

400 meters, Te Ohu Kai Moana must consider the most recent 5 years of available catch histories for that fishstock and classify it as follows:

- (a) Where at least 75% of the fishstock is taken in depths greater than 300 meters, it is Deepwater;
- (b) Where at least 75% of the fishstock is taken in depths of 300 meters or less, it is Inshore, and
- (c) Where neither paragraph (a) or (b) applies, Te Ohu Kai Moana must decide whether the fishstock is Deepwater or Inshore based on:
  - (i) The fishing equipment used to take the fishstock, and
  - (ii) The location where the fishstock was taken."

Please confirm that this provision will apply in the case of the Fisheries RFR redress.

122. On 19 July 2017, the Trust Board sent a letter to OTS (**attached** and marked **Document 94** within Exhibit A) notifying OTS that a meeting had taken place with Ngāi Tai ki Tamaki and stating, among other things, that:

*We have had the pleasure of engaging with both the Chairman, James Brown and Trustee, Lucy Steel of Ngai Tai ki Tamaki yesterday [but in fact on 13 July 2017] and appreciate their earnest discussion and their perspective. We hold talks like these in high regard. We understand and respect where they are coming from, however we indicated to them that we would put our concerns forward.*

*The Board has concerns with the considerable extent of the mapped boundaries of the proposed Protocol area for Ngai Tai ki Tamaki;*

*In particular, the Board is concerned that the Ngai Tai ki tamaki proposed Protocol Area includes the south west of the Ngatiwai rohe, between Matakanakana, Te Mau Tohora a Manaia, and Te Arai o Tahuhu. We respect that they have their own korero for Te Arai o Tahuhu, however this area is named after Tahuhunuiorangi, son of our tupuna Manaia II.*

*It is also of concern that the proposed Ngai Tai ki Tamaki protocol area includes Te Hauturu o Toi (Little Barrier island), Aotea (Great Barrier island), and Rakitu (Arid Island), and the surrounding seas of Te Moana nui-o-Toi.*

*The Board understands the ancient, pre-seventeenth century association of Ngaoho and Ngati Tai and their many hapu, that is, the early Tainui iwi and hapu who occupied the wider Hauraki Gulf and its offshore islands. Ngatiwai holds valued whakapapa associations with these tupuna.*

*Ngati Tai did not in our view, however occupy Mahurangi or Hauturu and Aotea from this time. Nor did they at any time in the nineteenth or twentieth centuries make claim to ancestral land in this area in the Native or Maori Land Court. We respect that Ngati Tai may have had associations with Te Pa Awana prior to the phased conquest of Rehua, Te Rangituehangahuru, Te Whaiti and Te Awe, on the other hand Ngatiwai and its constituent hapu claimed, held and still hold title to ancestral land at Mahurangi, Hauturu, Aotea, Rangiahua and Rakitu, and still maintain marae/papakainga in the district.*

*The Board understands that Ngai Tai ki Tamaki are based at Umupuia Marae, Te Wairoa (Clevedon) and Whatapaka Marae, Karaka, with extant ancestral interests extending north to the Tamaki River, Motukorea, Rangitoto and Motutapu.*

*It appears that the proposed protocol area as mapped by Ngai Tai ki Tamaki cover the entire area being asserted by the Marutuahu confederation, rather than the extant rohe generally described by Ngai Tai ki Tamaki.*

*On this basis the Board must object to the proposed Protocol Area as it is not firmly connected to an ongoing customary association within the overlapping area as at 1840 or beyond.*

123. On 20 July 2017 the Trust Board sent a letter to the Minister (**attached** and marked **Document 95** within Exhibit A) asking the Crown to:

*remove all rights and redress offered to Hauraki iwi on Aotea (Great Barrier Island) and in Mahurangi prior to any signing of a Hauraki iwi Treaty settlement and that a tikanga-based resolution between Te Iwi o Ngatiwai and Hauraki iwi takes place without Crown interference.*

124. On 21 July 2017, Hon Christopher Finlayson sent a letter to the Trust Board (**attached** and marked **Document 96** within Exhibit A) regarding his preliminary decision on the Ngāti Whanaunga overlapping claims. The Minister considered that the redress proposed for Ngāti Whanaunga at

Ōrewa was appropriate, that it did not prejudice future or existing settlements, and that it was in accordance with the Crown's assessment of Ngāti Whanaunga's historical interests. Accordingly, a preliminary decision was made to maintain the Crown's offer of redress to Ngāti Whanaunga.

125. On 28 July 2017 OTS sent an e-mail (**attached** and marked **Document 97** within Exhibit A) in response to my e-mail of 19 July 2017 concerning the Fisheries RFR. In summary the e-mail confirms consistency with the provisions of the Māori Fisheries Act 2004. However, despite explicit provision for agreed percentages to be used as opposed to fixed boundary points OTS confirmed that *"The map will be included in the Hauraki Collective Redress Deed..."*
126. On 10 August 2017 the Minister sent a letter (**attached** and marked **Document 98** within Exhibit A) responding to the Trust Board's letter of 20 July 2017. The letter states:

*As you are aware there have been overlapping claims discussions with Ngati Rehua-Ngatiwai ki Aotea and the Ngatiwai Trust Board over redress offers to Hauraki iwi on Aotea. On 11 November 2016 I wrote to advise you of my final decision to offer redress on Aotea to Ngāti Maru, Ngāti Tamatera, Ngaati Whanaunga and Te Patukirikiri. I still consider now, as I did then, the redress is reasonable and appropriate.*

*As I noted in my final decision, the Crown retains capacity to provide appropriate and fair redress to Ngātiwai in the event that Ngātiwai demonstrates distinct interests on Aotea. I am advised my officials provided you with information in 2016 about Crown-owned land on Aotea and as is clear from that information most of northern and central Aotea remains Crown land.*

*In relation to the redress offers to Hauraki iwi at Mahurangi my officials first sought your views in 2013 when you were provided with the Crown offer to Marutūāhu iwi for collective redress for comment. I am advised there was a series of correspondence at this time with the Office of Treaty Settlements (OTS) and the Chief Crown Negotiator and a meeting with the Chief Crown Negotiator. As a result of this engagement the Crown considered the concerns of Ngātiwai to be addressed.*

*On 1 April 2014 you wrote to me contesting Haruaki iwi redress north of Takatu Point. You also noted in your letter of 3 November 2016 to OTS the Ngātiwai Trust Board did not oppose statutory acknowledgements in principle provided the Hauraki iwi were able to demonstrate interests in the Mahurangi area. You appear now to oppose all redress to Hauraki iwi at Mahurangi.*

*The redress still subject to overlapping claims being addressed to the Crown's satisfaction at or near Mahurangi is offers of redress properties to Ngaati Whanaunga at Ōrewa, of which you have been informed, and protocol redress for Ngāti Maru, Ngāti Paoa, Ngaati Whanaunga, Ngāti Tamatera, Te Patukirikiri and Ngai Tai ki Tāmaki. Should you wish for a tikanga-based resolution to overlapping claims in relation to this redress I encourage you to engage with these iwi to discuss the proposed redress before I make a final decision. However, I decline your request to withdraw redress offers to Haruaki iwi where I have already made final decisions.*

*As I have said before, the Crown does not claim to have the right to determine mana whenua or mana moana and an offer of redress should not be seen as a signal that the Crown is doing so. A redress offer is simply a recognition the Crown accepts a claimant group has a level of interest sufficient to warrant that redress.*

127. On 16 August 2017, the Minister made his final decision regarding Ngāti Whanaunga. On 25 August 2017, the Ngāti Whanaunga Deed of Settlement was initialled.
128. On 18 August 2017, Hon Christopher Finlayson sent a letter to the Trust Board (**attached** and marked **Document 99** within Exhibit A) regarding the Ngāti Whanaunga overlapping claims. The Minister noted that the redress items Ngātiwai objected to at Ōrewa in the southern Mahurangi area were outside Ngātiwai's area of interest. On this basis, the Crown position was that there were no overlapping claims left to consider between Ngātiwai and Ngāti Whanaunga and that Ngāti Whanaunga have customary interests in this area warranting the provision of redress. A final decision was therefore made to maintain the Crown's offer to Ngāti Whanaunga (except in relation to the proposed protocols area).
129. On 22 August 2017, the Trust Board responded to Hon Christopher Finlayson's letter of 10 August 2017 (**attached** and marked **Document 100**



within Exhibit A). The Trust Board requested the Minister to handle Ngātiwai's interests sensitively and noted that Ngātiwai is open to redress being offered to Hauraki iwi, but only to the extent that such redress is consistent with Hauraki interests and does not undermine Ngātiwai's mana whenua. The Trust Board urgently requested the Minister (with the assistance of the Minister for Māori Development) to proactively facilitate engagement between representatives from Ngātiwai, Hauraki iwi and the Crown.

130. On 6 October 2017, Leigh McNicholl (OTS) sent a letter to the Trust Board (**attached** and marked **Document 101** within Exhibit A) providing an update on the overlapping claims process for the proposed Taonga Tūturu and Primary Industries protocol areas for Hauraki iwi.
131. On 10 October 2017, the Trust Board sent a letter to the (then) Prime Minister, Rt Hon Bill English (**attached** and marked **Document 102** within Exhibit A). The Trust Board listed its specific concerns regarding the manner in which the Crown was approaching overlapping claims. The Trust Board sought the Prime Minister's urgent intervention to proactively facilitate engagement between representatives of Ngātiwai, Hauraki iwi and the Crown.
132. On 17 October 2017, Hon Christopher Finlayson responded to the Trust Board's letters of 22 August and 10 October (**attached** and marked **Document 103** within Exhibit A) regarding settlements with Hauraki iwi. The Minister noted the Crown's availability to attend discussions regarding claimant group boundaries and predominance but noted that the Crown can only settle the claims of the group with which it is negotiating. The Minister stated that in instances where agreement on redress cannot be reached between overlapping groups, the Crown may have to make a decision on what redress is offered. The Minister considered that the Crown's engagement with Ngātiwai had been robust and thorough and that the settlement redress proposed to Hauraki iwi does not hinder the Crown's ability to provide appropriate redress to Ngātiwai in settlement of their claims in the future.
133. On 8 November 2017, Tessa Buchanan (OTS) sent a letter to the Trust Board (**attached** and marked **Document 104** within Exhibit A) regarding

overlapping claims with Hako. OTS indicated that the Hako negotiators would be in touch to arrange a discussion within the next week. OTS informed the Trust Board that the Hako negotiation team had been working through matters that prevented Hako settlement negotiations from progressing further and had now reached a stage where they were working towards initialling a Deed of Settlement. OTS stated that they would be seeking preliminary decisions from the Minister for Treaty Negotiations regarding the proposed redress for Hako, and welcomed any additional feedback to be submitted by 20 November 2017.

134. On 16 November 2017, John Linstead (Hako) sent an email to me (**attached** and marked **Document 105** within Exhibit A) regarding an overlapping claims hui between Ngātiwai and Ngāti Hako. I asked whether Hako had any indication of timeframes they were working towards, and whether there was a commitment from Hako to have more than a single meeting if this should be required. John stated that the Crown was pushing to complete the Hako overlapping claims as soon as possible, and that Hako were happy to meet more than once if necessary.

## **2018 – Dealings between the Trust Board and the Crown**

### *Preliminary Harbour Negotiations Initiated*

135. On 7 March 2018, Leah Campbell (OTS) sent a letter to the Trust Board (**attached** and marked **Document 106** within Exhibit A) regarding a hui to discuss how to approach harbour negotiations. OTS requested views on how negotiations that relate to the Ngātiwai area of interest could be configured, including timing, whether it was preferable for negotiations over each harbour to be conducted together or discretely, and the geographical area which negotiations would cover. It was proposed that the hui take place at 11am, 21 March at the Auckland Council Head Office.
136. On 21 March 2018, a meeting was held between Ngāti Rehua-Ngātiwai ki Aotea Trust, the Trust Board, Ngāti Manuhiri Settlement Trust representatives and OTS (**attached** and marked **Document 107** within Exhibit A) regarding preliminary discussion on harbour negotiations. Leah Campbell (OTS) stated that the main redress the Crown proposed to negotiate in harbour negotiations was likely to be co-governance. Leah

said that the Crown had a broad principle that it would not negotiate redress over claims that are also in litigation. In terms of determining who has interests, it was confirmed that the Crown would consider whether catchments are included in the scope of negotiations. Further discussion was had in relation to overlapping claims. It was noted that Ngātiwai was excluded from overlapping claims consultation and there was suggestion of a tikanga-based process to be put in place to resolve issues. OTS suggested that Ngātiwai write a letter to the Minister for Treaty Negotiations, and agreed to inform Crown Law of this position.

#### *Tikanga Based Discussions Initiated*

137. Between 23 March 2018 and 23 May 2018, emails were exchanged between me, Hauauru Rawiri (Ngāti Paoa) and Morehu Wilson (Ngāti Paoa) (**attached** and marked **Document 108** within Exhibit A) regarding the Ngāti Paoa Specific Overlapping Interests. Hauauru acknowledged that if Ngāti Paoa has interests that overlap with Ngātiwai then Ngāti Paoa would advocate for those interests; if Ngāti Paoa did not have interests, Ngāti Paoa would clearly state their position. Hauauru indicated that if there is concern over particular areas of overlapping interests, Ngāti Paoa were happy to meet and discuss. I responded by setting out my understanding of the overlapping claims issues that relate to the Ngāti Paoa settlement redress (including the protocol areas and the related statements of association), the concerns that relate to the Marutūāhu collective redress of which Ngāti Paoa is a party (including the specific vestings and the Coastal Statutory Acknowledgement), and the concerns that relate to the Hauraki collective redress of which Ngāti Paoa is also a party (including the Fisheries Quota RFR and RFR Area). I noted that it was the Trust Board's preference to discuss all of these matters directly with Ngāti Paoa through engagement hui consistent with tikanga. Hauauru responded that Ngāti Paoa were open to having the conversation and to get clarity on the overlapping interests of all of the redress.
138. On 3 April 2018, I responded to Hauauru's email of 28 March 2018 (**attached** and marked **Document 109** within Exhibit A) regarding Ngāti Paoa Specific Overlapping Interests. I noted that the Ngātiwai Treaty Claims Committee was not able to meet that morning due to a tangi and



other commitments. I asked Hauauru to propose dates to discuss overlapping claims and suggested a meeting for late April or early May at the Trust Board's office. Hauauru was happy with this approach and asked us to keep Ngāti Paoa informed.

139. Between 23 April 2018 and 24 April 2018, emails were exchanged between me and John Linstead (Hako) (**attached** and marked **Document 110** within Exhibit A) regarding Hako's overlapping claims. John indicated that Hako were happy to come up and meet Ngātiwai over this matter more than once (if required).
140. On 24 April 2018, Leah Campbell (OTS) sent a letter to the Trust Board (**attached** and marked **Document 111** within Exhibit A) regarding preliminary discussions on harbour negotiations. The letter provided responses to requests for information by Ngā Mana Whenua o Tāmaki Makaurau in the interests of transparency. The Minister for Treaty Negotiations did not consider that the Waitangi Tribunal urgency application prevented Ngātiwai's participation in harbour negotiations. Enclosed with the letter are:
- (a) Wai claim table relating to Manukau Harbour and the Hauraki Gulf Marine Park area;
  - (b) Record of the meeting held on 21 March 2018;
  - (c) Marine and Coastal Area (Takutai Moana) Act 2011 applications for Crown engagement and relevant maps; and
  - (d) Hauraki Gulf Marine Park map.
141. Between 26 April 2018 and 27 April 2018, emails were exchanged between the Trust Board, Leah Campbell (OTS), Lyndsay Stone (Ministry of Justice) and Tom White (Ministry of Justice) (**attached** and marked **Document 112** within Exhibit A) regarding the meeting on harbour negotiations. I acknowledged receipt of the documents that Leah sent me on 26 April 2018, but noted that the Trust Board's Crown engagement MACA application was not included in the maps provided, nor was the Trust Board's Waitangi Tribunal claim. In relation to the preliminary discussion on harbour negotiations, I requested that Ngātiwai be put into contact with

the rōpū responsible for work on the Crown response to the Wai 262 Tribunal Report.

142. On 30 April 2018, Leigh McNicoll (OTS) sent a letter to the Trust Board (**attached** and marked **Document 113** within Exhibit A) providing an update on the overlapping claims process for the proposed protocols areas for Hauraki iwi and responding to some of the materials raised in feedback to date. OTS stated that the Crown was still receiving and considering feedback from overlapping groups and further decisions from the Minister for Treaty Negotiations had not yet been sought. OTS stated that where no agreement can be reached, and in accordance with the Crown's overlapping claims policy, the Minister may be required to make a decision. OTS anticipated further decisions may be sought within the next month if objections remain unresolved between iwi.
143. On 15 May 2018, a hui was held between Hako and Ngātiwai at Whakapaumahara Marae in Whananaki. This hui was preliminary only with a view to continuing discussions if necessary at a further hui to be held on Aotea.
144. Between 16 May 2018 and 21 May 2018, emails were exchanged between me, Leah Campbell (Ministry of Justice), Ryan Bogardus (OTS) and Leigh McNicoll (Ministry of Justice) (**attached** and marked **Document 114** within Exhibit A) regarding the proposed protocol areas for Hauraki iwi overlapping with Ngātiwai. I was provided with a map of the proposed Ngāti Paoa Protocol Area (Ryan stated that he would provide a high quality version of the Fisheries Quota RFR Map and the Ngāti Paoa area of interest separately due to size). I noticed that the revised map was different to the original and asked whether there had been a deliberate change or whether this was an error. Leigh responded that the Minister for Treaty Negotiations made preliminary decisions in July 2017 in relation to the proposed protocol area for Ngāti Paoa, which resulted in revisions to the proposed area. Leigh also attached the letter dated 12 July from the Minister to Ngātiwai advising of his decision (**attached** and marked **Document 115** within Exhibit A). This was the first time I had seen the 12 July 2017 letter and have no record of having received it in July. Ryan also provided me with a map of the Ngāti Paoa area of interest. During this e-



mail exchange I advised OTS that the Board had not received the letter dated 12 July 2017 until this point.

145. On 23 May 2018, a hui was held with Ngāti Pāoa at Whakapaumahara Marae in Whananaki. This hui was preliminary only with a view to continuing discussions if necessary at a further hui to be held in the Mahurangi area. I provided a memorandum to all of the hui participants dated 21 May including Ngāti Paoa participants (**attached** and marked **Document 116** within Exhibit A) regarding the Ngāti Paoa overlapping claims and the disputed redress contained in the overlapping claims between Ngāti Paoa and Ngātiwai. The memorandum highlighted the Trust Board's key concerns of the redress that will have a damaging effect on Ngātiwai and its constituent hapū in the overlapping areas.
146. Between 22 May 2018 and 30 May 2018, emails were exchanged between me, Mook Hohneck (Ngāti Manuhiri) and Craig McWilliams (Ministry of Justice) (**attached** and marked **Document 117** within Exhibit A) regarding the preliminary discussions on the harbour negotiations. Representatives of relevant parties were also included in the email correspondence. Craig McWilliams (OTS) attempted to arrange for all representatives to meet in June in Auckland (I stated that it was likely that Ngātiwai would request a deferral of this hui and for it to be held up North). Mook Hohneck expressed that Ngāti Manuhiri didn't see any need to delay the hui or to travel north as he believed that the harbours were all within other iwi / hapū rohe and that the Trust Board, as a mandated iwi organisation, was not fit for purpose to talk to the kaupapa around Treaty Settlements and harbours. Mook suggested that the chair of Ngātiwai meet with him face to face. Mook suggested that Leah Campbell (OTS) continued ongoing kōrero with Ngāti Manuhiri and Ngāti Rehua.
147. On 31 May 2018, Barry Caldwell (Ngātiwai) sent an email to Josie Anderson and me (**attached** and marked **Document 118** within Exhibit A) attaching a video link from a recent a hui held with Hako. Barry informed Josie that the minutes were yet to be translated and transcribed, but would be distributed as soon as possible.
148. On 14 June 2018, the Trust Board sent a letter to Hon Andrew Little (**attached** and marked **Document 119** within Exhibit A) regarding a tikanga

process to resolve overlapping claims with Hauraki. The Trust Board reported that Ngātiwai, Ngāti Hako and Ngāti Paoa had met in May to commence a tikanga process for resolving overlapping claims and that it was agreed to have further hui. The Trust Board requested that the Minister take no further steps to finalise any of the relevant settlements to allow this tikanga process to run its course. Ngātiwai also reported that the Marutūāhu Collective, the Hauraki Collective, Ngāti Maru, Ngāti Tamaterā and Te Patukirikiri ignored the Trust Board's request to discuss overlapping claims (Ngāti Whanaunga agreed to meet with the Trust Board but had to postpone the meeting at the last minute).

149. On 20 June 2018, Hon Andrew Little sent a letter to the Trust Board regarding decisions on overlapping claims with Hako (**attached** and marked **Document 120** within Exhibit A). The Minister's preliminary decision was to *"maintain the offer of the statement of association to Hako subject to the removal of references to Aotea from the statement"*. The Minister stated that he would consider any additional information the Trust Board submits to his officials on the proposed statement of association by 6 July before he makes a final decision, if required.
150. Between 3 July 2018 and 23 July 2018, emails were exchanged between Hauauru Rawiri (Ngāti Paoa) and the Trust Board (**attached** and marked **Document 121** within Exhibit A) regarding the relationship between Ngāti Paoa and Ngātiwai and overlapping interests. We discussed the outcomes of the hui held on 23 May 2018, in particular, strengthening the relationship between both iwi by Ngāti Paoa sharing a copy of their Kawenata (Relationship Agreement) and collating a joint Kawenata. Additionally, development for a discussion framework was discussed.
151. Between 3 July 2018 and 23 July 2018, emails were exchanged between Hauauru Rawiri, the Trust Board and me (**attached** and marked **Document 122** within Exhibit A) regarding the relationship between Ngāti Paoa and Ngātiwai and overlapping interests. Haydn Edmonds and I agreed to meet in regards to finalising Ngātiwai's Kawenata.
152. On 6 July 2018, the Trust Board responded to Hon Andrew Little's letter of 20 June 2018 (**attached** and marked **Document 123** within Exhibit A) regarding the tikanga process required to resolve overlapping claims with

Hauraki. The Trust Board reiterated the matters raised in its letter of 14 June 2018 and requested that the Minister take no further steps to intervene in the agreed tikanga process for resolving overlapping claims.

153. On 26 July 2018, Hon Andrew Little responded to the Trust Board's letter of 14 June 2018 (**attached** and marked **Document 124** within Exhibit A) regarding the tikanga process required to resolve overlapping claims with Hauraki. The Crown considered it had taken reasonable steps to address the overlapping claims issues concerning the Marutūāhu collective redress. Since agreement between Ngātiwai and the Marutūāhu collective was not possible, the Minister made a final decision in November 2016. In a letter dated 13 July 2015, The Minister noted that the Trust Board was advised of the Crown's final decision on overlapping claims between Ngātiwai and the Hauraki collective. The Minister anticipated making a final decision on the Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā and Ngāti Whanaunga protocol areas and a preliminary decision on the Te Patukirikiri protocol areas shortly and would take the Trust Board's views into account. However, the Minister did not propose to re-consider final decisions that had already been made.
154. On 1 August 2018, the Trust Board sent a letter to the new Prime Minister, Hon Jacinda Ardern, (**attached** and marked **Document 125** within Exhibit A) regarding the Crown's treatment of the Hauraki settlements. The Trust Board urged the Prime Minister to stop the conflict between the iwi in the Hauraki settlement context escalating any further and to assist the Trust Board in resolving these matters.

#### *Fourth OIA Request*

155. Between 5 August 2018 and 28 September 2018, I sent two emails to Tipene Chrisp and then Leah Campbell from the Ministry of Justice (**attached** and marked **Document 126** within Exhibit A) regarding an OIA Request. The information requested related to "any reports/ advice papers/ briefings/ aid memoirs etc.," that provided the Minister for Treaty Negotiations with recommendations in respect of redress offered to iwi of the Marutūāhu confederation on Aotea and its surrounding islets. The email dated 28 September 2018 noted that my previous request of 5 August had not included a report that was noted in the response we



received on 22 November 2016. After further discussion with OTS and their feedback that the particular document I had requested did not contain any relevant information my request was then refined to include:

- (a) any documents concerning redress on Aotea subsequent to the ones we had already received and
  - (b) any documents concerning the inclusion or exclusion of Ngātiwai Trust Board in settlement negotiations related to Aotea that we had not already received.
156. On 5 September 2018, Hon Andrew Little responded to the Trust Board's letters of 14 June and 6 July 2018 (**attached** and marked **Document 127** within Exhibit A) regarding the tikanga-based discussions with Hako. The Minister stated that his preliminary overlapping claims decision regarding the Hako statement of association does not prevent the continuation of Ngātiwai tikanga-based discussions with Hako and encouraged the iwi to work together to reach agreement if possible.
157. On 5 September 2018, Hon Andrew Little responded to our letter of 1 August 2018 to the Prime Minister (**attached** and marked **Document 128** within Exhibit A) regarding Ngātiwai concerns in relation to the Hauraki settlements. The Minister reminded the Trust Board that he is open to further discussions on the Marutūāhu deed matters between iwi through an iwi led tikanga-based process. The Minister concluded that while the initialling/ signing of deeds is a significant step, it is not the conclusion as settlement legislation still needs to be past to implement the deeds and that no decision had been made regarding the introduction of settlement legislation.
158. On 24 October 2018, Hon Andrew Little sent a letter to Mook Hohneck (Ngāti Manuhiri) and the Trust Board (**attached** and marked **Document 129** within Exhibit A) regarding the structure of harbour negotiations. The Minister provided his initial view: that *"there should be a single negotiation for the Hauraki Gulf, including Waitematā Harbour"*. The Minister noted that this approach could still provide for the negotiation of area-specific arrangements to recognise particular iwi or hapū interests. The Minister asked officials to arrange a hui with iwi/ hapū representatives with interests

in the Hauraki Gulf to discuss his initial view and asked for the Trust Board's written feedback by 10 December 2018 (following the hui).

*Fifth OIA Response*

159. On 1 November 2018, I received the Crown's response to my requests dated 5 August and 28 September 2018 and further refinement of those requests (**attached** and marked **Document 130** within Exhibit A) containing a letter and accompanying documents in relation to my request. The accompanying documents (**attached** and marked **Document 131** within Exhibit A) contained:

- (a) A Ministerial advice paper entitled "*Ngāti Rehua-Ngatiwai ki Aotea: Preliminary overlapping claims decisions and Ngatiwai ministerial correspondence*" dated 16 September 2016. This document is redacted except for the following paragraphs:

*"39. Ngātiwai opposed redress offered to Marutūāhu iwi on Aotea in 2014. However OTS did not conduct a separate overlapping claims process with Ngātiwai because, at that time, we considered its interests were represented through Ngāti Rehua as the kaitiaki and resident group on Aotea.*

*40. OTS asked Ngātiwai to outline any separate interests on Aotea but it did not respond to this request. Accordingly we encouraged Ngātiwai to continue to engage with Ngāti Rehua.*

*41. Recently Ngātiwai informed OTS it has separate interests from Ngāti Rehua and should have been consulted as an overlapping group. We are currently seeking views from Ngātiwai in the individual Marutūāhu offers on Aotea."*

- (b) A Ministerial advice paper entitled "*Hauraki negotiations: Preliminary overlapping claims decision regarding Marutūāhu iwi redress on Aotea*" dated 7 October 2016. This document is largely redacted and discusses the overlapping claims process between Ngāti Maru, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri (Marutūāhu iwi) and Ngātiwai on Aotea. It confirms:



- (i) at paragraph 3, that overlapping claims with Ngāti Rehua were closed in 2014<sup>4</sup>, at paragraph 5, that officials considered Ngāti Rehua represented the Ngātiwai interests on Aotea and OTS therefore did not conduct a separate overlapping claims process with Ngātiwai in 2014;
  - (ii) at paragraph 7, that OTS disclosed the Marutūāhu iwi redress to Ngātiwai on 22 August 2016. (I note that this was approximately two years later); and
  - (iii) at paragraph 24, that Ngātiwai did not object to the inclusion of Aotea in the Marutūāhu collective coastal statutory acknowledgement or the offer to explore RFR redress with the Marutūāhu collective on Aotea. (However, Ngātiwai did request information on the nature and extent of Marutūāhu interests in the Hauraki Gulf and to what extent any exclusivity was sought with respect to any redress. At this time Ngātiwai had no information about any redress that the Crown was looking to explore with Marutūāhu iwi on Aotea and therefore were not in a position to respond).
- (c) A Ministerial advice paper entitled “Hauraki negotiations: Final overlapping claims decision regarding Marutūāhu iwi redress on Aotea” dated 10 November 2016. This document is largely redacted. It sets out further background to the overlapping claims process and engagement between Ngātiwai and Marutūāhu iwi. It confirms:
- (i) at paragraph 4, an advice paper (OTS report 2014/2015-008) was provided to the Minister recording that as a result of receiving no further objection from Ngātiwai to the Marutūāhu collective redress that no decision was required. Despite the Trust Board’s OIA requests as exhibited to this affidavit, this advice paper has never been disclosed to the Trust Board yet it would appear to contain important

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<sup>4</sup> See paragraph 44 (c) above which confirms that final decisions were made on 31 July 2014.

information about the Crown's views on overlapping claims under consideration in 2014/15. Had this information been provided by the Crown, it may have helped the Board to understand why it was being excluded from the overlapping claims process;

- (ii) at paragraph 7:

*"In our correspondence with Ngātiwai in 2014 Ngātiwai did not accept Ngāti Rehua represented their interests on Aotea. However, officials advised we had not received information which would make it appropriate to deal with Ngātiwai as well as Ngāti Rehua, and asked Ngātiwai to outline their separate interests. Subsequently, in 2016, Ngātiwai advised they will pursue redress on Aotea based on separate lines of descent, and have named two tupuna from whom they consider they derive separate interests."*

- (iii) at paragraph 10, it notes that the Marutūāhu iwi met with Ngātiwai in 2013. I am not aware of any meeting taking place between Marutūāhu "iwi" and Ngātiwai in 2013 in relation to the redress which is the focus of this advice paper. There could not have been a meeting in 2013 about the Marutūāhu iwi redress on Aotea as proposals had not yet been formulated. There was one meeting between Ngātiwai representatives, Michael Dreaver (CNN) and Paul Majurey (Marutūāhu collective negotiator) on 31 October 2013 (see paragraph 36 above) however this was in relation to the Marutūāhu collective Record off Agreement. No meetings have ever taken place between any of the Marutūāhu iwi and Ngātiwai in relation to the redress which is the focus of this advice paper to the Minister; and

- (iv) at paragraph 20, that only Ngāti Tamaterā (two sites) and Ngāti Maru (one site) are offered any exclusive cultural vesting redress, totalling 40 ha. Commercial redress of an RFR to Ngāti Whanaunga over 0.2 ha of local purpose reserve and a shared RFR over public conservation land.

- (d) An Aid Memoire for the Minister dated 29 November 2016, briefing Hon Christopher Finlayson in advance of a meeting between the Minister and Dr. Shane Reti to discuss the state of negotiations in relation to Hauraki iwi.
160. On Tuesday 6 November 2018, an email was sent by Tania Cameron (OTS) (attached and marked **Document 132** within Exhibit A) in regard to organising a hui to discuss the harbour negotiations.
161. On 22 November 2018, the Trust Board sent a letter to Hon Andrew Little (**attached** and marked **Document 133** within Exhibit A) entitled '*Request for Confirmation that the Hauraki Settlements are Paused*'. The Trust Board requested confirmation from Hon Andrew Little that the Hauraki Settlements be put on hold pending the Tribunal's inquiry and report as a result of the six applications being granted urgency from the Waitangi Tribunal on 9 November 2018.
162. On 27 November 2018, I received an email from Tania Cameron (OTS) regarding the hui to discuss the structure of harbours negotiations. On the same day I responded with a proposed meeting location and confirmed attendance. On 28 November 2018, I replied to Tania confirming the hui to be held at 2:30pm on Thursday 6 December 2018. A copy of the email correspondence is **attached** and marked **Document 134** within Exhibit A.
163. Between 30 November and 6 December, emails were exchanged between me, Tania Cameron (OTS), Mook Hohneck (Ngāti Manuhiri), Hayden Edmonds (Ngātiwai), Leah Campbell (Ministry of Justice) and Leigh McNicholl (Ministry of Justice) (**attached** and marked **Document 135** within Exhibit A) regarding the hui details for the structure of harbours negotiations discussions. On 3 December 2018, Tania Cameron further responded with a message that Mook Hohneck would like to meet elsewhere on 17 December 2018. Leah Campbell advised that the hui will need to be held on a date in the new year due to a clash with OTS commitments.
164. On 21 December 2018, Hon Andrew Little responded to the Trust Board's letter dated 22 November 2018, advising that the Crown had advised the Tribunal panel inquiring into 6 claims in relation to Hauraki settlements that



the Crown does not intend to introduce Hauraki settlement legislation while the Tribunal's inquiry is ongoing. A copy of this letter is **attached** and marked **Document 136** within Exhibit A.

## Conclusion

165. The Crown's approach to dealing with the overlapping claims included in the Hauraki Settlements (as detailed above) has been difficult, complex and frustrating, as follows:

### *Multi-layered process with no overall visibility*

- (a) The multi-layered approach to settlements with Hauraki iwi (i.e. two collectives and then individual iwi settlements) without any information from the Crown on the overall timeframe for resolution of all settlements, means that I have had no visibility of the overall process. The Trust Board has therefore been requested to provide *ad hoc* feedback to proposed settlements that are progressing at different times. This has made it very difficult to monitor and track progress to ensure the Trust Board's position is provided at the appropriate times and prior to key decisions being made by the Crown;

### *Unequal Treatment – Exclusion from the Process*

- (b) The Crown initially engaged with the Trust Board in 2013 regarding redress it proposed to offer to the Marutūāhu Collective on Aotea and the mainland at Mahurangi. Between 2014 to mid-2016, the Crown provided no information to the Trust Board regarding redress being offered to Marutūāhu on Aotea despite separately undertaking an overlapping claims process that involved Marutūāhu and hapū of Ngātiwai (Ngāti Rehua-Ngāti wai ki Aotea);

### *Late engagement with the Trust Board*

- (c) In relation to the Hauraki collective, there was no engagement with the Trust Board until after the Hauraki Collective Deed of Settlement was initialled on 22 December 2016;

- (d) In relation to Ngāi Tai ki Tamaki, the Trust Board was not consulted until after the Ngāi Tai ki Tamaki deed of settlement was signed. We also have not received a request for feedback in relation to the taonga tuturu protocol. Ngāi Tai ki Tamaki's settlement legislation has now been enacted (Ngāi Tai ki Tāmaki Claims Settlement Act 2018); and
- (e) In relation to the Marutūāhu Collective, we were not consulted in relation to Aotea until after the Crown had completed an overlapping claims process that only included Marutūāhu and Ngāti Rehua – Ngātiwai ki Aotea. The Marutūāhu Collective deed of settlement was initialled on 27 July 2018;

*Crown failure to appropriately facilitate inter-iwi engagement*

- (f) Despite encouraging overlapping iwi to engage directly with each other, the Crown has not taken any proactive steps to ensure inter-iwi engagement takes place so that overlapping claims issues can be resolved in a tikanga Māori way.

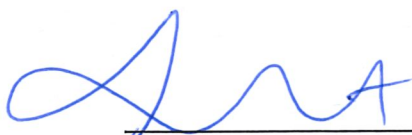
*Damaged wanaungatanga relationships*

- (g) The Crown's approach to settling with Ngāti Rehua and Ngāti Manuhiuri as part of the Tamaki Makaurau settlements has resulted in damaged relationships within Ngātiwai and between Ngātiwai and Hauraki Iwi.

*Crown failure to take account of iwi circumstances*

- (h) The Crown has imposed tight timeframes on the Trust Board to provide written responses without regard to the multiple overlapping settlements or the Trust Board's own priorities to manage its mandate, terms of negotiations and then urgent hearings process.

SWORN at Whangarei this )  
18<sup>th</sup> day of February 2019 )  
 before me: )



ATH-102021-1-585-V13



**Tania McPherson**

Avala Knight  
 Deputy Registrar  
 High/District Court  
 Whangarei



A Solicitor of the High Court of New Zealand