

**THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

AND IN THE MATTER of the Crown's Treaty settlement policy regarding overlapping claims and the proposed redress in relation to the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

AND IN THE MATTER of a claim filed by **HAYDN THOMAS EDMONDS** on behalf of Ngātiwai Trust Board and the iwi of Ngātiwai for an urgent inquiry into the Crown's settlement policy regarding overlapping claims and the proposed redress in the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

AFFIDAVIT OF TANIA MCPHERSON

Sworn 18 February 2019

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LEGAL

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WELLINGTON

I, **TANIA MCPHERSON**, Treaty Claims Manager, of Whāngarei swear:

1. My name is Tania McPherson. This affidavit replaces my brief of evidence and exhibit A dated 24 July 2017 (Wai 2666, A10 & A10(a)) and my previous affidavit and exhibit A dated 23 August 2017 (Wai 2666, A7(b) & 10(b)(i)).
2. Ko Matanui te Maunga
Ko Te Wairoa te Awa
Ko Matapouri te Moana
Ko Mahuhukiterangi te Waka
Ko Te Whanau a Rangiwhakaahu, Ko Te Akitai, Ko Te Kapotai, Ko Ngāti Rehua, Ko Ngāti Toki ki te Moana ngā Hapū
Ko Ngātiwai te Iwi
3. I am of Ngātiwai descent through my mother Abigail Maria Schofield (nee Mackie) and her parents Charlie Te Ngore Mackie and Ivy Mackie (nee Reti). My principal hapū is Te Whanau a Rangiwhakaahu located at Matapouri, where my principal marae is also located.
4. I hold a Bachelor of Science degree and the equivalent of an Honours degree from the University of Auckland.
5. I have worked in the area of Māori rights and interests for approximately 20 years in various roles with particular interests in Māori fisheries and marine policy development.
6. I am employed by the Ngātiwai Trust Board (the **Trust Board**) and have held the position of Treaty Claims Manager since early 2013. My role as described in the Treaty Claims Manager's job description is to progress the Trust Board's Treaty Claims towards settlement and to manage the Trust Board's Treaty Claims Unit.
7. I am authorised by the Trust Board to give this evidence in support of the application for an urgent Tribunal hearing regarding the Hauraki Collective, the Marutūāhu Collective and individual Hauraki iwi settlements (**Hauraki Settlements**).

8. In this affidavit, I will set out:

ATH-102021-1-585-V13



- (a) the context for overlapping claims and Ngātiwai settlement negotiations;
- (b) the background and current status of the Trust Board's own settlement negotiations as this has impacted on the Trust Board's engagement with the Crown in relation to the Hauraki Settlements;
- (c) my role in the dealings between the Trust Board and:
 - (i) the Office of Treaty Settlements (**OTS**); and
 - (ii) the Minister for Treaty of Waitangi Negotiations (the **Minister**);
 (together, the **Crown**); and
- (d) engagement between the Trust Board and the Crown regarding the Hauraki Settlements.

Context for Overlapping Claims and Ngātiwai Settlement Negotiations

Ngātiwai Overlapping Claims

9. I set out the background and context to the Trust Board's interaction with the Crown in relation to the Tamaki Makaurau settlements as this background is relevant to the manner in which the Crown has engaged with Ngātiwai. At the same time the Crown was negotiating with Hauraki, it was engaging with Ngātiwai regarding settlements for our southern hapū. The settlement of Treaty claims regarding Ngātiwai have been split because of the Crown's decision to deal with Tamaki Makaurau separately from the other parts of our rohe further to the north of Tamaki Makaurau.
10. The settlement proposal of the Crown in 2009 was noted in the Ngātiwai Mandate Report (Wai 2561), as follows (at page 4 chapter 1.3):

In 2009, the Crown presented settlement proposals as part of negotiations with claimant groups in Tamaki Makaurau, Kaipara, and Hauraki. Two hapu of Ngatiwai, Ngati Manuhiri and Ngati Rehua, were included in the Tamaki proposals. The Ngatiwai Trust Board requested an urgent meeting to discuss settling the Treaty claims of all Ngatiwai

hapu. In response, the Crown told the board it intended to settle Ngatiwai's historical Treaty claims in two phases: first, it would continue to work with Ngati Rehua and Ngati Manuhiri; secondly, it planned a comprehensive settlement of Ngatiwai's remaining Treaty claims 'at the same time' that it dealt with Ngapuhi's Treaty claims. The Crown completed a settlement with Ngati Manuhiri in 2012 and initialled a Deed of Settlement with Ngati Rehua-Ngatiwai ki Aotea in December 2016.

11. The Crown therefore divided the settlement of Ngātiwai claims in two. First, the Tamaki Makaurau settlements, which involved Ngāti Rehua – Ngātiwai ki Aotea (**Ngāti Rehua**) and Ngāti Manuhiri and second, the remaining hapū of Ngātiwai to the north. In early 2013, when the Trust Board commenced a process for seeking a mandate for the comprehensive settlement of all remaining Ngātiwai Treaty claims, the Crown was also working to resolve overlapping claims that resulted from the Tamaki Makaurau settlements. This Crown approach resulted in the Ngātiwai rohe being split in two and dealt with separately by the Crown.
12. I have set out at paragraphs 13 - 15 below how the Crown did not engage with the Trust Board for the period from October 2015 to August 2016. I understand this is because the Crown wrongly assumed that it only needed to engage with Ngāti Rehua in relation to Aotea without any consideration for the nature of the interests of Ngātiwai on Aotea.
13. In October 2015, the Trust Board's mandate for negotiations was recognised by the Crown and by May 2016, the Waitangi Tribunal had determined to hold an urgent hearing concerning the Trust Board's mandate.
14. Meanwhile, in April 2016, the Crown commenced an overlapping claims process between Ngāti Rehua and Ngātiwai. This process resulted in a dispute about the claimant definition in the Ngāti Rehua mandate. Clarity about the claimant definition is important because it goes to the heart of the Crown's overlapping claim policy and to whom the Crown will admit into overlapping claims processes.
15. In August 2016, as a result of the overlapping claims process between Ngātiwai and Ngāti Rehua the Crown re-engaged with the Trust Board seeking its views on overlapping claims in respect of Hauraki iwi on Aotea.

Ngātiwai Mandate for Negotiations

16. In early 2013, the Trust Board commenced a process to establish a mandate to settle all the remaining historical Treaty of Waitangi claims of Ngātiwai, which are separate to but shared with claims included in the Ngāti Manuhiri and Ngāti Rehua settlements. For example Wai 224 is the Ngātiwai iwi wide claim. The Trust Board's progress with establishing its mandate was as follows:
 - (a) Phase I: Pre-mandate – early preparations (March to July 2013);
 - (b) Phase II: Official mandate process (August to November 2013);
 - (c) Phase III: Post mandate, deed of mandate prepared (December 2013 to June 2014); and
 - (d) Phase IV: Deed of mandate amended (July 2014 to July 2015).
17. The Crown recognised the Trust Board's mandate on 21 October 2015. An urgent hearing into the Crown's recognition of the Trust Board's mandate took place between October and December 2016 (**Ngātiwai Mandate Inquiry**). The Waitangi Tribunal released its report on the Ngātiwai Mandate Inquiry in October 2017 (Wai 2561).
18. The activities detailed at paragraphs 16 to 17 above were therefore taking place at the same time as the Trust Board was seeking to ensure it provided its position to the Crown regarding the Hauraki Settlements. For example, in October 2013 when the Trust Board received the first letter from OTS seeking feedback on the Marutūāhu Collective redress the Trust Board had just completed its official mandate hui (9 hui in total around the North Island) and four additional hui (in Australia and Whāngarei). At that time we were also awaiting the completion of the voting period and mandate outcome. It was therefore difficult to provide responses to the Crown in the short timeframes provided.
19. Since October 2017, when the Waitangi Tribunal released the Ngātiwai Mandate Report (Wai 2561), the Trust Board has been working together with the support and facilitation of Ngātiwai kaumātua to consider and respond to the findings and recommendations of the Waitangi Tribunal.

My role in dealings with the Crown in relation to the Hauraki Settlements

20. Since I have been employed by the Trust Board in early 2013, I have been the primary contact for almost all correspondence between the Trust Board and officials from OTS and/or the Minister regarding any overlapping claims issues with the Hauraki Settlements. I have also attended meetings with officers of OTS, Crown negotiators and the Minister. I am therefore familiar with the correspondence and dealings between the Trust Board and the Crown.
21. Based on my involvement in the processes referred to in paragraph 20 above, I am aware that there are different negotiation processes occurring simultaneously between the Crown and the Marutūāhu Collective, the Hauraki Collective and individual iwi of Hauraki. I have prepared a table (**attached** and marked **Document 1** within Exhibit A to this affidavit) which summarises my understanding of the various layers of the Hauraki Settlements including the dates when the Trust Board was first contacted by the Crown regarding overlapping claims issues. The Crown has never provided us with an overview of the process and timeframes for these intertwining claims which has made it much more difficult for the Trust Board to respond in a prompt and comprehensive way. I have not had visibility of the Crown's timetable and the interrelationship between the collective and individual iwi settlements.
22. In relation to overlapping claims issues, the Ngātiwai area of interest (**Aol**) is set out in the map **attached** and marked **Document 2** within Exhibit A.

2013 – 2018: Dealings between the Crown and the Trust Board regarding Hauraki Settlements

23. I set out below in chronological order the correspondence and meetings between the Trust Board and various representatives of the Crown regarding the Hauraki Settlements, including:
- (a) redress that has been included within the Hauraki Collective Deed of Settlement initialled on 22 December 2016 and signed on 2 August 2018;

- (b) redress that has (since Ngātiwai's urgency application was filed) been included within the Marutūāhu Collective Deed of Settlement initialled on 27 July 2018;
- (c) redress the Minister has proposed to offer to individual iwi of Hauraki as follows:
 - (i) redress included in the Ngāti Paoa Deed of Settlement initialled on 18 August 2017;
 - (ii) redress included in the Ngāti Whanaunga Deed of Settlement initialled on 25 August 2017;
 - (iii) redress included in the Ngāti Maru Deed of Settlement initialled on 8 September 2017;
 - (iv) redress included in the Ngāti Tamaterā Deed of Settlement initialled on 8 September 2017; and
 - (v) redress included in the Te Patukirikiri Deed of Settlement signed on 7 October 2018.

2013 – Dealings between the Trust Board and the Crown

24. The Marutūāhu Record of Agreement dated 17 May 2013 (**Record of Agreement**) (**attached** and marked **Document 3** within Exhibit A) included the following potential collective cultural redress items that fall within the Ngātiwai Aol:

- (a) vesting of the Mahurangi Scenic Reserve (8.1212ha);
- (b) vesting of Motuora Island Recreation Reserve (79.7230ha);
- (c) vesting of Kawau Island Scenic Reserve (3.0351ha);
- (d) a coastal statutory acknowledgement in the wider Hauraki Gulf extending north on the mainland to Te Arai Point and including all off shore islands, including Aotea (Great Barrier Island) and Hauturu (little Barrier Island); and

- (e) a commitment to explore property RFR redress on Aotea (Great Barrier Island) subject to the resolution of overlapping claims, in particular with Ngāti Rehua.
25. The Crown did not request any input from the Trust Board regarding any potential overlapping claims with Ngātiwai prior to signing the Record of Agreement. It was Ngātiwai (through the Trust Board) who approached the Crown after reviewing the Record of Agreement.
26. The Trust Board, after considering the Record of Agreement, sent a letter to the Minister on 6 June 2013. A copy of this letter is **attached** and marked **Document 4** within Exhibit A. That letter requested that the Trust Board be able to engage in overlapping claims discussions with the claimants and the Crown given the extent of overlapping interests within the Ngātiwai Aol.
27. The letter of 6 June 2013 noted the following overlapping issues for engagement and discussion:
- (a) the nature and extent of the interests of Marutūāhu in the Hauraki Gulf;
 - (b) the extent, significance and jurisdiction of statutory acknowledgements in relation to the relevant consenting authorities and the Environment Court;
 - (c) the extent and particulars contemplated in relation to fisheries management sustainability decisions; and
 - (d) the Trust Board's opposition to any transfer of assets as set out in the table 3 in the Record of Agreement at paragraphs 1 and 5 in particular.
28. On 12 June 2013, the Trust Board received an acknowledgement letter from the Minister and on 1 July 2013 the Minister responded as follows:
- Thank you for your letter regarding the Ngāti wai Trust Board's wish to engage in discussions with Marutuahu Iwi about their record of Agreement with the Crown. I am very supportive of such engagement taking place.*

29. Copies of the letters from the Minister of 12 June 2013 and 1 July 2013 are **attached** and marked **Documents 5** and **6** within Exhibit A.
30. On 4 October 2013, Michael Dreaver, Chief Crown Negotiator, met with the Treaty Claims Committee (**TCC**) of the Trust Board in Whangarei for the first time. The purpose of the meeting was introductory. During that meeting the TCC requested an update on the Crown's settlement negotiations with Marutūāhu. The notes from this meeting (**attached** and marked **Document 7** within Exhibit A) record that Mr Dreaver responded by saying that in relation to the coastal statutory acknowledgement, it was a "symbolic instrument" that "*has nothing to do with mana moana or commercial fishing*".

Hauraki Iwi and Marutūāhu Collective Overlapping Claims Process Initiated

31. On 4 October 2013, OTS sent a letter entitled "*Hauraki iwi Treaty Settlements*" (**attached** and marked **Document 8** within Exhibit A). That letter noted that the Crown and iwi of Hauraki were entering into the final stage of negotiations and the relevant iwi specific redress would be provided shortly. The letter also set out the Marutūāhu Collective overlapping claims process and timeframes. The letter indicated that the Record of Agreement could be found on the OTS website. However, the Record of Agreement did not include a map showing the extent of the proposed coastal statutory acknowledgement for the Marutūāhu Collective.
32. On or after 7 October 2013, OTS provided the Trust Board a map (**attached** and marked **Document 9** within Exhibit A) showing an overview of Ngāpuhi and Ngātiwai Māori blocks, Māori ownership and overlapping iwi.
33. On 9 October 2013, OTS sent an e-mail advising that they were unable to disclose the Hauraki iwi redress at that point but that they would update the Trust Board as soon as possible and no later than 14 October 2013 on when the information could be expected along with any changes to the proposed consultation timeframes. A copy of this email is **attached** and marked **Document 10** within Exhibit A.

34. On the same day I had a conversation with Adam Levy of OTS about the Trust Board's experience in dealing with a coastal statutory acknowledgement in relation to overlapping claims with Ngāti Pukenga. In that instance, I explained, the Trust Board had overcome some of its concerns by seeking clarification in the settlement legislation that redress would not extend to fisheries management or decision making. Hence on 10 October 2013, I followed up with an e-mail setting out the discussion (**attached** marked **Document 11** within Exhibit A).

35. On 31 October 2013, OTS sent an email (**attached** and marked **Document 12** within Exhibit A) to the Trust Board with further information about the coastal statutory acknowledgements, as follows:

The exclusive redress offered to the Marutuahu Iwi is the transfer of specific pieces of land. This includes transfer as cultural redress of the Mahurangi Scenic Reserve (8.12ha), transfer of 2.5 hectares from Motuora Island and potential transfer of land on Kawau Island (up to 1ha at Schoolhouse Bay)...

36. On 31 October 2013, I am aware that a meeting took place in Warkworth between Paul Majurey (Marutūāhu Collective negotiator), Mr Dreaver (Chief Crown negotiator), Haydn Edmonds (Chairman of the Trust Board) and Jim Smillie (Trust Board Chief Executive Officer) to discuss overlapping claims. On the same day, the Trust Board sent a letter to OTS (**attached** and marked **Document 13** within Exhibit A) stating, among other things, that:

1. The nature and extent of the Marutuahu's interests in the draft Record of Agreement is not clear; and

2. The extent of the Statutory Acknowledgements sought and the significance/jurisdiction of those Acknowledgements with reference to the relevant consent authorities including the Environment Court is unclear. In respect of its commercial interests, Hauraki agreed to settle on a 55:45 basis with Ngātiwai Trust Board in relation to Aotea with the Hauraki interests extending no further north than Takatu Point. This was on the basis that that was the extent of Hauraki's commercial interests in relation to Aotea. It was implicit that Hauraki had no interests in Hauturu at all. The proposed Statutory Acknowledgement extends to Te Arai Point and incorporates both islands on the grounds of cultural and customary interests. An acknowledgement of that scope is incongruous with the acknowledged commercial position.

3. *There is no detail as to the extent of the particulars contemplated with respect to "fisheries management sustainability decisions" as contemplated in clause 4.10.*

4. *It is unclear to what extent any exclusivity is sought with respect to any redress.*

2014 – Dealings between the Trust Board and the Crown

37. On 1 April 2014, following discussions with Ngāti Rehua, the Trust Board sent a letter to the Minister (**attached** and marked **Document 14** within Exhibit A) informing the Crown that in relation to Marutūāhu, Ngātiwai:

- (a) together with Ngāti Rehua, has mana whenua over Aotea and surrounding islands;
- (b) challenges the claims made by Marutūāhu on Aotea, the mainland and the coastal environs; and
- (c) had been unsuccessful in its attempt to discuss matters with Marutūāhu.

Overlapping Claims Process with Marutūāhu Iwi Denied

38. On 11 April 2014, the Trust Board received an acknowledgment of its letter dated 1 April 2014. On 15 May 2014, the Minister sent a letter (**attached** and marked **Document 15** within Exhibit A) to the Trust Board stating, among other things, that:

the Crown is already engaging with Ngāti Rehua in relation to redress offered to Marutūāhu Iwi on Aotea. ...

The only redress the Crown has offered to the Marutūāhu Iwi on the mainland north of Takatu Point is a coastal statutory acknowledgement.

39. On 25 July 2014, following further discussions with Ngāti Rehua, the Trust Board sent another letter to OTS **attached** and marked **Document 16** within Exhibit A) stating, among other things, that:

the Crown is in the process of offering redress options to member iwi associated with the Marutūāhu confederation including Ngāti Paoa, Ngāti Maru, Ngāti Tamatera, Ngāti Whanaunga and Te Patukirikiri

...

1. The south-eastern boundary marker of the Ngātiwai tribal rohe is Te Tohora-a-Manaia (one of the six whales of Manaia) and islet off Mātarehu (Cape Barrier). Therefore Ngātiwai-wide tribal interests extend to include the entire area on and around Aotea as outlined in our Deed of Mandate.

2. Decisions about redress options on Aotea that may impact on options available to Ngātiwai in addition to Ngāti Rehua ki Aotea appear to be imminent however wider Ngātiwai interests are not represented in discussions and the foreclosure of those options are of great concern.

3. This is not to say that we are challenging the interests of Ngāti Rehua (or its representative Trust) or their involvement in discussions concerning overlapping interests. In this regard we wrote to the Minister on 1 April 2014 expressing our support for the Trust while requesting that our wider iwi interests also be included and represented in discussions.

4. The response we received from the Minister dated 15 May 2014 was disappointing as it appears to have missed the point that wider Ngātiwai interests exist and should be accommodated suitably. Rather than directing us to suitable alternative contact persons within Marutuaahu or specific iwi the Crown is now dealing with it referred us back to our own people, Ngāti Rehua whom we are already engaged with.

5. In addition the letter from the Minister appears to contradict information we have received recently about redress options being offered indicating that only statutory acknowledgements are at issue whereas recently we have been informed that RFR's, land transfers and statutory acknowledgments are on the table.

6. We are also disturbed to learn from Mike Dreaver that proposed redress options for the iwi identified above appear to relate to the Mokohinau Island which sits firmly within our tribal rohe. This is a complete surprise to us and we have not been provided with any information substantiating any such claims or provided the opportunity to comment on any such claims.

7. The Maori Land Court evidence of the case between ourselves and Haruaki Māori Trust Board (Aotea Trust Board vs. J De Silva) shows that the iwi indicated above do not have any land, customary rights of ongoing association with Aotea. Any interests are therefore through intermarriage, and we can account for those whakapapa lines.

8. Finally it should be noted that Ngātiwai in addition to Ngāti Rehua ki Aotea are the customary and contemporary owners in land on Aotea. This ownership is inextricably linked between Ngātiwai and Ngāti Rehua ki Aotea and cannot be separated out.

Based on these factors the Ngātiwai Trust Board reject any offer of redress you may be facilitating with the iwi identified above in relation to Aotea and elsewhere without our knowledge or input.

40. On 30 September 2014, I followed up my previous email to OTS asking if there had been an oversight or a reason for the delay in receiving a response (**attached** and marked **Document 17** within Exhibit A).
41. On 14 October 2014, OTS responded to the Trust Board's 25 July 2014 letter (**attached** and marked **Document 18** within Exhibit A) stating, among other things, that:

As per our previous communication, we are engaging with Ngāti Rehua Ngātiwai ki Aotea Trust (Ngāti Rehua) in relation to their overlapping claims with Ngāti Maru, Ngāti Tamatera, and Te Patukirikiri. In your letter you raise concerns the Crown had not taken into account wider Ngātiwai interests in Aotea. The Crown understands Ngāti Rehua represents the interests of Ngāti Wai on Aotea. The Crown considers it is appropriate to engage directly with Ngāti Rehua and I have not received any information which would make it appropriate for the Crown to deal with Ngātiwai as well as Ngāti Rehua in relation to this matter. It would assist the Crown if you would outline what are the separate interests of Ngātiwai on Aotea.

First OIA Request

42. On 17 October 2014, I sent an Official Information Act 1982 (**OIA**) request (**attached** and marked **Document 19** within Exhibit A) to OTS to obtain information to help the Trust Board better understand why the Crown had not involved it in the overlapping claims process for Aotea.
43. On 14 November 2014, OTS sent a letter (**attached** and marked **Document 20** within Exhibit A) to the Trust Board informing it that an extended time period would be required to provide the OIA response because of the volume of information requested and the consultation required.

First OIA Response

44. On or about 15 December 2014, OTS provided a response to the Trust Board's OIA request by post which contained:

- (a) an OTS report entitled "*Hauraki negotiations: Preliminary decision on external overlapping claims*" dated 14 November 2013 (**attached** and marked **Document 21** within Exhibit A);
- (b) an OTS report entitled "*Hauraki negotiations: Preliminary decision on the Marutūāhu iwi redress on Aotea and Ngāti Rehua-Ngāti Wai ki Aotea overlapping claims*" dated 24 June 2014 and a letter attached for the Minister's signature subject to his approval entitled "*Aotea overlapping claims – preliminary decisions*" signed and dated 18 July 2014 (**attached** and marked **Document 22** within Exhibit A). This report is redacted and focuses on the overlapping claim process involving Marutūāhu iwi redress on Aotea and the overlapping claims process with Ngāti Rehua. There is no mention of Ngātiwai; and
- (c) an OTS report entitled "*Hauraki negotiations: Final decision on Marutūāhu and Ngāti Rehua-Ngāti wai ki Aotea overlapping claims*" dated 31 July 2014 and a letter attached for the Minister's signature subject to his approval entitled "*Aotea overlapping claims – final decisions*" signed and dated 4 August 2014 (**attached** and marked **Document 23** within Exhibit A). This report has some redactions but it contains no information about Ngātiwai.

2015 – Dealings between the Crown and the Trust Board

- 45. There were no new overlapping claims issues raised in relation to Hauraki settlements during this period.

2016 – Dealings between the Crown and the Trust Board

- 46. On 12 April 2016, following further discussions with Ngāti Rehua, the Trust Board sent OTS a letter entitled "*Re: Offer of redress for Ngāti Maru & Ngāti Tamatera on Aotea*" objecting to the redress offered by the Crown to Marutūāhu on Aotea (**attached** and marked **Document 24** within Exhibit A).

Ngāti Rehua Overlapping Claims Process Initiated

47. On 27 April 2016, OTS sent a letter to the Trust Board entitled "*Ngāti Rehua-Ngāti wai ki Aotea claimant definition*" (**attached** and marked **Document 25** within Exhibit A) seeking its written views on the Ngāti Rehua claimant definition. It stated, among other things, that:

On 13 April 2016 we met with representatives of Ngāti Rehua-Ngāti wai ki Aotea, Ngāti Manuhiri and Ngātiwai to discuss various issues related to Ngāti Rehua-Ngāti wai ki Aotea settlement negotiations, including its claimant definition. As part of our discussions, Ngāti Rehua-Ngāti wai ki Aotea signalled its intention to settle the claims of all Ngātiwai individuals who descend from the tupuna who exercised customary rights on Aotea (Great Barrier Island) by virtue of descent from:

Ranginui (the son of Hikihiki);

Rehua (the son of Mataahu and Te Kura); or

Te Awe.

At the meeting we asked whether this definition covered all potential Ngātiwai claimants in the area of interest... claimed by Ngāti Rehua-Ngāti wai ki Aotea. Your representative at the meeting indicated he needed to seek further direction from the Ngātiwai Trust Board as to whether Ngātiwai has claims based on separate descent lines within this area and, based on this, whether Ngātiwai will seek redress within this area as part of its Treaty settlement negotiations.

48. On 15 June 2016, OTS sent a letter (**attached** and marked **Document 26** within Exhibit A) informing the Trust Board that since the Ngāti Rehua Record of Agreement had been signed on 18 June 2011, there had been some changes to the redress.
49. On 4 July 2016, the Trust Board responded to the 27 April 2016 letter explaining the interests of Ngātiwai on Aotea which are separate to the interests of Ngāti Rehua and expressing its concern on a number of related issues (**attached** and marked **Document 27** within Exhibit A).
50. On 15 July 2016, I along with other members of the TTC attended a meeting with officials from OTS to discuss overlapping claims in relation to Ngāti Rehua. Trust Board representatives requested a response as to why Ngātiwai were left out of the overlapping claims process in relation to the Marutūāhu negotiations. OTS confirmed it would respond to this

request (**attached** and marked **Document 28** within Exhibit A is a copy of the OTS notes of this meeting).

51. On 22 July 2016 and then again on 5 August 2016, I sent a follow-up e-mail to OTS seeking the following information:

I am writing again to request the following information please:

- *Most urgently we would ask for the Crown asset audit at least for the Ngāti Rehua – Ngāti wai ki Aotea Area of Interest as a starting point with the remainder of Ngātiwai rohe to follow.*
- *The information about what redress has been decided upon by the Minister for Marutūāhu Iwi on Aotea.*
- *Any understanding of what happen to Ngātiwai Trust Boards engagement concerning overlapping claim with Marutūāhu iwi on Aotea.*

52. On 5 August 2016, OTS responded to my e-mail earlier that day and said:

I can advise as follows:

We have not yet prepared an overall Crown asset audit for Ngatiwai. Having spoken with my colleagues, I have confirmed this step is usually undertaken at the AIP stage of negotiations;

I have attached a couple of draft documents re Crown assets on Aotea. These are: (a) draft; (b) subject to update and confirmation; and (c) for discussion purposes only. That is, these documents do not constitute the Crown asset audit for Ngatiwai. However, they may assist with our discussion.

I will forward some correspondence outlining the engagement with Ngatiwai about overlapping claims for Marutuahu from 2013 and 2014.

I will ask Meremine to forward a summary of the redress for Marutuahu iwi on Aotea.

53. A copy of the email correspondence referred to in paragraphs 51 and 52 is **attached** and marked **Document 29** within Exhibit A.

Second OIA Request

54. On 5 August 2016, I also made an OIA request by email (**attached** and marked **Document 30** within Exhibit A) on behalf of the Trust Board seeking:

...any reports/advice papers/briefings/aid memoirs etc provided to the Minister of Treaty Settlements concerning recommendations in respect of any redress offered iwi of the Marutūāhu confederation on Aotea (Great Barrier Island) and its surrounding islets.

55. On 12 August 2016, I (and other representatives from the Trust Board) met with officials from OTS to discuss overlapping claims with Ngāti Rehua. At that meeting, the Trust Board representatives again asked OTS officials why the Trust Board had been excluded from overlapping claims discussions with Marutūāhu regarding Aotea. In response, OTS officials said that final decisions had already been made about Marutūāhu redress on Aotea and agreed to provide Crown information relating to the consultation that had led to the Minister's final decisions (**attached** and marked **Document 31** within Exhibit A is a copy of the OTS notes of this meeting).

56. On 22 August 2016, OTS sent a letter to the Trust Board entitled "Redress for Marutūāhu iwi on Aotea" (**attached** and marked **Document 32** within Exhibit A) noting that the Trust Board had been consulted on the Marutūāhu Collective redress in 2013 stating, among other things, that:

At that stage, proposed redress for the Marutūāhu Collective included exploration of RFR redress on Aotea. As a result of subsequent negotiations, the Marutūāhu Collective has not been offered redress on Aotea. However, the Marutūāhu iwi are also in negotiations with the Crown for iwi-specific Treaty of Waitangi settlement redress. In the course of those negotiations, some of the Marutūāhu iwi have been offered iwi-specific redress on Aotea, being: Ngāti Maru, Ngāti Tamatera, Ngaati Whanaunga and Te Patukirikiri.

57. On 22 August 2016, I e-mailed OTS requesting maps of all the redress properties in relation to Aotea (**attached** and marked **Document 33** within Exhibit A) and stating, among other things, that:

We are very disappointed that you have left it until now to provide us with an opportunity to respond to overlapping claims in respect of Aotea (Great Barrier Island). This has been a matter of some concern to us for a considerable period of time. We have documented evidence to show that we asked to be involved in these discussions long ago but were dismissed at that time. We would like you to ensure to advise the Minister of this in your next

briefing as it has not been for lack of willingness on our part to engage in these discussions.

It is also very bad timing for you to request a response from us by 5 September 2016 as we are currently preparing four responses to the claimant evidence relating out the Ngātiwai Mandate Inquiry due to be filed on 2 September 2016. On this basis we would request at least an extra two week[s] to respond.

Marutūāhu Iwi Overlapping Claims Process Initiated

58. On 23 August 2016, OTS sent a letter to the Trust Board entitled “Timeframes for overlapping claim – Redress for Marutūāhu iwi on Aotea” with a revised timeframe for written responses on the proposed Aotea redress and enclosed a map (**attached** and marked **Document 34** within Exhibit A) illustrating the location of the Marutūāhu iwi redress on Aotea.

Second OIA Response

59. By letter dated 30 August 2016 (**attached** and marked **Document 35** within Exhibit A), OTS responded to the Trust Board’s OIA request of 5 August 2016 stating that:

... The information you seek was released to you in December 2014 in response to your request dated 17 October 2014.

60. On 31 August 2016, the Trust Board sent a letter to the Minister entitled “Concerns with the Crown’s approach to Treaty Settlements with Ngātiwai interests” (**attached** and marked **Document 36** within Exhibit A) and stating among other things that:

The situation is compounded by the fact that it is only within the last week or so that the Board has been advised of properties on Aotea (Great Barrier Island) that are proposed as part of the Marutūāhu settlement package and asked to comment – very much at the 11th hour – as part of the overlapping claims process. We frankly cannot understand how the Board could have been left out of this discussion for so long, when the primacy of the interests of Ngātiwai over Aotea and its environs was comprehensively determined by the Maori Land Court as long ago as 1998.

...

Request for Co-ordination

The Board’s capacity to respond to all of these issues is, to some extent, being hampered by the segmented way in which they are

being handled by the Crown ... Exacerbating matters is the fact that each of these settlement processes and teams responsible for managing them appear to be operating on their own, unrelated, timetables.

61. By letter dated 20 September 2016 (**attached** and marked **Document 37** within Exhibit A) the Minister sent a letter entitled “*Ngāti Rehua- Ngātiwai ki Aotea: Preliminary overlapping claims decision and other matters*” and stating, among other things, that:

You note in your letter that, from a Ngātiwai perspective, the Office of Treaty Settlements’ timeframes from engagement with various groups on overlapping claims are not co-ordinated and I appreciate this creates an additional challenge for Ngātiwai Trust Board. I would like to thank you for your engagement on these matters.

62. By letter dated 20 September 2016, (**attached** and marked **Document 38** within Exhibit A), the Trust Board sent OTS its preliminary written response to individual Marutūāhu iwi redress proposed on Aotea (**Preliminary Response**) which set out:

- (a) the Trust Board’s preliminary response on all redress proposals;
- (b) the Trust Board’s view that it has been prejudiced by the overlapping claims process; and
- (c) the Trust Board’s objection to the earlier Marutūāhu Collective redress in the Mahurangi area.

63. The Preliminary Response was only “preliminary” because:

- (a) the Trust Board had been involved with preparations for an urgent inquiry into the Crown’s recognition of its mandate due to take place in early October 2016;
- (b) the Trust Board had not been able to discuss this matter at the full board level or with any of its marae or hapū communities affiliated to the Trust Board;
- (c) the Crown had not disclosed all information upon which the Trust Board could provide a definitive response despite requests for further information; and

(d) the Trust Board had requested a meeting with the Minister to discuss the Crown's approach to dealing with overlapping claims on Aotea in relation to the Marutūāhu iwi.

64. By email dated 22 September 2016 (**attached** and marked **Document 39** within Exhibit A), OTS asked the Trust Board for permission to share the Preliminary Response with the iwi concerned to which the Trust Board agreed on the same day.

65. On 29 September 2016, OTS sent the Trust Board a map (**attached** and marked **Document 40** within Exhibit A) showing all of the remaining Crown land on Aotea excluding land the Crown had already offered to vest in overlapping groups (i.e. Marutūāhu and Ngāti Rehua). By letter dated 10 October 2016 (**attached** and marked **Document 41** within Exhibit A), the Minister sent the Trust Board his preliminary decision concerning the individual Marutūāhu iwi redress offers on Aotea. The decision did not respond to, or accept, any of the concerns and objections raised by the Trust Board in its Preliminary Response and stated:

This offer remains subject to the resolution of overlapping claims to the satisfaction of the Crown.

I have carefully considered your 20 September response to the Crown's offer.

You have not opposed the statutory acknowledgement and deed of recognition offered to Ngāti Maru for the Whangapoua Conservation Area. You advised [you] would not oppose the same offer to Ngāti Tamatera if they demonstrated similar interests. You have opposed all of the other redress offered to Marutūāhu iwi on Aotea.

The Crown is guided by three general principles when considering overlapping claims:

- *the Crown's wish to reach a fair and appropriate settlement with each iwi in negotiations;*
- *the Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to all iwi and achieve a fair settlement of their historical claims; and*
- *The Crown's duty to ensure the redress offered to the claimant group in negotiations does not prejudice any other groups, or create unintended inferences regarding the mana of other groups.*

In making decisions on the redress offers to Marutūāhu iwi on Aotea I have taken into account both the information provided by

Ngātiwai, information previously provided by Marutūāhu iwi, and independent historical research (which includes consideration of evidence provided to the Maori Land Court and the Waitangi Tribunal).

66. On 13 October 2016, following a telephone conversation I had with an OTS official, OTS sent an e-mail (**attached** and marked **Document 42** within Exhibit A) to all the Marutūāhu negotiators advising them that Ngātiwai were keen to meet with them. I did not receive a response from any of these negotiators. Those to whom the e-mail from OTS was sent included:

- (a) Paul Majurey – negotiator for the Marutūāhu Collective and negotiator for Ngāti Maru;
- (b) Wati Ngamane – negotiator for Ngāti Maru;
- (c) Liane Ngamane – negotiator for Ngāti Tamatera;
- (d) John McEnteer – negotiators for Ngāti Tamaterā;
- (e) David Williams – negotiator for Te Patukirikiri;
- (f) William Peters – negotiator for Te Patukirikiri;
- (g) Nathan Kennedy – negotiator for Ngāti Whanaunga; and
- (h) Tipa Compain – negotiator for Ngāti Whanaunga.

Third OIA Request¹

67. By email dated 18 October 2016 (**attached** and marked **Document 43** within Exhibit A), the Trust Board made a request to OTS for:

- (a) a map showing the redress offered to Ngāti Rehua to assist the Trust Board to understand the various redress options being provided to other Large Natural Groupings within Ngātiwai's AOI and understand the potential redress remaining for Ngātiwai negotiations and if the remaining options are prejudicial to Ngātiwai interests; and

¹ OTS interpreted this as an OIA request