

**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 Declaratory 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)

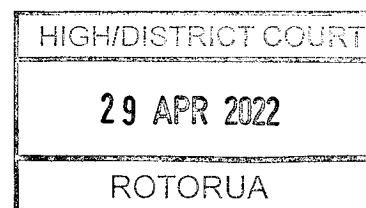
DATED

29 April 2022

Statement of Claim

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** model, 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 its 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.

Ngāti Whakaue's submission

12. The only submission that Council took notice of was from three leaders representing four Ngāti Whakaue corporate entities³ (“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 that voters on the Māori Roll would have the same number of votes as voters on the General Roll (“voter parity”). However, while there is parity of voting between the two wards there is a

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>

disparity of numbers of voters in each ward (21,700 Maori & 55,600 General). Therefore the value of a vote in the Maori Ward is worth about 2.6 times the value of a vote in the General Ward. Voter parity is the antithesis of, and comes at the expense of, equal suffrage.

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.

⁴ <https://www.youtube.com/watch?v=5w9tqrR25tk&t=3619s>

⁵ <https://www.youtube.com/watch?v=-u9-ZvqEMyQ>

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 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. The Mayor immediately disregarded the published agenda in favour of five motions tabled by Cr Yates which became the “Substantive Resolution”.
25. Despite protestations from Crs Kai Fong, Macpherson and Tapsell, councillors were prevented by the Mayor from considering any other options.

The five motions of the “Substantive Resolution” were:

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;*

⁶ <https://youtu.be/-u9-ZvqEMyQ?t=2914>

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>

- (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)*
- (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. Each motion was separately decided on and passed by a slim majority.

27. The 4th motion, including 4a & 4b (together “the impugned Decision”), 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.
28. The 5th motion was the recommendation from the SP&F Committee.
29. Neither the 4th nor the 5th motions had been publicly notified or consulted on, which is contrary to the Council's statutory duty to consult⁹ and the Council's Significance and Engagement Policy.¹⁰
30. 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.
31. The Council decided to adopt all five of Cr Yates' motions with varying majorities.

Local Government Commission

32. 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*

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>

- 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

33. 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:

34. The Applicant:
- (a) does not challenge the decision to establish a Māori Ward in the 1st Motion; and
 - (b) notes that the Local Government Commission has already set aside the 5th Motion.
35. The Applicant seeks urgent injunctive relief to set aside the impugned Decision and enjoin the Respondent from pursuing legislative reform through Parliament on the grounds that:
- (a) the process was **PROCEDURALLY UNFAIR** because:
 - (i) the impugned Decision was **predetermined**; and
 - (ii) the majority of Elected Members who are affiliated with Ngāti Whakaue / Te Arawa were **biased** in favour of the

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

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 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, the Treaty of Waitangi 1840 / Te Tiriti and co-governance were **irrelevant considerations**;

PROCEDURAL UNFAIRNESS

First Cause of Action - Predetermination

- 36. The impugned Decision was predetermined as demonstrated by the Mayor allowing Cr Yates' "Substantive Resolution" to replace the published agenda and ruling that Councillors were not permitted to consider any other options / models / amendments as detailed above.
- 37. The Applicant therefore seeks a declaration that the impugned Decision was predetermined and requests that the impugned Decision be set aside.

Second Cause of Action - Bias

- 38. 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.

39. 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.
40. 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).
41. In **2016** Ngāti Whakaue / Te Arawa retained control of Council when Chadwick was re-elected as Mayor 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).
42. In **2019** Ngāti Whakaue / Te Arawa once again retained control of Council when Chadwick was re-elected as Mayor 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 almost invariably voted with the Ngāti Whakaue / Te Arawa-affiliated councillors (6 out of 10 councillors, plus the Mayor).
43. Pursuant to Schedule 7 of the Local Government Act 2002 Elected Members

are required to declare that:

*I will **faithfully and impartially**, and according to the best of my skill and judgement, execute and perform **in the best interests of the Rotorua district**, the powers, authorities, and duties vested in or imposed upon me as a member of the Rotorua District Council by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, and any other Act.*

(emphasis added)

44. Unfortunately majority of the Elected Members on Council who are affiliated with Ngāti Whakaue / Te Arawa do not act impartially and in the best interests of the Rotorua district. Instead they make what they call “mokopuna decisions” which are in the best interests of Ngāti Whakaue / Te Arawa corporate entities. In this case it is no coincidence that that they:
 - (a) disregarded all public submissions 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, Te Tiriti and co-governance as a relevant consideration as proposed in the Ngāti Whakaue corporate submission; and
 - (e) adopted the “interim” **1M:1G:8AL** model as proposed by the Ngāti Whakaue corporate submitters;
 - (f) also adopted the “ideal” **3M:3G:4AL** model to be pursued via statutory reform that even exceeded the wishes of the Ngāti Whakaue corporate submission.
45. The test of bias is whether a “fair-minded and informed observer, having considered the facts, would conclude there was a real possibility that the

Council was biased”.¹³

46. The 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, is only explicable by the majority of incumbent Elected Members attempting to gerrymander or rig the election in favour Ngāti Whakaue / Te Arawa corporate interests.
47. The essence of the impugned 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.
48. The Applicant therefore seeks a declaration that a majority of the decision-makers were presumptively biased and therefore requests that the impugned Decision be set aside.

ILLEGALITY

Third Cause of Action - Improper Purpose

49. The second Motion of the “Substantive Resolution” reveals an improper purpose for the impugned 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);

(emphasis added)

50. Given that those enrolled on the Maori Roll comprise 28% of the total electoral population, it is improper to give that community of interest the same number of seats as the 72% enrolled on the General Roll in order to manufacture Voter Parity at the expense of equal suffrage.
51. 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

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

the proper and lawful way to achieve that purpose.

52. After almost nine years of the Council making decisions in the best interests of Ngāti Whakaue / Te Arawa, a common perception in Rotorua is 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.
53. The improper purpose of the Bill is to rig or gerrymander the election so that Ngāti Whakaue / Te Arawa can retain control of the Council in perpetuity.
54. 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.
55. The Applicant therefore seeks a declaration that the impugned 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

56. Section 76AA of the Local Government Act 2002 ("LGA") requires the Council to develop a Significance and Engagement Policy.
57. Section 82 of the LGA sets out the Principles of Consultation.
58. The Council violated both its' *Significance and Engagement Policy* and the principles of consultation set out in s 82 of the LGA.
59. The Applicant therefore seeks a declaration that the process followed by Council was flawed and therefore requests that the impugned Decision be set aside.

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

60. 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

61. 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.
62. Although this section explicitly refers to general elections, the application of a purposive interpretation¹⁵ 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.
63. The so-called “plus or minus 10%” rule of the Local Electoral Act 2001¹⁶ provides statutory authority to the principal of equal suffrage applying to local government elections.
64. The proposed law in the Bill would also 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.
 - (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.
65. In the Report of the Attorney-General on the Bill the Hon. David Parker

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

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.

66. The Applicant therefore seeks a declaration that the Bill presented to Parliament would limit New Zealanders' rights and freedoms under both s 12 and s 19 of NZBORA and that this limitation cannot be reasonably justified in a free and democratic society¹⁷ and requests that the impugned Decision be set aside.

Sixth Cause of Action – Irrelevant considerations

¹⁷ Section 5 of New Zealand Bill of Rights Act 1990

Voter Parity is an irrelevant consideration

67. 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);*

68. “Voter parity” appears to be a new 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 only have 3 votes while those on the General Roll would have 7 votes.¹⁸

69. This is **not** a problem because the 3 seats (30%) in the Māori ward out of the 10 available on Council are roughly proportional to the number of voters enrolled on the Māori Roll (28%), which is equal suffrage.

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 impugned Decision be set aside.

The Fenton Agreement is an irrelevant consideration

72. The second motion of the Substantive Resolution states that Council:

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

73. The Fenton Agreement¹⁹ (also known as the Rotorua Township Agreement) 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 Whakaue 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

¹⁸ Section 2, Schedule 1A of The Local Electoral Act 2002

¹⁹ A handwritten and transcribed version is provided in the Bundle

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 of leasing rather than purchasing land meant that many of those who had entered into leases failed to take them up. Consequently the Fenton Agreement, entered into in good faith by both parties, failed.
 76. Subsequently, in 1889 Ngāti Whakaue sold 3,020 acres known as the Pukeroa Oruawhata Block to the Crown 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 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”. Nevertheless 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 the 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 impugned Decision be set aside.

Te Tiriti / Treaty of Waitangi is an irrelevant consideration

81. “Te Tiriti” was invoked 5 times during the first reading of the Bill in Parliament.
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:²⁰

*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***

²⁰ <https://www.youtube.com/watch?v=5w9tqrR25tk&t=3245s>

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. As Mr Coffey explained in his Opening Statement during the first reading of the Bill in 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?

84. Mr Coffey is apparently alluding to Ko te Tuarua (Article 2) of Te Tiriti which uses the term “tino rangātiratanga” which states:²¹

*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)

85. 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

²¹ Schedule 1 of The Treaty of Waitangi Act 1975

86. 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.
87. The Applicant therefore seeks a declaration that Te Tiriti is an irrelevant consideration for a local government representation model and requests that the impugned Decision be set aside.

Co-governance is an irrelevant consideration

88. The words “co-govern” or “co-governance” were also used 18 times during the first reading of the Bill in Parliament.
89. 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.
90. Co-governance is not referred in the Local Electoral Act and is therefore an irrelevant consideration for the purposes of representation arrangements.
91. The Applicant therefore seeks a declaration that co-governance is an irrelevant consideration for a local government representation model and requests that the impugned Decision be set aside.

Costs and Reasonable Dispersements

92. 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 29 April 2022

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A handwritten signature in black ink, appearing to read 'Robert Lee', written in a cursive style.

Robert Lee

Applicant