te Ao Hou* 10.

⁵ John Booth "The N.Z. Maori Council Begins Its Work" (1963) 43 *Te Ao Hou* 6.

- 20.2. a body to offset the Labour Party's domination of the (then) four Māori seats in the House; or
 - 20.3. a body which could never be truly independent insofar as its funding came from government; or
 - 20.4. a body which was not truly representative. The NZMC continued to be based on the customary, rural communities established in 1900, without reference to the growing pan-tribal, urban communities, and the District Councils were based on the tribal boundaries of the Māori Land Court with no provision for the urban centres;⁶ or
 - 20.5. a body which could carry the mana of an independent authority for Māori given the emphasis on "welfare" in the name of the founding Statute and in the statutory description of the NZMC's purposes.
21. Accordingly, the 1962 New Zealand Maori Council, which was the first and only body empowered to represent an independent view on behalf of all Māori, had still the task of proving to Māori that it was truly independent and able to perform the role that generations of Māori had sought.

The New Zealand Maori Council's achievements

22. Notwithstanding its generally conservative position, the NZMC soon proved its capacity, political impartiality and independence with its opposition to the Hunn Report, its review of the Pritchard-Waetford Report for Māori Land reform, its proposed amendments to the Rating Act and the Town and Country Planning Act (the NZMC introducing the concept of the relationship of Māori People to their ancestral land as a matter of national

⁶ The Report of the Maori Affairs Committee on the Maori Community Development Act December 2010 (at 6) is in error in assuming that the 1945 Act represented the traditional communities while the 1962 Act reflected the assimilation policies of the 1960 Hunn Report and set out to establish social behavioural controls on Māori in their new urban environments. The error was repeated by Te Puni Kokiri at each of the Consultation Hui conducted during September 2013. In fact the 1962 legislation had no provision for urban communities and continued to be based on the same tribal structures as before. Further, despite its initial cautious and conservative approach, and the fact that its first Secretary John Booth was a former public servant, the Council was strongly opposed to the assimilation policies of the Hunn Report and its approach to Māori land. The Council was particularly opposed to the Māori Affairs Amendment Act 1967 which gave effect to the Hunn policies for the management of Māori Land and was further opposed to the government's town planning reforms. The only legislative concession to the changing Māori demography was to change the name of Marae Committees and Tribal Executives to Māori committees and Māori Executives in recognition of the fact that some Committees and Executives included persons living outside their tribal districts. Those on the national body were Sir John Bennett of Te Arawa but a representative for the Takitimu district where he resided, and Rene Ormsby of Ngati Maniapoto, a representative for Tauranga where he was President of the Tauranga and Mount Maunganui Waterside Workers Union.

importance), its strong opposition to the National Government's Māori Affairs Amendment Act 1967, its support for the Labour Government's Māori Affairs Amendment Act 1974, its arguments in support of the recognition of Māori fishing rights and of interests in rivers, lakes and foreshores well before the establishment of the Waitangi Tribunal, and its arguments for the official recognition of the Treaty of Waitangi, with an analysis of statutes that contravened the Treaty, well before the Māori Land March of 1975. In 1976 the NZMC chairman became one of the three founding members of the Waitangi Tribunal. In 1979 the name of the Act was changed from the "Māori Welfare Act" to the "Māori Community Development Act". While this was not the "National Council of Tribal Executives Act" or "the New Zealand Māori Council Act", which the NZMC had debated, it did give expression to the founding concept of community self-government in 1900.

23. Also at that time, the National Government, with a former Council member, Ben Riwai Couch, as Minister of Māori Affairs, entered into an arrangement for the NZMC to rewrite Māori Land Law. In a concerted long term effort, in public meetings throughout the country, the Māori Council produced its Brown Paper on Māori Land. While it languished for some years in government departments, since it was not the work of any government department, the Paper eventually provided the basis for the Ture Whenua Māori Act 1993.
24. The NZMC's most prominent role was in the litigation which it commenced from the mid-1980s, to support the work of the Waitangi Tribunal and to stem the sale of State Assets, or the creation of property interests in natural resources, without providing for Māori claims to the assets or resources in question. The resources in question included lands, minerals, forests, fisheries, radio-waves and broadcasting assets. The results included land banking and claw-back provisions in respect of Crown lands, the reservation of forestry rentals pending the settlement of claims in respect of Crown forests, the creation of a trust to fund the research and other costs associated with Treaty claims, the provision of legal aid in the Waitangi Tribunal, and the establishment of Māori Radio stations and Māori television and of bodies for the administration of Māori interests in Radio Spectrum.
25. Four aspects of the NZMC's actions at that time deserve particular attention:
 - 25.1. Notwithstanding initial doubts about the effectiveness of the NZMC as a voice for Māori people, the NZMC eventually established both its independence of government and its willingness to work with it.

- 25.2. The benefit of the NZMC's work was passed on to hapū and iwi in their eventual negotiations and settlements. There was no benefit to the NZMC.
- 25.3. On the other hand the NZMC has suffered diminishing financial support from government.
- 25.4. The most significant outcome for all Māori was judicial recognition of the standing of the NZMC to represent Māori interests generally by virtue of its statutory authority. But for the statutory recognition, the NZMC could not have brought the actions which it did. Accordingly, it is statutory recognition that gives the NZMC, constitutional status, and it is that status, for the benefit of all Māori, which is most at risk in the current consultation process.

The New Zealand Maori Council as it emerged

26. Since its reformation in 1962, the Council has undergone some changes. In 1962 the Council existed as a four tier body of:
 - 26.1. Committees, based on hapū, electing to:
 - 26.2. Executives, based on iwi, electing to:
 - 26.3. Districts, based on waka, electing to:
 - 26.4. the New Zealand Māori Council.
27. It is now three tier:
 - 27.1. Committees
 - 27.2. Districts, and
 - 27.3. NZMC
28. The Executives have been omitted through a provision enabling direct representation of the Committees on the District Councils.⁷
29. Under other empowering provisions, the NZMC has increased the number of districts. There are now 15 including two urban districts for central and south Auckland respectively.

⁷ Maori Community Development Act 1962, s 10A.

30. The National Council meets three or four times a year with an Executive that meets monthly.
31. The NZMC's primary responsibilities are to promote policy development nationally and community development locally.
32. The underlying rationale is to promote Māori self-government.
33. In practice the NZMC has sought to develop principles for action. There is currently some consensus that the NZMC exists to promote the survival of Māori as a people by incorporating the values, kaupapa and tikanga which distinguish Māori as a people, into Māori policy development and Māori community management.
34. The NZMC's approach is to support Māori communities however they may manifest themselves today. In expressing support, the NZMC promotes respect for the values, kaupapa and tikanga by which Māori support one another.
35. The NZMC does not promote any political ideology other than the ancestral ideology of the Māori people.
36. The NZMC adheres to the principles of the Treaty of Waitangi as defining its obligations to the State, and the obligations of the State to Māori. While the founding Chair, Sir Turi, was averse to the recognition of the Treaty in legislation, the NZMC came later to advocate for statutory recognition, following the paper of HK Ngata (later Sir Henry) of Ngāti Porou, on Statutes which contravene the Treaty of Waitangi, and the advocacy of Dr Douglas Sinclair of Ngai Tahu.
37. The NZMC regards the Treaty of Waitangi as giving effect to rights now more explicitly defined in the UN Declaration of the Rights of Indigenous Peoples.
38. The NZMC believes that state recognition of Māori self-governing rights, is critical to the exercise of such rights in practice.

The Changing Climate in Indigenous Peoples' Rights.

39. The most significant sea-change throughout the Māori search for self-determination, is its recent recognition as a right, rather than a concession, and the formulation of principles for its achievement, in the United Nations Declaration on the Rights of Indigenous Peoples. The declaration was adopted by the United Nations General Assembly in 2007, and endorsed by the New Zealand Government, with limitations, in 2010. It changes the way

in which government must treat with Māori in developing self-governing institutions.

40. For the Māori Council, the international recognition of indigenous peoples' rights, has been a long journey. It began in 1971, when the NZMC joined with the National Indian Brotherhood of North America, and with other national organizations, to establish the World Council of Indigenous People to develop a Charter on Indigenous Peoples Rights. The World Council was formed in British Columbia in 1975. Although the World Council has ceased operations, its Charter and its lobbying led on to the formation of the UN Working Group on Indigenous Peoples Rights in 1982, which began the process that led to the Declaration of 2007 that we have today.
41. Foremost in the NZMC's submissions on that process has been the principle of rangatiratanga, as it is known in Treaty law, as self-government as it has been described in relation to the Māori Council system, or self-determination as it is called in the Declaration.

The New Zealand Maori Council's decline and reformation

42. The NZMC's leadership declined in the late 1990s with the shift of support to the National Māori Congress and later, the shift of interest from national policy to iwi development through the Treaty Settlement process. Established in 1990, the Congress provided direct iwi representation and produced a broader portfolio for economic and social reform than the NZMC could muster. Council and Congress shared common views on cultural survival and community autonomy and collaborated on some projects.⁸ The difference was that the NZMC focused on both traditional and modern communities.
43. However, both Council and Congress succumbed to the shift of focus from national interests to local rivalries over the division of fisheries assets and the management of Treaty claim settlements. By the new millennium the Congress had ceased to operate, and the NZMC was mainly engaged on managing Wardens and considering its own reform.
44. With the shift of the Warden's administration to the Ministry from 2007, as is referred to below, the Council fell into a malaise. In that process, two groups, with different views over the Council's future, claimed to represent it, each hampered by questions of the legality of their actions through the failure of several district chairs to conduct elections. Accordingly, when the Māori Affairs Committee of the House proposed reforming the NZMC, in 2010, the NZMC needed to get its house in order before it could join the debate. The then chairman, Sir Graham Latimer, sought the opinion of an

⁸ For example, the Maori Electoral Option claim.

independent barrister on how to proceed and despatched the barrister's comprehensive statement to districts, on the electoral requirements, for the next triennial elections from February to June 2012.⁹

45. When Sir Edward Durie was elected chair of the Raukawa District Māori Council, in May, Sir Graham requested him to oversee arrangements for the national hui and final elections on 23 June. Sir Edward notified all Districts of the accreditation and electoral processes and appointed Sir Wira Gardiner, as an independent, to oversee them. This enabled any district representatives to be challenged for failure to hold valid elections.¹⁰ The Minister and Ministry have been informed of the results of the elections.¹¹
46. Thus the NZMC reformed on 23 June on the basis of proper elections but with the effect, on the final count, that the NZMC became represented by only 9 of its 15 districts, while 6 districts were unable to operate, as required by the Act, for failure to hold elections. Notwithstanding that representatives of three of those districts continue to attend meetings of the national body, on an informal basis, Council resolved to ensure that all six districts are fully functional before the next triennial elections. It expects to meet that target.

The Council's current business

47. The reform of the NZMC also unleashed a number of issues of national importance which had lain dormant during the NZMC's period of comparative inactivity, emphasising the need for a national Māori watchdog on policy development. For example the government developed a claims settlement process, under the vagaries of executive discretion rather than certainty of statutory authority, and without Māori representations on the essentials for a fair negotiations process. Neither Council nor the Congress was there speak out and the claims settlement process was formulated on the Crown's own terms.
48. However, a number of live issues remained to compel the NZMC's early attention. As a result the NZMC is currently engaged in claims or court proceedings relating to rights in relation to freshwater bodies, radio spectrum, and access to the Crown Forestry Rental Trust. In addition to the current claim on the process for providing for self-government and national representation, and the provision of safety to Māori communities through the Māori Wardens, the NZMC is currently considering issues in relation to electoral rights, and court proceedings on the lawfulness of Crown action under the Māori Community Development Act 1962.

⁹ See circular letter to Districts 2 February 2012.

¹⁰ See circular letter to Districts 4 June 2012.

¹¹ See letter to Minister 27 June 2012 and Ministry 5 July 2012.

49. Accordingly, the timing of the Crown's consultation programme on the Community Development Act, is an issue in this claim, as relevant to the capacity of the NZMC to respond adequately at this stage of its reformation, and to the impact which the consultation process may have on the capacity of the NZMC to respond to the other issues of national importance already mentioned.

Statutory Reform

50. The NZMC supports reform – but not by the current process. Account must be taken of the changing nature of the Māori communities and the current representation of hapū and iwi through post-settlement governance entities and collectively through iwi leaders.

51. However, in the NZMC's view, based on its historical experience, the practical exercise of self-government for indigenous people, depends on the official recognition of the authority to exercise self-governing rights by a specified body or bodies. At this stage the NZMC is the only body to have received recognition of the right to exercise such a role at a national level, for the purposes specified in its governing Act.

52. Whether the NZMC should continue to be that body, or the only body, is the critical question for Māori today. The NZMC is strongly of the view however, that the body to perform such a function is not the critical issue, but rather that official recognition of the right of a chosen body to perform that function, should not be compromised. That is the principle which Māori have sought to maintain for some 160 years.

Background to the Wardens and the claim on the administration of the Wardens

Introduction to the Wardens issue

53. Presently the NZMC has the statutory responsibility to administer the Wardens under the Māori Community Development Act 1962. The question is whether the administration of the Wardens should be passed to a new organisation under the Minister of Māori Affairs, separate from the NZMC, as government currently proposes.

54. The NZMC considers administration through the NZMC is necessary to ensure that the Wardens remain independent of the Police and are driven by Māori kaupapa through the communities they represent.

55. The Committee considers reforms are needed to the NZMC's legislation, which provides for the Wardens, but should follow after dialogue between

the NZMC and other Māori leaders, to refine the proposals before they are taken to regional and national hui.

56. Presently, the administration of the Wardens has been assumed by the government through the Māori Wardens Project. This has operated to support and upgrade the Wardens since 2007. The Project is sponsored by the Ministry of Māori Development and the NZ Police, and is administered by the Ministry.¹²
57. Although the NZMC appreciates the government's considerable efforts to upgrade the Wardens, the Project has always had at its heart, the development of a new structure for the Wardens' governance and management.¹³ However, the NZMC's position is that the Wardens are founded on an old kaupapa of Māori self-government which must be maintained. The NZMC considers that the Government and the Government's Consultation papers have failed to take proper account of the kaupapa.

The History of the Wardens

58. The Wardens are statutory Māori officers. They are the longest standing such officers in the country.
59. The Warden's story, like that of the NZMC, begins with the initiatives to establish measures of local self-government, already mentioned, from the 1840's. These measures adapted the customary Runanga (or hapū and iwi chiefly assemblies) to form Committees and Councils to regulate local conduct and manage local disputes. The Committees and Councils were to provide the basis for Māori self-government.
60. In the Waikato however, the customary term of "Runanga" was maintained and it was this term that government was later to deploy. The first Māori King was chosen in 1858 "to unite the tribes, protect land from further sales and make laws for Māori"¹⁴. The King maintained the Runanga and various officers who had been introduced including the office of "Wātene" or Wardens.¹⁵
61. Government recognition for the wardens dates from 1861. While the Governor, Sir George Grey, opposed the national Māori self-government

¹² Te Puni Kōkiri *Discussion Paper on Proposed Changes to the Māori Community Development Act 1962* (2013). Initially the project was overseen by a Māori Warden Governance Board which included a Māori Council representative, but the Board has ceased to operate.

¹³ Project Charter, May 2008, para 2.1.

¹⁴ Ministry for Culture and Heritage 2009b.

¹⁵ For the general history see Alan Ward *A Show of Justice* (AUP/OUP, 1973) at 65, 125, 132, 137, 140-3.

that the Kīngitanga represented, the War in the country appears to have persuaded the Governor to accede to a measure of local self-government. In 1861, following the first Taranaki war, he adopted the Waikato “Runanga system”, as he called it, for local control purposes. He established several Runanga with power to make laws and determine disputes. He appointed hapū leaders as Assessors, Karere and Wātene. The Assessors were the kaumatua who determined the way forward. The Karere spread the word of the issues arising and the decisions made. The Wardens enforced the decisions. The Assessors were continued into the 20th century through the Native Land Act 1909 but the office was discontinued in the Māori Affairs Act 1953. The Karere were made redundant by the Māori newspapers. Only the Wātene survived to the present. They came to operate through the Māori Councils of 1900, 1945 and 1962.

The Wardens’ Kaupapa

62. In terms of their history, the wardens are agents for officially-recognised, Māori self-government. The rationale for their existence has not radically changed over time. Today they are community volunteers whose authority is enhanced through:¹⁶

62.1. appointment by their communities

62.2. accountability to their communities

62.3. the capacity to speak with the authority of the community

62.4. independence of government

62.5. recognition by government and

62.6. lack of police powers.¹⁷

63. The authority for the kaupapa is embedded in the wardens’ warranting process.

Wardens’ warrants and powers.

64. The warranting of Wardens is prescribed by the Māori Community Development Act 1962 (MCDA). Wardens must be nominated by “the community” represented in the District Māori Councils.¹⁸ In practice, the nominations are proposed to the District Councils by the Committees. Once

¹⁶ See affidavit of B.B.

¹⁷ In fact limited powers in relation to the supply of liquor and the retention of car keys were provided for in the 1962 Act and associated regulations.

¹⁸ Maori Community Development Act 1962, s 7(2).

appointed, the wardens remain accountable to the community in that the District Councils:

64.1. may recommend cancellation of the warrants at any time;

64.2. must resolve whether to reappoint the wardens every three years.¹⁹

65. If approved, the formal warranting is done by the Minister of Māori Affairs, thus providing official recognition by the government.²⁰

66. The tasks which wardens perform vary between districts. They include crowd and traffic control (primarily for marae), first aid services, security services, managing disputes within and between whānau, assisting at schools, truancy prevention, tangihanga and hui duty, court attendance and support and assisting Police in street work. But in the performance of those tasks the wardens have no police powers. The powers which they have relate only to the requirements which they may impose on the staff of licensed premises, on those misbehaving in public places or at public functions, or those about to drive when they should not (with the power to retain their car keys).²¹

67. Where a District has been disestablished, as happens automatically when a District fails to hold elections, the wardens will be managed by some other District, until the disestablished district is re-established. This is managed through the powers of the New Zealand Māori Council to amalgamate and to direct districts.²²

68. To ease administration, the Māori Warden's Committee of NZMC has established a process for the warrants in a district to expire at the same time.

The Wardens' current state

69. It is not possible to count the number of Māori Wardens. Ministry of Māori Development keeps the count but counts only those said to have warrants from the Minister. Normally one would expect no less but in this instance the Minister has ceased to issue warrants for some bona fide districts and has issued warrants without bona fide district approvals in other cases. The NZMC estimates there are over 1000 persons acting as wardens. Also, the Ministry has worked through the New Zealand Māori Wardens Association ("NZMWA") which has no authority in the administration of the wardens.²³

¹⁹ Maori Community Development Act 1962, s 7(4).

²⁰ Maori Community Development Act 1962, s 7(1)(2).

²¹ Maori Community Development Act 1962, s 31 – 35.

²² Maori Community Development Act 1962, s 14(4), s 16(2).

²³ NZMWA was formed by Wardens in 1980 to promote Wardens' interests.

70. This has led to divisions amongst Wardens, frustration for District Māori Councils, and confusion for volunteers who work without warrants. To resolve the confusion and frustration, the NZMC is assisting in the preparation of High Court proceedings by concerned volunteers to determine the lawfulness of the Minister's actions.²⁴
71. The Minister maintains there are currently 883 warranted Māori Wardens.²⁵ The NZMC estimates there are more than a thousand serving as wardens.
72. A view from the Ministry is that those purporting to act as wardens are equally divided in their support for NZMWA or the District Māori Councils.²⁶ From its own canvassing of districts in 2012, NZMC is of the view that most of those acting as wardens in fact support the District Councils. In the statements at the consultations, so far, the Wardens' support for the NZMC has been overwhelming.

How the Wardens are managed

73. In terms of the Act, the Wardens are under the control and supervision, and are subject to any express directions of, the District Māori Councils. The District Maori Councils may also assign particular duties to specific wardens.²⁷ Districts may also delegate their powers in relation to any warden to a Māori Committee.²⁸ In turn, the Districts are subject to the control of NZMC and must act in accordance with its directions.²⁹
74. The issue now arises from the administration of the wardens by the Ministry through the Māori Wardens Project. The question is whether this has prevented the Māori Councils from the proper exercise of their statutory duties, or is otherwise inconsistent with the Act and unlawful. To restore

²⁴ In the Council's view the situation has led to persons holding invalid warrants: on the nomination of NZMWA (which has no statutory authority) or by Ministry operatives but not by District Councils as required by the Act

- Approved by persons without authority to represent District Councils for failure to hold proper elections, produce proper returns or comply with NZMC accreditation requirements.
- It has also led to persons approved by District Councils and acting as wardens, but lacking warrants; and to "rogue wardens" not wishing to take sides between NZMWA and the District Councils, and acting with the approval of neither. Some of these are working with the Police.

²⁵ Te Puni Kōkiri *Discussion Paper on Proposed Changes to the Māori Community Development Act 1962* (2013) at 18-19.

²⁶ Notes of discussion of 1 August 2012 and follow up paper on the status of wardens at 29 August 2012.

²⁷ Maori Community Development Act 1962, s 7(5), s 16(5).

²⁸ Maori Community Development Act 1962, s 7(5), s 16(6).

²⁹ Maori Community Development Act 1962, s 16(2).

certainty, affected Council members who propose legal action will also seek to have that question resolved.

75. Relevant aspects of the Project are considered further, below.

The Māori Wardens Project

76. In a Confidence and Supply Agreement of October 2005, between Rt Hon Helen Clarke for Labour and Rt Hon Winston Peters for New Zealand First, Mr Peters secured a commitment from the government to fund the Māori Wardens.³⁰ The Māori Wardens Project was established as a result, in 2007, as a joint venture of the Ministry of Māori Development and New Zealand Police but with the Ministry providing the administration. Some \$15m was set aside for that purpose.

77. The terms of the project, including the objectives, were set out in the Project Charter.³¹ The purpose was broadly to provide training and support for the Wardens and to establish with NZMC and NZMWA “a viable national body to govern and manage Māori Wardens in the longer term”.

78. A provision in the Project Charter which provided some relief to the Māori Council, said the project excluded the “[d]evelopment of any policy or processes that imply direct control of Māori Wardens by Te Puni Kōkiri or the Police” noting that, “Māori Wardens are community volunteers and will continue to operate under localised arrangements as at present”. In addition, “effective working relationships” were to be established with NZMC and NZMWA, and the project was to exclude “the development and establishment of a national coordination body”.³²

79. Nonetheless, the Governance board and an Advisory body on which the NZMC had a representative was in fact charged with developing a policy for the formation of a new body for the wardens’ future administration, but no agreement was reached. The NZMC’s position is that the NZMC should continue to be the body responsible for the wardens. As a result the Board and Advisory body were collapsed in 2009 and the issue of the future administration of the Wardens, and the NZMC’s ongoing role, was referred to the Māori Affairs Committee of the House of Representatives, in the form of an inquiry into the Māori Community Development Act.

80. The Committee, with the Ministry as its advisor, proposed that the Wardens be transferred to an organisation independent of the NZMC and that the

³⁰ Confidence and Supply Agreement of October 2005

³¹ Project Charter May 2008

³² Project Charter May 2008 pp 9 - 10.

NZMC be reformed, after a comprehensive public consultation.³³ Meanwhile, the Ministry had become the effective administrator of the wardens notwithstanding that the legislation vested that function in the NZMC.

81. Unfortunately, the Ministry gave bad advice to the Committee on the kaupapa. It considered that while the 1945 Act represented the traditional communities based on traditional settlement, the 1962 Act represented the assimilation policies of the 1960 Hunn Report and was intended to establish social behavioural controls on Māori in their new urban environment.³⁴
82. In fact it is plain from the 1962 Act, and from the statements of the NZMC at the time, that the Act intended nothing of the sort. It was modelled on the same tribal system as before.³⁵ The 24 members of the NZMC were distinguished tribal leaders, nearly all with rural pursuits. There were no urban representatives at that time and the Districts were the tribal districts of the Māori Land Court. The NZMC did not consider urban behavioural controls and there was in fact overt opposition to the assimilation policies of the Hunn Report. Further the NZMC's national body had been accepted by Government before the publication of the Hunn Report (in 1961) and the public controversy about that report had not arisen at that time. This Council's position on the Report was then evident in its opposition to the pepper potting policies for urban Māori Housing and the effects of the Town and Country Planning Act 1952 and the Māori Affairs Act 1953 in restricting Māori in building on their ancestral lands. Apart from the NZMC's support for the Māori Education Foundation, the NZMC's interest in policy development remained firmly focused on the traditional topics of the Treaty of Waitangi, and the retention of land, culture and customary fishing rights.

³³ Maori Affairs Committee *Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues* (2010).

³⁴ *Inquiry into the Operation of the Māori Community Development Act 1962 and Related Issues* (2010) at 6. J. K. Hunn *Report on the Department of Maori Affairs* (Government Printer, Wellington, 1961).

³⁵ As to statements see the Address of John Booth, Secretary, NZMC, on Turangawaewae marae, Ngaruawahia 1963. "The New Zealand Māori Council was formed in 1962. The Māori Council is built on the basis of the old Tribal Committees that exist in most parts of the country. On top of the Tribal Committees we have the Māori Executives, and then the District Councils, of which there are eight. Each of the District Councils sends three members to the New Zealand Māori Council. Those 24 members of the Māori Council provide a group of people, a group of elders who can tell of the problems of their own districts, and who can bring all of the wisdom of their own people to bear on the problems that exist throughout the country." Cited in Te Puni Kōkiri *Discussion Paper on Proposed Changes to the Māori Community Development Act 1962* (2013) at 9.

83. The Committee was also not informed of the customary kaupapa of the wardens. The wardens were tied into the principle of community self-government formally recognised in 1900, by which wardens came to be appointed by their communities, independent of the Police, and of the Crown, and fully accountable to the appointing communities for the renewal of their three yearly warrants. Nor was the Committee informed of the principle of Māori democracy, where leadership does not derive from Crown appointments, but from community appointments. The NZMC's statute has a system of elections from the community up, which reflects that principle, and the wardens are part of the principle.

Funding arrangements

84. NZMC members work voluntarily. The NZMC receives annual funding of \$196,000 for administration expenses in relation to its work in strengthening Māori community development and promoting national Māori policy. This includes funding for the three meetings of the NZMC per annum and the regular meetings of the Executive or other committees.³⁶ Funding for the administration of the Wardens has not been included in the NZMC's funding since the Māori Wardens Project began.

85. Nonetheless the NZMC maintains a Warden's Committee, the Committee Chair meets with Districts and their Wardens, and the Committee has developed a new Warden's Manual and provides advisory services. Formerly, the NZMC has maintained a principle to keep administrative costs to a minimum to ensure maximum funding of wardens expenses and operational needs, bearing in mind that they also work voluntarily.

86. District Councils receive no funding for the administration of the Wardens and no share of the administration funding, although they provide the primary liaison with Wardens.

87. On the other hand the Ministry has funded NZMWA to undertake administrative responsibilities notwithstanding that they have no authority to do so.³⁷ The Ministry also has its own paid staff engaged in the project. No Council member has been paid for administrative services but the Ministry has engaged persons who are not Council members to provide that service. This includes the former chair of a disestablished District Council who failed several times to hold the triennial elections required under the Act.³⁸

³⁶ See Vote Maori Affairs, 2013

³⁷ According to a paper of 2007, NZMWA was receiving \$100,000 for administration and \$76,000 for "Youth at Risk" Programmes (Te Puni Koriki *Briefing Paper to Minister of Māori Affairs*, 30 March 2007, para 11, 12, 23).

³⁸ In terms of the Act, all members of District Councils cease to be members from 30 May in the year in which the triennial elections are to be held, and are reinstated as members only on

88. In the search for an alternative structure, Government has also proposed maintaining a central administrative unit within a government agency to ensure equitable and consistent administrative support to the Wardens regardless of their location.³⁹ The NZMC is opposed to the maintenance of bureaucratic funder culture as counter-productive.
89. NZMC is concerned that the Wardens Project has set the precedent for large administration costs creating an expectation that such costs will be replicated in the budget for any new Warden's Authority. The Project engages a Project Team within the Ministry, and has established fourteen Regional Centres around the country with Regional Coordinators, replicating the structure of the National and District Councils but substituting paid staff for voluntary effort, with office accommodation costs where such accommodation is not necessary.⁴⁰ The NZMC considers there should be some paid personnel but only a few, part time and without accommodation, to ensure the maximum allocation of funds to the actual work of the wardens.
90. From 2007 to end 2010, the Ministry had invested just over \$13 million as its contribution to the Project.⁴¹ Under Vote Māori Affairs of the current budget, \$1,178,000 is appropriated for 2013/14 for "assistance to the National Māori Wardens Association to meet administrative costs and to provide funding to Māori Wardens for locally based initiatives that focus on improving outcomes for Māori youth and whānau".⁴² The Police contribution is additional.

Background to the claim on managing relationships

91. When the NZMC reformed itself in 2012, through strict compliance with the Act's electoral requirements, it led to three things.⁴³ First, in the administration of the wardens it challenged the Crown for dealing with District "chairs" who were in fact out of office for failing to hold elections, and who had been out of office for as many as nine years. Second, with six out of 15 districts not lawfully functioning for want of elections, the NZMC had to rebuild before it could proceed with confidence on matters of policy

the completion of the elections within the timeframes prescribed (Maori Community Development Act 1962, s s 20(3), s 21(5)). Districts must also file particulars of office holders with the Secretary. (Regulation 7(2) Māori Community Development Regulations 1963).

³⁹ Discussion Paper on Proposed Changes to the Māori Community Development Act 1962, 2013 p 24.

⁴⁰ Te Puni Kōkiri *Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007 – 2010* (2013) at para 57.

⁴¹ Te Puni Kōkiri *Evaluation of the Investment by Te Puni Kōkiri in the Māori Wardens Project 2007 – 2010* (2013) at para 4.

⁴² The Treasury *The Estimates of Appropriations 2013/13* (2013) at B.5 p 177.

⁴³ See section above on the Council's Decline and Reformation.

reform, including its own reform. Third, Council members raised an array of issues which had lain dormant during the period of the NZMC's malaise, with the "water claim" pre-eminent amongst them.

92. On the first issue, the Crown continued to deal with and to promote the chairs who had not held elections. When the NZMC sought the Crown's assurance that the Crown had no issues with the elections of 2012, the Crown failed to reply and then later contended that the NZMC was not validly elected but without explaining how it came to that conclusion.
93. On the second issue the NZMC sought to defer the discussions on the NZMC's reform until all districts were able to contribute. The NZMC sought funding to assist the rebuilding of the Districts. The Crown decided to proceed with the reform proposals and no funding has been granted. The NZMC is nonetheless proceeding with rebuilding and has made significant progress.
94. The NZMC also sought deferral on account of the likely impact of the consultations on its primary business of developing Māori policy issues. The pre-eminent concern at the time related to the water claim.
95. The Water Claim seeks to establish that Māori have variable proprietary interests in different water bodies, and to establish a process by which they may be identified and protected. True to its interest in policy rather than persons the NZMC does not claim to represent all Māori but to seek a benefit for all Māori. Almost immediately on its re-establishment the NZMC had several expressions of support for its proceeding with such a claim with several examples of water interests claimed by different hapū. As a result the NZMC decided to proceed not on its own but in association with a number of co-claimants whose case examples were representative and several others in different water bodies covering springs (hot and cold), rivers, streams, swamps, aquifers and lakes. The claim is therefore managed by a group of persons much wider than Council members.
96. The claim has proceeded through stage one of a Tribunal Inquiry, in which findings of proprietary interests were made, and to the High Court and Supreme Court. The latter proceedings required significant funding from outside sources, resulting in an expansion of the claim management group to include certain funders. The claim is now back before the Tribunal on the second stage of the Inquiry which relates to how the claimed Māori interests are properly provided for.
97. In addition to the management group the claim has the assistance of an Expert Group with wide experience, including international experience, in

water management, economic development, environmental management and indigenous peoples' interests. While funding has been obtained for some of their work, there is a large voluntary component. In addition there is a legal team of instructing solicitors and barristers.

98. The claim is particularly vulnerable to any destabilising third party influences such as has come from the Crown over its reform proposals, especially when the term 'reform' inherently includes the prospect of 'remove'. Such proposals have a seriously chilling effect on hapū and iwi co-claimants, voluntary managers, funders, experts and counsel.



Cletus Maanu Paul



Sir Edward (Taihākurei) Durie



Desma Kemp Ratima



Anthony Toro Bidois