

- (b) information supplied by Marutūāhu to the Minister regarding their claims relating to redress offered to these iwi on and around Aotea so the Trust Board could understand the basis for the redress they were seeking.

68. On 19 October 2016, an OTS official sent an e-mail (**attached** and marked **Document 44** within Exhibit A) to me confirming:

... the only groups who are currently in negotiations with the Crown who have redress offers in the Ngātiwai area of interest are those individual Marutūāhu iwi we are consulting with you on redress on Aotea, and

the Marutūāhu Collective, which has been offered a coastal statutory acknowledgement that extends into the Ngātiwai AOI, as well as the following vestings:

- *1.37ha of Kawau Island Historic Reserve (Te Kawa Tu Maro);*
- *2.5ha at Motuora Island Recreation Reserve (Moutuhora); and*
- *Mahurangi Scenic Reserve.*

The Crown engaged in an overlapping claims process with the Ngātiwai Trust Board on the Marutūāhu Collective redress in 2013 and 2014.

Third OIA Response

69. On 19 October 2016, in response to the Trust Board's OIA request, OTS provided the following information to the Trust Board about Marutūāhu interests on Aotea:

- (a) Two research documents;
- (i) Wai 406, *"The Islands lying between slipper island in the south-east, Great Barrier Island in the north and Tiritiri-Matangi in the north-west"*, by Paul Monin dated December 1996 (**attached** and marked **Exhibit B** to my affidavit); and
- (ii) Wai 1362, *"Tikapa Moana and Auckland's Tribal Cross Currents: The enduring customary interests of Ngāti Paoa, Ngāti Maru, Ngāti Whanaunga, Ngāti Tamatera and Ngāi Tai in Auckland"* (**attached** and marked **Exhibit C** to my

affidavit), by Associate Professor Michael Belgrave et al dated April 2006.

- (b) An independent assessment by David Armstrong commissioned to research into the customary interests on Aotea/Great Barrier Island (**attached** and marked **Document 45** within Exhibit A); and
 - (c) An internal draft OTS memo the subject of which was titled: "*Customary interest on Aotea (Great Barrier Island)*" dated 22 January 2014 (**attached** and marked **Document 46** within Exhibit A).
70. On or after 26 October 2016, OTS sent the Trust Board a map showing the Ngāti Rehua redress options (**attached** and marked **Document 47** within Exhibit A).
71. By letter dated 3 November 2016 (**attached** and marked **Document 48** within Exhibit A), the Trust Board responded to OTS regarding Marutūāhu redress on Aotea. This response was provided to OTS on the basis that the Crown had:
- (a) received the Trust Board's request for inclusion in the overlapping claims process dated 6 June 2013;
 - (b) initially supported the Trust Board's inclusion in the process (see Minister's letter dated 1 July 2013 discussed at paragraph 28 above);
 - (c) disclosed the redress on 4 and 31 October 2013 (see paragraphs 31 and 35 above);
 - (d) thereafter excluded the Trust Board from any further overlapping claim negotiations and only engaged with our hapū, Ngāti Rehua (see Minister's letter dated 15 May 2014 discussed at paragraph 38 above) despite the Trust Board being aware that negotiations were ongoing; and
 - (e) on 19 October 2016, the Crown clarified the redress that had been offered (or decided upon) for the Marutūāhu Collective (see paragraph 68 above).

72. On 9 November 2016, the Trust Board sent a follow up e-mail (**attached** and marked **Document 49** within Exhibit A) to all the Marutūāhu negotiators requesting an indication of those who were willing to meet to discuss their individual iwi settlements. I did not receive any response to this request.
73. By letter dated 11 November 2016 (**attached** and marked **Document 50** within Exhibit A), the Minister sent the Trust Board his final decision on individual Marutūāhu redress. This letter notes that the parties had not met but that there had been discussions with Paul Majurey. I am aware that the only discussion that had taken place between the Trust Board and Paul Majurey was in October 2013. The letter confirmed the Minister's preliminary decision.

Fourth OIA Response

74. On 22 November 2016, OTS provided a further response to the Trust Board's OIA request dated 18 October 2016 stating that the information requested had either already been provided in December 2014 or was being withheld as negotiation sensitive (**attached** and marked **Document 51** within Exhibit A is a copy of that response).

Hako Overlapping Claims Process Initiated

75. On 22 November 2016, OTS also sent the Trust Board a letter entitled "*Hako Treaty settlement negotiations with the Crown*" seeking the Trust Board's written feedback on the Hako statement of association by 6 December 2016 (**attached** and marked **Document 52** within Exhibit A). The statement of association referred to an unnamed pā site on Aotea at an unknown location. I called OTS immediately to request an extension to the timeframe given that we were heading into our extended Ngātiwai mandate hearings in Wellington on 1 and 2 December 2017. It was agreed that 20 December 2016 would be more appropriate. I sought clarification that a statement of association would not create any future rights for Hako to which OTS said they would provide clarification on this point.

76. On 23 November 2016, I received an email from OTS (**attached** and marked **Document 53** within Exhibit A), explaining the nature and scope of a statement of association.

77. By letter dated 9 December 2016 (**attached** and marked **Document 54** within Exhibit A), the Trust Board sent to OTS its preliminary response and request for additional information, which stated that:

As far as the Board is aware Ngāti Hako are a hapū of Marutuahu. They appear to be asserting a claim to the same geographical area claimed by all of Marutuahu. It overlaps and to a small degree with Ngātiwai at Mahurangi and in particular at Aotea.

Any documented Ngāti Hako association with these places is unknown to Ngātiwai who have had no dealings with them either in the past or over recent generations. The documentation received to date primarily describes a Ngāti Hako ancestral association with Tamaki Makaurau. It does not refer to Mahurangi or Aotea.

Ngāti Hako did not appear as part of the Hauraki Maori Trust Board claim to Aotea in the 1990s. In fact the Court ruled in its Decision regarding the Papa Tupu lands on Aotea, 23 February 1998, p. 2, that in relation to Aotea, Ngāti Hako, "have not established any separate interests within the context of this enquiry."

On this basis the Board would be pleased to receive any such documented evidence to allow a more fulsome consideration to be given to the statement of association redress options on offer by the Crown.

78. On 9 December 2016, OTS responded by e-mail (**attached** and marked **Document 55** within Exhibit A) confirming that they had advised the Hako negotiators of our preliminary response and indicated that the negotiators may contact us in relation to this matter.

79. On 22 December 2016, the Crown and the Hauraki Collective initialled a deed of settlement (the **Hauraki Deed of Settlement**). The Deed of Settlement includes the following redress overlapping with the Ngātiwai Aol:

- (a) Collective Redress: - a Right of First Refusal (RFR) to purchase a portion² of Crown quota³ for any new species that enters the QMS in the future; and

² This portion has been described as 30% of Crown quota or 30% of 80%.

- (b) Protocols redress: protocols with individual iwi of Hauraki and the Ministry of Primary Industries. We understand that such protocols are part of the relevant individual settlements.

2017 – Dealings between the Trust Board and the Crown

Hauraki Collective Protocol Overlapping Claims Process Initiated

80. On 13 January 2017, OTS sent a letter (**attached** and marked **Document 56** within Exhibit A) to the Trust Board entitled “*Overlapping claims regarding the proposed Protocol Area map for the Taonga Tuturu and Primary Industries protocols*” requesting feedback on the proposed protocols redress by 19 January 2017, six days later.
81. On 13 January 2017, I e-mailed OTS and asked for clarification for the extremely short timeframe and on 17 January 2017 OTS responded with clarification that the date of 19 January 2017 was an error and that the correct date was 31 January 2017. This would therefore have allowed only two weeks for a response given Northland anniversary day fell within that period.
82. On 17 January 2017, I sent a follow up e-mail to OTS informing them that our TCC had met and as I had not yet heard back from OTS I had been asked to inform OTS of the TCC requests as follows:
- (a) an eight week extension of time to enable a comprehensive submission to be compiled in response to the letter dated 13 January 2017;
 - (b) a meeting with OTS officials to discuss the proposals in the 13 January 2017 letter and potential consequences for Ngātiwai;
 - (c) funding to prepare an informed response and engage with the overlapping groups concerned; and

³ Crown quota is the residual amount 80% of remaining after the first 20% has been allocated to Iwi via Te Ohu Kaimoana to meet the requirements under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

(d) that OTS organise hui with the 10 negotiators listed in the letter as soon as possible.

83. The emails referred to in paragraphs 81 and 82 above are **attached** and marked **Document 57** within Exhibit A.

84. By email dated 17 January 2017 (**attached** and marked **Document 58** within Exhibit A), OTS responded to my requests regarding timeframes stating, among other things, that:

What is the rationale for timeframes provided for this overlapping claims process? (question from Tania McPherson)

Protocols are relationship redress. They are non-exclusive and can be provided to more than one claimant group in the same area and it is common for them to be overlapped. The protocol is not subject to this overlapping claims process; the Crown seeks comment on the protocol map only. As protocols set out processes and do not decide outcomes, we consider there is very limited potential for prejudice to overlapping claimants. As such, we consider the timeframes provided in the letter were adequate to seek the views of Ngātiwai.

What happens when iwi have protocol areas that overlap? (question from Haydn Edmonds)

.... Where an agency has a protocol with more than one claimant group, it is that agency's responsibility to engage with those claimant groups under the guiding principles set out in the respective protocols.

...

Taonga Tūturu protocols are relationship agreements issued by the Minister for Arts, Culture and Heritage on behalf of the Crown. Protocols are offered to iwi primarily as Treaty settlement redress. ... Protocols typically cover:

- *Administration of the Protected Objects Act;*
- *Iwi engagement in policy and legislation reviews;*
- *Board appointments notification and nominations process;*
- *Registration of iwi as expert examiners and collectors of taonga tūturu;*
- *Provision of cultural practices and professional services by iwi;*
- *Administration of national monuments, war graves and historical graves in the iwi's rohe;*
- *History publications;*
- *Terms of Issue and the protocol area.*

Fisheries Quota RFR Overlapping Claims Process Initiated

85. By email dated 18 January 2017 (**attached** and marked **Document 59** within Exhibit A), OTS sent a letter to the Trust Board entitled "Overlapping claims regarding the proposed area over which the Hauraki Collective Fisheries Quota RFR" requesting feedback on the proposed fisheries RFR redress. The Crown did not request the Trust Board's views on the Quota RFR redress mechanism itself but the area over which the Quota RFR redress is to be applied.
86. By email dated 19 January 2017 (**attached** and marked **Document 60** within Exhibit A), I requested an update from OTS on the Hako Statement of Association. I noted that I had returned from the Christmas break and had not received any response from the Hako negotiators. I noted also that:
- We are seeking to meet with OTS officials from the Hauraki team next week to discuss our growing frustration and concerns with OTS overlapping claims approach. So I'm checking back with you on any developments in the Hako space too.*
87. On 19 January 2017, I received a call from John Linstead of Hako who offered to meet with Ngātiwai representatives to discuss the statement of association.
88. He asked me if there had been any concerns expressed about it and I informed him that the Trust Board had provided a preliminary response to OTS on 9 December 2016.
89. On 20 January 2017, I sent an email to Mr Linstead with proposed meeting dates. On 22 January 2017, I received an e-mail from Mr Linstead advising that due to work commitments and other previously scheduled hui, Hako negotiators were unable to meet on the proposed dates. Mr Linstead advised he would reschedule but this never happened despite my attempts on 23 January 2017 and 9 February 2017 to follow up with him. A copy of this email correspondence is **attached** and marked **Document 61** within Exhibit A.
90. On 31 January 2017, the Trust Board and OTS officials met to discuss and clarify the Marutūāhu Collective, the Hauraki Collective and individual

Hauraki iwi and the redress that was at issue in each case. The redress of concern to the Trust Board included the Fisheries RFR and the protocol areas in particular. **Attached** and marked **Documents 62 and 63** within Exhibit A are the notes of the meeting prepared by both OTS and the Trust Board.

91. On 15 February 2017, I sent an email to OTS explaining the then activities of the Trust Board and requesting an extended time to allow for engagement with Hauraki iwi to occur. I also requested an update on how OTS were progressing with an updated overlapping claims map that showed all of the Hauraki Iwi Aol's (**attached** and marked **Document 64** within Exhibit A). I have never received a map showing all of the Hauraki Iwi Aol's.

Hauraki Iwi Individual Protocols Overlapping Claims Process Initiated

92. On 27 February 2017, OTS sent a letter entitled "*Overlapping claims for Taonga Tuturu and Primary Industries protocol area*" notifying the Trust Board that OTS now proposed to amend the collective area to individual Hauraki iwi areas and sought written feedback by 14 March 2017 (**attached** and marked **Document 65** within Exhibit A is a copy of that letter and appended map). At this point the Hauraki iwi who were seeking protocol areas that overlapped with the Ngātiwai rohe were reduced from the ten original Hauraki iwi down to four being; Ngāti Maru, Ngāti Whanaunga, Te Patukirikiri and Ngāti Paoa.

Ngāti Whanaunga Overlapping Claims Process Initiated

93. On 1 March 2017, OTS sent a letter to the Trust Board entitled "*Treaty Settlement Negotiations regarding Ngāti Whanaunga: Overlapping claims*" (**attached** and marked **Document 66** within Exhibit A) requesting feedback on proposed redress comprising vestings for the following land parcels at Orewa in Mahurangi;

- (a) 0.063 ha. 2 Riverside Road, Orewa;
- (b) 0.0885 ha. Deferred Selection Property located at 27 Otanerua Road, Hatfields Beach; and

- (c) 0.0961 ha. Deferred Selection Property located at 29 Otanerua Road, Hatfields Beach.
94. On 14 March 2017, I sent OTS a copy of the notes that the Trust Board had taken from the meeting held at the Trust Board's office on 31 January 2017. On 14 March 2017, Ryan Bogardus from OTS responded by stating: *"Thank you for sending these through. I will ensure these are filed for our records"*. On 14 March 2017, I responded to Ryan Bogardus and stated: *"Can you also please ensure you read and take note of these minutes and if you have any comments or edits on them please let me know."* On 14 March 2017, Ryan Bogardus from OTS responded to my e-mail and stated: *"I will review them and respond to you."* I never received a response from Ryan Bogardus on the notes that I sent to him (**attached** and marked **Document 67** within Exhibit A are those e-mails).
95. On 15 March 2017 (**attached** and marked **Document 68** within Exhibit A), the Trust Board provided a preliminary response relating to the following outstanding matters:
- (a) Hako statement of association;
 - (b) Hauraki Collective Fisheries Quota RFR Area;
 - (c) Hauraki Iwi individual Protocol Areas; and
 - (d) Ngāti Whanaunga overlapping claims.
96. On 21 March 2017, I sent an e-mail to OTS requesting confirmation that there were no further overlapping claims in the pipeline for Ngāti Maru or any other iwi. On 22 March 2017, I received a response that OTS were not aware of any further overlapping claims with Ngāti Maru or other iwi, other than the existing overlapping claim processes with which Ngātiwai was involved. (**Attached** and marked **Document 69** within Exhibit A are these emails of 21 and 22 March). Yet, as can be seen below further overlapping claims processes soon followed.
97. On 6 April 2017, the Minister sent a letter to the Trust Board with his preliminary decision concerning the Fisheries Quota RFR (**attached** and marked **Document 70** within Exhibit A). The Minister's preliminary

decision was to revise the Fisheries RFR area to reflect the coastline entitlements agreed under the Māori Fisheries Act 2004 (**Māori Fisheries Act**) and seeking further feedback by 27 April 2017. Attached to this letter was a map illustrating the coastline over which the coastline entitlement would be applied.

98. On 7 April 2017, I called OTS to ask questions about the Fisheries Quota RFR and on 9 April 2017 OTS sent an e-mail setting out a record of that conversation with a request to clarify if the record was accurate. In response on 10 April 2017 I replied stating, among other things, that (**attached and marked Document 71** within Exhibit A):

However, it appears based on the Ministers letter and attached map that there may be a difference of understanding about:

- a) How those agreements/entitlements are interpreted/displayed and applied in practice or*
- b) It may be that the letter simply lacks sufficient clarification on some points.*

For example:

- 1. There is insufficient explanation as to how quota RFR's can be said to be non-exclusive because Rights of First Refusal are by their very nature exclusive...However, there is no explanation as to how Ngatiwai options will be preserved (should it chose to seek this type of redress) in any future negotiations. For example if the Crown intend to allocate the available 30% to the Hauraki Iwi how will Ngatiwai options remain preserved?*
- 2. There is insufficient explanation for the statement in the legend that the blue line represents "Length of coastline (non-exclusive)". If Hauraki Iwi do not have 100% of interest in this area then what % interest does it have and on what basis?*
- 3. I did not say that Hauraki and Ngatiwai have a 50% allocation of coastline on Aotea. I said that Ngatiwai have more than 50% of coastline entitlement on Aotea but could not remember the exact details and yet the map VISUALLY appears to show that Hauraki have 100% of that coastline without mentioning that other iwi have interests*

there too (including who those iwi are and what their % interests are). I pointed out that that Map could be misinterpreted in the future as evidence that the Hauraki Iwi have 100% interests in Aotea coastline which would be very upsetting for Ngatiwai – despite the legend.

4. *... I would suggest that the map be removed altogether from the Hauraki settlement documents and that you simply rely on the agreed coastline entitlements (i.e. percentages) as the basis of any quota allocation calculations. This together with some clarification about how quota RFR's can be said to be non-exclusive within this redress mechanism and how Ngatiwai options will be preserved may help to resolve these matters.*

99. On 12 April 2017, I sent an email (**attached** and marked **Document 72** within Exhibit A) to OTS requesting an update on all the Marutūāhu Iwi settlements.

100. On 21 April 2017, OTS sent a letter to the Trust Board (**attached** and marked **Document 73** within Exhibit A) entitled "Response to questions raised regarding preliminary decisions on Pare Hauraki Fisheries RFR area" and stating that:

Fisheries RFR area map

You have advised you are unhappy with the proposed map of the Fisheries RFR area and seek it not to be included at all. Considering the RFR Deeds Over Quota the Crown has provided to other iwi all included a Fisheries RFR area map, we do not think it is unreasonable to include a Fisheries RFR area map in the Pare Hauraki Collective Redress Deed.

Level of detail shown in the Fisheries RFR area map

You have advised you are unhappy with the Fisheries RFR area's level of detail with respect to the interests of other iwi. We have not required Fisheries RFR area maps in previous settlements to show the interests of other iwi. Those Fisheries RFR areas, like that of the Hauraki iwi, are non-exclusive. We think it is reasonable for the iwi of Hauraki to also have a Fisheries RFR area map showing their interests only. The map clearly states the coastline length is non-exclusive and thereby acknowledges the interests of other iwi...

W A

101. On 27 April 2017, the Trust Board sent a letter (**attached** and marked **Document 74** within Exhibit A) to the Minister, which stated, among other things that:

Maori Fisheries Act 2004 Agreements

I am encouraged that you have revised the Hauraki Collective proposed redress relating to quota rights of first refusal ("RFR") for new species entering the Quota Management System. I am pleased that you have acknowledged that agreements made by iwi under the Maori Fisheries Act ("MFA 2004") is the most reasonable approach to take in determining future shares. The Board SUPPORTS this fundamental change in approach.

Non-Exclusive Coastline Map

I am concerned however that your officials appear not to fully understand, or choose to ignore, the allocation model contained in the MFA 2004 and continue to promote a non-exclusive coastline map for inclusion in the Hauraki Collective Settlement legislation. The Board STRONGLY OPPOSES this approach as it undermines our existing fishing agreements with Ngapuhi, with Ngati Whatua and with Marutuahu/Hauraki iwi.

102. On 3 May 2017, a meeting took place between officials of OTS, Rick Barker (lead negotiator), representatives of the Trust Board and other Northland iwi representatives to discuss the Fisheries quota RFR. **Attached** and marked **Document 75** within Exhibit A are the OTS notes of the meeting with the Trust Boards edits added. At that meeting, the officials from OTS indicated that:

- (a) they were unaware of the location of "Area One", a key fisheries management area;
- (b) they were unaware of the different methods for classification of inshore and deepwater stocks under the Māori Fisheries Act;
- (c) they were unaware of the allocation methods for deepwater and inshore fishstock under the Māori Fisheries Act;
- (d) they were unaware that the allocation models under the Māori Fisheries Act included both iwi coastline length and population

statistics in the calculation of each iwi's entitlement for deepwater stocks;

- (e) they were unaware that where iwi could not agree on coastline fixed points, they could instead agree percentages without identifying coastline boundaries and fixing points or lines on maps; and
- (f) they were however, aware that the agreements were confidential to the iwi concerned and could not be used for other purposes.

103. On 5 May 2017, I sent OTS a copy of the "*He Kawai Amokura*" report. This document sets out information about the allocation models contained in the Māori Fisheries Act. I pointed OTS in particular to pages 36-39 of this document which sets out the formulae for allocation (**attached** and marked **Exhibit D** to my affidavit).

104. On 11 May 2017, Rick Barker sent a letter to the Trust Board (**attached** and marked **Document 76** within Exhibit A). Among other things, it stated:

I understood from the meeting you broadly supported an approach to the Fisheries RFR that reflects the methodology set out in the Maori Fisheries Act 2004 and the agreements reached between iwi over coastline. However, you were clear your view is that the Pare Hauraki Fisheries RFR area map does not adequately reflect the allocation model and does not provide the level of detail you require to feel your interests are protected. I note it is your strong preference there be no map.

The Minister for Treaty of Waitangi Negotiations will be advised of your position and will communicate his decision on the Fisheries RFR area in advance of the Pare Hauraki Collective Redress Deed Signing.

105. On 16 May 2017, OTS sent a letter to the Trust Board (**attached** and marked **Document 77** within Exhibit A) concerning the preliminary response from the Trust Board dated 15 March 2017 in relation to the Ngāti Whanaunga proposed redress. It states:

The letter raised concerns regarding proposed redress for Ngaati Whanaunga at Orewa and Otanerua. I appreciate the information you

provided in relation to interests in these two areas at Hatfields Beach. I note the proposed Ngaati Whanaunga redress falls outside the Ngatiwai area of interest, as shown on page 9 of the Ngatiwai Deed of Mandate.

The next step in this process is for the Minister for Treaty of Waitangi Negotiations to make a preliminary decision regarding overlapping claims for Ngaati Whanaunga. Overlapping groups will be offered further time to consider and comment on the Minister's preliminary decision before a final decision is made.

106. I sent further e-mail requests to OTS on 12 April 2017, 16 May 2017, 18 May 2017 and 23 May 2017 requesting an update on all the Marutūāhu iwi settlements (**attached** and marked **Document 78** within Exhibit A).
107. On 30 May 2017, the Trust Board sent a letter (**attached** and marked **Document 79** within Exhibit A) responding to the Ngāti Whanaunga redress. This letter stated:

The Board response raised matters of historical fact included in the document, specifically the location of Te Tumu o Waimai.

The Board also noted a Ngatiwai ancestral association with Otanerua through the ancestress Tukituki.

Your letter dated 16 May 2017 noted that this area 'falls outside the Ngatiwai area of interest'. While that may be the case it is not consistent with tikanga Maori. It does not recognise that while iwi have formal rohe, necessarily set out in regards to Treaty settlements, they also have ancestral associations with numerous places adjoining and outside of their rohe, and maintain connections with them.

108. On 1 June 2017, OTS provided a copy of the draft notes they had taken at the meeting held in Hamilton on 3 May 2017 to discuss the Fisheries RFR. I responded by e-mail on 6 June 2017 with track changes in the notes (**attached** and marked **Document 80** within Exhibit A).
109. On 16 June 2017, the Trust Board sent a letter to all Hauraki Iwi for which the Trust Board had received contact details, stating (among other things) that:

Despite the fact that the Minister has made final decisions on some of these redress matters already, the purpose of this letter is to make a final request for direct (face to face) engagement with you concerning both your individual settlement and your collective settlement redress overlapping with the Ngatiwai rohe or Area of Interest.

As there are many layers of redress and many parties involved in these negotiations it is our preference to meet with each group separately to discuss individual settlements and together with each collective or its representative to discuss the Marutuahu and Hauraki Collective redress.

...

110. The letters to Hauraki iwi were all copied to the Minister on the same day (**attached** and marked **Document 81** within Exhibit A). Below are the people to whom each letter was addressed and the response:

- (a) **Hako** negotiators: Josie Anderson and John Linstead. While no hui resulted from this letter at this time, after some time (see paragraph 139 and 143 below) an initial hui was held with Hako on 15 May 2018 with another hui tentatively agreed to be held on Aotea;
- (b) **Ngāti Hei** negotiators: Joe Davis and Peter Johnston. No response to date;
- (c) **Ngāti Maru** negotiators: Paul Majurey and Wati Ngamane. No response to date;
- (d) **Ngāti Paoa** negotiators: Hauauru Rawiri and Morehu Rawiri. While Hauauru Rawiri initially agreed to a meeting on 23 June 2017, following clarification of the overlapping claims issues and an update on our mandate status, Mr Rawiri sent an email stating (**attached** and marked **Document 82** within Exhibit A):

[w]e are unable to meet with you at this point in time... A suggested way forward is to meet with Marutuahu and Hauraki Collectives first. Mindful of the conversation that we had earlier and Ngaati Wai still awaiting confirmation of its treaty negotiation mandate. Not to undermine or pre-empt anything, we suggest that we await the outcome from the Waitangi tribunal and treaty claims

mandate affirmation before we get into treaty overlapping claims discussions. In terms of the fish, quota etc, Pare Hauraki Trust Board, Pare Hauraki Fisheries would be the best to discuss this matter as they are the mandated entity to deal with these matters. If any questions, do not hesitate to contact me.;

While no hui resulted from this letter at this time, after some time (see paragraph 137-138 and 145 below) an initial hui was held with Ngāti Paoa on 23 May 2018 with the another hui tentatively agreed to be held in Mahurangi;

- (e) **Ngāti Porou ki Hauraki** negotiators: Pineamine Harrison, John Tamihere and Fred Thwaites. A response was received from Mr Tamihere on 16 June 2017 confirming there were no overlaps claimed by Ngāti Porou ki Hauraki with Ngātiwai. On 21 June 2017, I responded that we would like to discuss the Hauraki Collective Deed over Quota redress and on 22 June 2017, Mr Tamihere responded that *"Fish is a separate legislative process to Treaty negotiations and as you will be aware has its own independent process."* (**Attached** and marked **Document 83** are the e-mail communications with Mr Tamihere);
- (f) **Ngāti Rahiri Tumutumu** negotiators: Jill Taylor and Nicki Scott. No response to date;
- (g) **Ngāti Tamaterā** negotiators: Liane Ngamane and John McEnteer. No response to date;
- (h) **Ngāti Tara Tokanui** negotiators: Amelia Williams and Russell Karu. On 16 June 2017, by email Ms Williams indicated her willingness to meet to discuss overlapping claims and requested that we to contact Paul Majurey in relation to Hauraki Collective and Marutūāhu overlapping claims. (**Attached** and marked **Document 84** within Exhibit A are the e-mail communications with Ms Williams);
- (i) **Ngāti Whanaunga** negotiators: Tipa Compain and Nathan Kennedy. On 10 July 2016, a meeting was confirmed but had to be cancelled the day before due to ill health (**attached** and

Document 85 within Exhibit A are the e-mail communications with Mr Compain); and

- (j) **Te Patukirikiri** negotiators: William Peters and David Williams. No response to date.

Ngāi Tai ki Tamaki Overlapping Claims Process Initiated

111. On 19 June 2017, I received a letter dated 13 June 2017 from OTS entitled "*Primary Industries protocol area for Ngai Tai ki Tamaki's comprehensive settlement*" (**attached** and marked **Document 86** within Exhibit A). This letter attached a map for a "Primary Industries" protocol area with Ngāi Tai ki Tamaki and requested written feedback by 27 June 2017.
112. On 20 June 2017, the Trust Board sent a letter to Ngāi Tai ki Tamaki requesting a meeting. This letter was copied to the Minister, Ngāti Rehua and Ngāti Manuhiri (**attached** and **Document 87** within Exhibit A).
113. On 21 June 2017, Ngāi Tai ki Tamaki negotiator James Brown responded positively in an e-mail to the proposed meeting with a view to establishing a meeting date (**attached** and **Document 88** within Exhibit A is a copy of this email).
114. On 22 June 2017, I sent a letter to OTS (**attached** and marked **Document 89** within Exhibit A) providing a summary of the Trust Board's involvement with protocol area discussions to date and making a number of corrections. This letter noted that:
- ...It has also been noted that your letter requests feedback on the Primary Industry protocol area but there is no mention of the Ministry for Culture and Heritage Taonga Tuturu matter. Can you please confirm if this is an omission?*
115. No response has been received on this point of clarification.
116. On 12 July 2017, the Minister sent a letter to the Trust Board entitled "*Hauraki Collective Fisheries RFR Deed Over Quota Area Final Decision*" (**attached** and marked **Document 90** within Exhibit A). The final decision

was to maintain the preliminary decision but to replace the previous coastline map with another map showing fixed points.

117. On 14 July 2017, the Trust Board sent a letter to the Minister (**attached** and marked **Document 91** within Exhibit A) requesting his urgent intervention with all of the Hauraki/Marutūāhu settlements before the situation becomes irreversible. The letter stated, among other things, that:

As you will appreciate these overlapping claims processes have consumed much of our time while we were initially working to gain our own mandate and then subsequently defend it in Waitangi Tribunal urgency hearings. To a large extent however I consider that the Crown has ignored our feedback and pressed on to advance these settlements to the prejudice and detriment of Ngatiwai in the southern end of our rohe.

For that reason I write to inform you that our Board has formally resolved to approve a course of action that may or may not include litigation against the Crown in relation to these matters. This letter is therefore a courtesy letter to seek your urgent intervention before these matters become irreversible.

As you will be aware our Board recently sent out urgent requests for direct engagement with all of the Marutuahu/Hauraki Iwi negotiators (for whom we have received contact details) in an effort to meet, discuss and resolve these matter[s] with the negotiators concerned. While we are currently still working on organising these meetings I can say at this point that we have not received an overwhelmingly positive response from those concerned. This, together with our past efforts to engage with Marutuahu and Hauraki Iwi to resolve our differences has left us with little hope.

Therefore as a courtesy I am also taking this opportunity to advise you that we are simultaneously preparing an urgent hearing application which we intend to file no later than 21 July 2017.

If you consider it of value to meet to discuss these matters further I would like to invite you to do so at our offices in Whangarei between noon Wednesday 19 July and noon Friday 21 July 2017. I await your reply. Please don't hesitate to call me if you would like to discuss these matters.

118. On or about 15 July 2017, I called Leah Campbell from OTS and left a message on her phone asking a single question: "are deepwater stocks

included?" in relation to the Minister's decision on the Fisheries RFR. This question was important because the answer would reveal if the Crown had considered how iwi population statistics should be included in its RFR formula.

119. On 17 July 2017, I received a phone call from Terry Lynch from the Ministry for Primary Industries. We discussed the wording in the Minister's letter which had left me with some doubt that the final RFR fisheries redress for the Hauraki Collective would be allocated consistently with all aspects of the Māori Fisheries Act. It was not clear to me that deepwater and inshore stocks were to be included or that coastline agreements and population statistics would be used to determine the appropriate RFR fisheries redress. I also raised the map as a major concern of the Trust Board.
120. On 18 July 2017, I received an e-mail from OTS responding to my question to Mr Lynch (**attached** and marked **Document 92** within Exhibit A is a copy of that e-mail). That e-mail stated:

Where the Crown offers an RFR to the Pare Hauraki Governance Entity for any fish stock that is entered into the Quota Management System, the Crown shall determine the quantity of each fish stock to be offered to the Governance Entity in accordance with any coastline agreements reached between iwi under the provisions of the Maori Fisheries Act 2004.

If the stock is a deep water or freshwater fish stock, the quantity of each stock to be offered to the Governance Entity will be in accordance with the allocation provisions of the Maori Fisheries Act 2004 for that type of fish stock.

Where a fish stock is brought into the Quota Management System and no allocation mechanism has been developed in accordance with the Maori Fisheries Act 2004, the Crown reserves the right, after consultation with affected parties, which would include other iwi in the fish stock area, to develop an RFR allocation mechanism for that stock. The Crown has agreed with the Hauraki Collective that in that circumstance, the new allocation mechanism will not be based on coastlines, but could include population or other options.

With groups that already have Fisheries RFRs, the Crown has reserved the right to determine the quantity of fish to be offered by any method the Crown considers appropriate. We would expect to use this formulation in any offers of RFRs to other iwi in future as part of MPIs standard redress package.

121. On 19 July 2017, I sent an email to OTS (**attached** and marked **Document 93** within Exhibit A) stating, among other things, that:

It is my understanding following the phone call with Terry L[y]nch yesterday that the Fisheries Quota RFR redress is intended to be absolutely and totally consistent with the Maori Fisheries Act allocation method and policies. On that basis and given your response below can you please confirm:

1. *The map with the red dots accompanying the letter from the Minister dated 13 July 2013 will not be included in the documents associated with the Hauraki Collective settlement legislation.*

I refer you to page 37, paragraph 91 of He Kawai Amokura where it states:

"...Second, where Mandated Iwi Organisations do not wish to record or fix specific boundary points, the Iwi may agree the percentages of the coastline for the fishery that should be used to calculate each Iwi's entitlement..."

The Ngatiwai Trust Board have made it plain that they do NOT WISH TO RECORD OR FIX SPECIFIC BOUNDARY POINTS. The Board opts to have the percentages already agreed to be used to calculate each Iwi's entitlement.

2. *Where there are fish stocks brought into the QMS and no allocation mechanism has been developed.*

I refer you to page 63-64 paragraph 14 of He Kawai Amokura where it states

"...Te Ohu Kai Moana must publish in the Gazette the appropriate description for the fishstock as Freshwater, Inshore or Deepwater. However there may be cases where it is not clear whether the fishstock is Inshore or Deepwater. In those instances, where evidence suggests that a particular fishstock may be taken between the depths of 200 meters and