BEFORE 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.

AMENDED STATEMENT OF CLAIM

20 DECEMBER 2018

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AMENDED STATEMENT OF CLAIM

THE CLAIM

1. This amended statement of claim is filed by Haydn Thomas Edmonds on behalf of Ngātiwai Trust Board (the **Trust Board**) and the iwi of Ngātiwai (**Ngātiwai**) pursuant to sections 6(1)(c) and 6(1)(d) of the Treaty of Waitangi Act 1975.

2. The Trust Board was incorporated on 22 November 1966 as a charitable trust under the Charitable Trusts Act 1957 with the purpose of addressing the collective needs of Ngātiwai.

3. The Trust Board is comprised of fourteen (14) trustees representing those affiliated marae in the Ngātiwai Rohe. Ngātiwai includes the many related hapū, whānau and individuals affiliated to the kāinga and marae of Ngātiwai. The hapū of Ngātiwai include Ngare Raumati, Ngāti Tautahi, Te Uri o Hikihiki, Te Whānau Whero-mata-mamoe, Te Aki Tai, Te Kainga Kuri, Ngāti Toki ki-te-moana, Te Whānau o Rangiwhaakahu, Ngāti Takapari, Ngāti Kororā, Te Waiariki, Te Patuharakeke, Ngāti Manuhiri and Ngāti Rehua.

4. Ngātiwai is unified in descent from Maui-Tikitiki, Toi te Huatahi, and Ngāti Manaia. The tribal name Ngātiwai applies collectively to all hapū who share descent from Manaia, Manaia II and ngā kōpikopikotanga maha o Ngātiwai.

Background – Crown approach to Ngātiwai settlements

5. In 2009, the Crown presented settlement proposals which would involve the settlement of claims with claimant groups in Tāmaki Makaurau, Kaipara, and Hauraki. Two hapū of Ngātiwai, Ngāti Manuhiri and Ngāti Rehua, were included in the Tāmaki proposals.

6. In response to the Crown proposal, the Trust Board proposed to the Crown that the Treaty claims of all Ngātiwai hapū be settled together rather than separate out the two Ngātiwai hapū in Tāmaki.

7. The Crown did not adopt the Trust Board's proposal and implemented a two phase approach to Ngātiwai, as follows:

(a) first, the Crown would complete settlements with two Ngātiwai hapū, Ngāti Rehua and Ngāti Manuhiri as they were within the Tāmaki Makaurau area; and

(b) second, the Crown proposed to negotiate a comprehensive settlement of Ngātiwai's remaining Treaty claims at the same time that it dealt with Ngāpuhi's Treaty claims.

8. In 2009, the Crown recognised mandates for the Ngāti Manuhiri Settlement Trust and the Ngāti Rehua-Ngātiwai ki Aotea Trust. The later mandate contained a claimant definition that comprises descendants of Rehua and two Ngātiwai tūpuna, Te Awe and Ranganui.

9. Unlike the Ngāti Manuhiri mandate, the Ngāti Rehua-Ngātiwai ki Aotea mandate, by claimant definition, does not represent the interests of Ngāti Rehua as a discrete hapu because of the additional Ngātiwai tūpuna who are included. The Ngāti Rehua-Ngātiwai ki Aotea claimant definition does not include all descendants of Ngātiwai tūpuna including Haua, the eldest son of Te Rangihokaia, and his descendants Te Kowhai, Tuatai, Kau Te Awha and Taukokopu who have customary rights and interests on Aotea (**Haua Descendants**).

10. Haua Descendants are included within the Ngātiwai Trust Board's mandate for a comprehensive settlement of all remaining historical Treaty of Waitangi claims. This means that in terms of Aotea, there are Ngātiwai tribal interests that are not represented by Ngāti Rehua-Ngātiwai ki Aotea. The Trust is the only entity with a mandate to represent those interests on Aotea.

11. In 2012, the Crown completed a settlement with Ngāti Manuhiri.

12. In October 2015, the Trust Board's mandate for negotiations was recognised by the Crown and in May 2016, the Waitangi Tribunal had determined to hold an urgent hearing concerning the Trust Board's mandate (see Tribunal report in 2017 (Wai 2561)).

13. In April 2016, the Crown initiated an overlapping claims process between the Trust Board and the Ngāti Rehua-Ngātiwai ki Aotea Trust but this process failed to resolve overlapping claims and in particular claimant definition issues.

14. In December 2016, the Crown initialled a Deed of Settlement with Ngāti Rehua-Ngātiwai ki Aotea.

15. The Crown's policy and approach to settlement of Ngāti Manuhiri and Ngāti Rehua-Ngātiwai ki Aotea claims in the southern end of the Ngātiwai Rohe separately from the remainder of the Ngātiwai claims has resulted in:

    (a) the Trust Board being excluded from consultation in relation to overlapping claims with Hauraki;

    (b) damaged relationships within Ngātiwai; and

    (c) the Trust Board having no visibility of the progress and timeframes for the Hauraki settlements.

NGĀTIWAI CUSTOMARY RIGHTS AND INTERESTS

16. The Ngātiwai Rohe or area of interest extends from Tapeka Point in the Bay of Islands to Matakanakana in Mahurangi and encompasses the eastern seaboard and all off-shore islands, including, but not limited to, Tawhiti Rahi and Aorangi (Poor Knights), Taranga and Marotere (Hen and Chickens Islands), Aotea (Great Barrier Island) and Hauturu (Little Barrier Island) (the **Ngātiwai Rohe**). A map showing the Ngātiwai Rohe is **attached** to this Amended Statement of Claim.

17. Since prior to 1840, Ngātiwai has exercised, and continues to exercise, ahi kā, mana whenua, mana moana, rangatiratanga and kaitiakitanga within the Ngātiwai Rohe.

18. The Māori Land Court made the following orders in *John Da Silva v Aotea Māori Committee & Hauraki Māori Trust Board*[1] (the ***Da Silva* Decision**) recognising the customary interests of Ngāti Rehua and Ngātiwai ki Aotea (hapū of Ngāti Wai) in Aotea:

> *(a) Pursuant to s. 131/93 (formerly under s. 161/53 in the application by John da Silva), the Court determines the status of all the islands and rock outcrops in the environs of Aotea to which title has not previously been determined, to be Māori customary land.*

[1] *John Da Silva v Aotea Māori Committee & Hauraki Māori Trust Board* 23/2/1998, 25 Tai Tokerau MB 212.

(b) Pursuant to s.132/93, the Court determines the owners of the islands and rock outcrops in (a) above to be Ngāti Rehua, to hold the same as kaitiaki for themselves and, in accordance with the tikanga of whanaungatanga, for Ngāti Wai ki Aotea and Marutūāhu ki Aotea.

CROWN POLICY, ACTS AND OMISSIONS

19. This claim concerns the application of the Crown's policies and related acts and omissions concerning:

(a) **Overlapping Claims Process**: the treatment of overlapping claims and related redress in the context of Treaty settlement negotiations and in particular, the policies, process and actions of the Crown in relation to overlapping claims for settlements relating to the collective and individual iwi of Hauraki (the **Overlapping Claims Process**);

(b) **Pare Hauraki Collective Redress Deed**: the process followed, and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide to the Hauraki Collective the following redress included in the Pare Hauraki Collective Redress Deed signed on 2 August 2018 (the **Hauraki Collective Deed**):

Cultural Redress

(i) the official name change of Aotea from "Great Barrier Island (Aotea)" to "Aotea / Great Barrier" (**Aotea Name Change Redress**); and

(ii) a right of first refusal to purchase certain quota as set out in a fisheries right of first refusal deed in relation to an area that specifies a boundary point within the Ngātiwai Rohe (the **Hauraki Collective Fisheries RFR**); and

(iii) a Statement of Pare Hauraki World View that specifies the term 'mai Matakana ki Matakana' and includes reference to Mahurangi and motu within the Ngatiwai Rohe;

(iv) Protocols between each iwi of Hauraki and the Ministry of Primary Industries which will require the Ministry to have particular regard to the "Pare Hauraki World View "

(c) **Marutūāhu Collective Redress Deed**: the process followed and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide redress to the collective of Marutūāhu which is included in the Marutūāhu Collective Redress Deed initialled on 27 July 2018 (the **Marutūāhu Collective Deed**):

Cultural Redress

(i) the following exclusive redress:

- fee simple estate in the Moutohora property (**Motuora**) (as shown on deed plan OTS-403-09), currently being part Motuora Island Recreation Reserve;
- fee simple estate in the Marutūāhu property (**Mahurangi**), currently being part Mahurangi Scenic Reserve (as shown on deed plan OTS-403-08); and
- fee simple estate in Te Kawau Tu Maro property (**Kawau**) being part Kawau Island Historic Reserve (as shown on deed plan OTS-403-18);

(ii) a Statement of Association to an area that includes Mahurangi, Orewa, Pakiri and Te Tii; and

(iii) a Coastal Statutory Acknowledgement (as shown on deed plan OTS-403-01) in relation to the coastal area from Te Arai Point east to Aotea (Great Barrier Island);

(d) **Ngāti Paoa Deed of Settlement:** the process followed and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide the following redress to Ngāti Paoa included in the Ngāti Paoa Deed of Settlement initialled on 18 August 2017 (**Ngāti Paoa Deed of Settlement**):

Cultural Redress:

(i) acknowledgements that:

- Ngāti Paoa regional boundaries are traditionally recorded as “Mai Matakana ki Matakana” (Matakana at Tauranga Moana to Matakana at Mahurangi);

- Ngāti Paoa has interests at Mahurangi and Omaha;

(ii) a Statement of Association to an area that includes Mahurangi and Motuora island; and

(iii) protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe, which purport that Ngāti Paoa’s interests in the protocol area derive from its status as tangata whenua;

(e) **Ngāti Whanaunga Deed of Settlement:** the process followed and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide the following redress to Ngāti Whanaunga included in the Ngāti Whanaunga Deed of Settlement initialled on 25 August 2017 (**Ngāti Whanaunga Deed of Settlement**):

Cultural Redress:

(i) acknowledgements that Ngāti Whanaunga has interests at Mahurangi, Omaha and Aotea;

(ii) fee simple estate in Te Tumu o Waimai (also described as 2 Riverside Road, Orewa);

(iii) deferred selection properties at 27 Otanerua Road, Hatfields Beach and 29 Otanerua Road, Hatfields Beach;

(iv) protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe;

(v) coastal statement of association which includes the coastal marine area within the Ngātiwai Rohe;

Commercial Redress:

(i) exclusive right of first refusal over the Tryphena Hall Local Purpose (Site for Community Buildings) Reserve; and

(f) **Ngāti Maru Deed of Settlement:** the process followed and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide the following redress to Ngāti Maru included in the Ngāti Maru Deed of Settlement initialled on 8 September 2017 (**Ngāti Maru Deed of Settlement**):

Cultural Redress

(i) acknowledgements that:

- "the Rohe of Ngāti Maru encompasses the area mai Nga Kuri a Wharei ki Mahurangi or mai Matakana ki Matakana";
- land was not reserved by the Crown for Ngāti Maru on Aotea and that the Crown took "Ngāti Maru lands, including lands on Aotea";
- Ngāti Maru has interests at Mahurangi and Omaha;

(ii) exclusive redress being fee simple estate in the Ruahine Scenic Reserve or property (as shown on deed plan OTS-403-341),

(iii) Statement of Association, Statutory Acknowledgement and Deed of Recognition in relation to the Whangapoua Conservation Area (part Aotea Conservation Park) as shown on the deed plan OTS-403-340; and

(iv) protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe which purport that Ngāti Maru's interests in the protocol area derive from its status as tangata whenua;

Commercial Redress

(i) shared rights of first refusal (shared with Ngāti Tamaterā and Te Patukirikiri) to the following properties on Aotea:

- Harataonga Scenic Reserve of 264.4292 hectares;

- Komahunga conservation area (part Aotea Conservation Park) of 7.6760 hectares;
- Medlands Wildlife Management Reserve of 4.1520 and 5.63222 hectares;
- Okupu conservation area (part Aotea Conservation Park of 14.6016 hectares;
- Oruawharo Creek Recreation Reserve of 0.4935 and 0.1141 hectares;
- Oruawharo Creek Government Purpose Reserve of 1.3680, 3.6779 and 1.1170 hectares;
- Oruawharo Marginal strip of 25.0 and 2 hectares;
- Pa Point Recreation Reserve of 2.6450 hectares;
- Rosalie Bay Marginal Strip of 2.0 hectares;
- Ruahine North conservation area (part Aotea Conservation Park) of 26.2 hectares;
- Ruahine South conservation area (part Aotea Conservation Park) of 26.2 hectares;
- Sandy Bay Marginal Strip of 0.8 hectares;
- Shoal Bay conservation area (part Aotea Conservation Park) of 0.2093 hectares;
- Te Atamira Scenic Reserve of 0.8093 hectares;
- Tryphena Scenic Reserve; and
- Wairahi forest sanctuary (part Aotea Conservation Park) of 477.1600 hectares);

(the **Aotea RFR Properties**);

(g) **Ngāti Tamaterā Deed of Settlement**: the process followed and decisions made by, or on behalf of, the Crown that has resulted in the

Crown agreeing to provide the following redress to Ngāti Tamaterā included within the Ngāti Tamaterā Deed of Settlement initialled on 20 September 2017:

Cultural Redress

(a) acknowledgements that Ngāti Tamaterā has interests at Mahurangi, Omaha and Aotea;

(b) exclusive redress, being the:

- fee simple estate in Rangitāwhiri, being part of Aotea Conservation Park, as a recreation reserve named Rangitawhiri Reserve (previously described as Tryphena North Conservation Area); and
- fee simple estate in Te Rohu, being Hilltop Recreational Reserve, as a recreation reserve named Te Rohu Reserve (previously described as Hilltop Recreation Reserve) of approximately 16.3 hectares;

(c) Statement of Association, Statutory Acknowledgement and Deed of Recognition in relation to the Whangapoua Conservation Area (Part Aotea Conservation Park) as shown on deed plan OTS-403-70);

(d) protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe which purport that Ngāti Tamaterā's interests in the protocol area derive from its status as tangata whenua;

Commercial Redress:

(e) shared rights of first refusal in the Aotea RFR Properties; and

(h) **Te Patukirikiri Deed of Settlement:** the process followed and decisions made by, or on behalf of, the Crown that has resulted in the Crown agreeing to provide commercial redress in the form of shared rights of first refusal in the Aotea RFR Properties to Te Patukirikiri,

which is included in the Te Patukirikiri deed of settlement initialled on 8 September 2017 (**Te Patukirikiri Deed of Settlement**):

20. The Trust Board has raised its concerns regarding the issues set out at paragraph 19 above (the **Proposed Hauraki Redress**) with the Crown but the Crown has failed to satisfactorily resolve those issues to date.

21. Other iwi groups have also raised concerns of a similar nature regarding the Crown's Treaty settlement policy in relation to overlapping claims and related redress in the context of the Hauraki settlement negotiations, including:

    (a) the issues raised in the Statement of Claim dated 14 March 2017 filed by Charlie Tawhiao on behalf of the Ngāi Te Rangi Settlement Trust (WAI 2616);

    (b) the issues raised in the Statement of Claim dated 27 March 2017 filed by Te Ariki Morehu on behalf of Te Pukenga Koeke o Te Arawa (WAI 2617);

    (c) the issues raised in the Statement of Claim dated 31 March 2017 filed by Stanley Rahui Papa on behalf of Te Whakakitenga o Waikato Incorporated (WAI 2653);

    (d) the issues raised in the Statement of Claim dated 3 April 2017 filed by Deane Elliot Adams on behalf of Ngāti Huarere ki Whangapoua (WAI 2652);

    (e) the issues raised in the Statement of Claim dated 3 July 2017 filed by Maatai Ariki R Kauae Te Toki on behalf of Hako I Te Rangi Te Pūpū o Hauraki (WAI 2664);

    (f) the issues raised in the Statement of Claim dated 18 July 2017 filed by Patrick Nicholas on behalf of himself (WAI 2665);

    (g) the issues raised in the Statement of Claim dated 11 August 2017 filed by Teresa Lynette Turner on behalf of herself and as a member of the Ngāti Rāhiri Tumutumu iwi (WAI 2667);

(h) the issues raised in the Statement of Claim dated 14 September 2017 filed by Terrence Leslie (Mook) Hohneck on behalf of the Ngāti Manuhiri Settlement Trust (WAI 2678);

(i) the issues raised in the Statement of Claim dated 11 October 2017 filed by Huhana Lyndon and others on behalf of Ngāti Rehua, Ngātiwai and Ngāpuhi whānau (WAI 2677);

(j) the issues raised in the Statement of Claim dated 2 May 2018 filed by Riki Hona, Roimata Nicholas and Patrick Nicholas on behalf of Ngāti Ranginui and Waitaha (Ngāti Ranginui) of the Te Puna Katikati area (WAI 2730);

(k) the issues raised in the Statement of Claim dated 23 May 2018 filed by Morehu McDonald and Hinengaru Thompson Rauwhero personally and on behalf of Ngā Hapū o Ngāti Hinerangi and Ngāti Hinerangi Wai Claimants (WAI 2733);

(l) the issues raised in the Statement of Caim dated 6 June 2018 filed by Tame Kuka, Chrissie Rolleston and Mark Nicholas on behalf of Pirirakau Hapū (WAI 2755);

(m) the issues raised in the Statement of Claim dated 3 July 2018 filed by John Tamihere on behalf of Te Rūnanga o Ngāti Porou ki Hauraki (WAI 2735);

(n) the issues raised in the Statement of Claim dated 3 August 2018 filed by Patrick Nicholas (claim #2) (WAI 2753); and

(o) the issues raised in the Statement of Claim dated 10 August 2018 filed by Ronald Te Pio Kawe on behalf of Ngā Hapū o Ngāti Ranginui Settlement Trust and Ngā Hapū o Ngāti Ranginui (WAI 2754).

22. If the Proposed Hauraki Redress is incorporated into, or not removed from:

(a) the Hauraki Collective Deed,

(b) the Marutūāhu Collective Deed,

(c) the Ngāti Paoa Deed of Settlement,

(d) the Ngāti Whanaunga Deed of Settlement,

(e) the Ngāti Maru Deed of Settlement,

(f) the Ngāti Tamaterā Deed of Settlement; and

(g) the Te Patukirikiri Deed of Settlement

and is given legal effect through settlement legislation, the rights and interests of the Trust Board and Ngātiwai will be significantly and irreversibly prejudiced.

PRINCIPLES OF THE TREATY OF WAITANGI

23. The relevant principles of the Treaty include:

(a) **Partnership:** The Crown and Māori, being Treaty partners, must act reasonably and in good faith towards each other;

(b) **Active Protection:** The Crown has a duty to actively protect the interests of Māori specified in the Treaty. To this end, in its decision making processes regarding settlement redress, the Crown must act:

(i) proactively and on a fully informed basis;

(ii) in accordance with tikanga;

(iii) with appropriate acknowledgement of the customary interests and mana whenua / mana moana of relevant iwi; and

(iv) in a manner that does not erode the customary interests and mana whenua of relevant iwi.

(c) **Reciprocity:** The Crown must respect tino rangatiratanga and tikanga in exercising kāwanatanga and this should be reflected in its decision making.

(d) **Equity and impartiality**: The Crown has a duty to act fairly and impartially towards iwi. This principle means, the Crown:

(i) must not allow one iwi to have an unfair advantage over another in relation to process and/or outcomes;

(ii) must take into account the particular circumstances of each iwi rather than simply treat all iwi the same;

(iii) must not create divisions between iwi or damage to the relationships between iwi.

OVERLAPPING CLAIMS POLICY

24. The Crown's current Treaty settlement policies and guidelines are set out in Ka tika ā muri, ka tika ā mua: Healing the past, building a future (the **Red Book**).[2] These policies include the following statements:[3]

(a) the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage;

(b) the Crown will assist the process by providing information on proposed redress items to all groups with a shared interest in a site or property;

(c) where disagreements relating to overlapping claims arise from the Crown proposing a particular form of redress, such as the transfer of a site or property to one claimant group to the exclusion of another, exclusive redress may not be appropriate;

(d) often both groups have an interest, such as historical or cultural associations, in a site or property and these interests can be accommodated by a form of redress which is non-exclusive and allows the interests of different groups to be recognised and accommodated;

(e) the Crown would prefer that disagreements over redress were settled by mutual agreement between claimant groups. In the absence of agreement, the Crown may have to make a decision and in reaching any decision will be guided by two general principles:

(i) the Crown's wish to reach a fair and appropriate settlement with the claimant group in negotiations; and

(ii) the Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims.

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2 Office of Treaty Settlements, *Ka tika ā muri, ka tika ā mua: Healing the past, building a future – A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* [March 2015].

3 Ibid at page 59.

25. The Waitangi Tribunal has inquired into and made findings on overlapping claims disputes in the context of Treaty settlements on several occasions, including:

    (a) in the Tāmaki Makaurau Settlement Process Report (WAI 1362, June 2007);

    (b) in the Te Arawa Settlement Process Report (WAI 1353, June 2007);

    (c) in the Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report (WAI 996, May 2003); and

    (d) in the Ngāti Awa Settlement Cross-claims Report (WAI 958, July 2002).

26. In the Tāmaki Makaurau Settlement Report, the Tribunal stated (at page 109):

    (a) The Office of Treaty Settlements needs to identify early the other tangata whenua groups that will be affected by the settlement, and commit to a programme of hui that will continue throughout the negotiation.

    (b) The Office of Treaty Settlements needs to take the initiative with the other groups: it has the information about the negotiations, it has the resources; it needs to make the running with all affected groups, and not only those who are well-informed and responsive.

    (c) The Office of Treaty Settlements should not wait until after the redress has been agreed in principle with the settling group. This is too late to form a relationship with the other groups.

    (d) The Office of Treaty Settlements needs to make a commitment to understanding the customary underpinning of the tangata whenua groups' positions.

27. In the Ngāti Awa Settlement Cross-claims Report, the Tribunal stated (at page 88):

    (a) the Crown should not be satisfied that cross-claims have been addressed until really no stone has been left unturned. Even if a consensual approach can be achieved only in relation to one item of contested redress, that can ameliorate the wider relationships in

issue. The Crown has a duty in this regard, flowing from the principles of partnership and good faith under the Treaty of Waitangi.

(b) *The simple point is that where the process of working towards settlement causes fallout in the form of deteriorating relationships either within or between tribes, the Crown cannot be passive. It must exercise an 'honest broker' role as best it can to effect reconciliation, and to build bridges wherever and whenever the opportunity arises. Officials must be constantly vigilant to ensure that the cost of settlement in the form of damage to tribal relations is kept to an absolute minimum.*

28. In the Te Arawa Settlement Process Report, the Tribunal stated (at page 64):

(a) *The Minister and OTS should at all times be mindful that because of these multiple roles, OTS holds a powerful position in the negotiation process: it becomes the negotiator, the dispenser of justice, and the policy adviser to the Minister who has the final power. This makes it critical that OTS is rigorous in its endeavours to uphold the honour of the Crown, and to discharge the Crown's Treaty duties. In the context of overlapping claims, it must do so in a manner that is fair and impartial. It must be an honest broker, and it must remain independent; and*

(b) *OTS staff must have the requisite skills to move in and out of the Māori realm if they are to truly understand the tikanga underpinning Māori cultural preferences. These understandings must then be reflected in the development of policies and processes that respect those preferences, without relying solely on the advice of those standing to benefit the most from the settlement process.*

29. In the Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report, the Tribunal found that:

(a) *(At page 58): "We believe that it is very difficult to deal with cross-claimants fairly if they are brought into the settlement process only as it nears its conclusion. Inevitably, the Crown ends up defending a position already arrived at with the settling claimant, rather than approaching the whole situation with an open mind and crafting an offer with one group that properly addresses the interests of others with a legitimate interest."*

(b) *(At page 67): "In the first instance at least, the Crown's role is one of facilitation and consultation rather than arbitration. Only after conciliatory measures (such as facilitated hui, mediation, and use of a third party researcher) have been honestly tried and failed, should the Crown feel justified in standing back and simply making decisions on the merits of cross-claimants' objections to cultural redress."*

Crown Practices

30. The engagement of the Crown with the Trust Board and its decision making in relation to the Overlapping Claims Process and the Proposed Hauraki Redress is unreasonable and inconsistent with the principles of the Treaty of Waitangi outlined at paragraph 21 above and with Crown policy as set out in the Red Book and outlined at paragraph 22 above.

31. In particular, in engaging with the Trust Board the Crown has:

(a) not engaged with the Trust Board at an early stage in the development of proposed redress to be offered to iwi of Hauraki and only engaged after redress proposals have been formulated;

(b) failed to keep the Trust Board informed as to its overall processes and timetable for settlements in circumstances where the Crown is negotiating with multiple groups within Hauraki simultaneously, as follows:

(i) Hauraki Collective;

(ii) Marutūāhu Collective; and

(iii) individual iwi of Hauraki;

(c) failed to adequately engage with the Trust Board in relation to Aotea on the wrong assumption that the Crown can engage with Ngāti Rehua-Ngātiwai ki Aotea Trust without regard to the views of Ngātiwai;

(d) proceeded on the wrong assumption that the grant of non-exclusive cultural redress to Hauraki (either collectively or to individual Hauraki iwi) has no effect on the rights and customary interests of Ngātiwai in relation to the redress areas;

(e) proceeded on the wrong assumption that the grant of exclusive commercial redress to Hauraki (either collectively or to individual Hauraki iwi) has no effect on the rights and customary interests of Ngātiwai in relation to the redress areas;

(f) failed to appropriately investigate the respective customary interests of Hauraki (either collectively or of individual Hauraki iwi) and Ngatiwai in relation to the areas of overlapping;

(g) offered redress to Hauraki (either collectively or to individual Hauraki iwi) without specifying the customary basis on which the Crown recognises the interests in those redress areas;

(h) failed to provide an appropriate process through which overlapping customary interests can be assessed with due regard to tikanga;

(i) failed to act consistently by providing information on all proposed redress that is located in the overlapping area between Ngātiwai and the Hauraki iwi to enable Ngātiwai to provide a response;

(j) failed to facilitate hui between iwi or be proactive to ensure iwi engage in a tikanga Māori way;

(k) proceeded to progress settlements by initialling and/or signing deeds of settlement without first requiring that the settling iwi engage with overlapping claimants in a tikanga based process;

(l) undermining matters of tikanga by allowing settlements to progress without first requiring that a tikanga based process take place in relation to overlapping claims issues;

(m) determined to offer redress in relation to Aotea in a manner that is inconsistent with the findings in the *Da Silva* Decision and without regard to tikanga;

(n) offered settlement redress that is:

(i) convenient to the Crown; and/or

(ii) motivated by meeting expedient timeframes; and/or

(iii) biased towards Hauraki iwi and prejudicial to Ngātiwai,

without regard to the impact on inter-tribal relationships and mana whenua / mana moana;

(o) failed to consider offering alternative redress to settling iwi that appropriately compensates that iwi without creating inter-tribal divisions and offending mana whenua, mana moana; and

(p) determined to offer the Hauraki Collective Fisheries RFR redress by reference to an area that includes coastline boundary points within the Ngātiwai Rohe without regard to the impact of this approach on existing inter-iwi relationships or agreements.

HAURAKI COLLECTIVE DEED

Aotea Name Change Redress

32. Aotea is a highly significant island within the Ngātiwai Rohe. It represents the south-eastern boundary of the Ngātiwai Rohe and has always been known as being part of Ngātiwai.

33. Clause 13.1 of the Hauraki Collective Deed provides for official name changes as part of cultural redress to be provided to the Hauraki Collective. One of the names to be changed is Aotea (currently "Great Barrier Island (Aotea)", which is to be changed to "Aotea / Great Barrier Island."

34. Clause 13.3 provides as follows:

> *"The legislation giving effect to the deed of settlement of historical Te Tiriti of Waitangi / the Treaty of Waitangi claims between Ngāti Rehua-Ngātiwai ki Aotea and the Crown will provide for an Aotea / Great Barrier Island name change* ***if it comes into force before the Pare Hauraki collective redress legislation****."*
>
> (emphasis added)

35. While a deed of settlement has been initialled for Ngāti Rehua-Ngātiwai ki Aotea in December 2016, the Crown has put settlement negotiations on hold pending an Annual General Meeting and election of trustees for the relevant Ngāti Rehua Ngātiwai ki Aotea Trust.

Issues

36. Ngātiwai has the following concerns regarding the Aotea Name Change Redress:

(a) the Crown has not engaged at all with Ngātiwai in relation to the inclusion of the Aotea Name Change Redress in the Hauraki Collective Deed.

(b) no process, based on tikanga, was used to identify the relevant customary interests of Marutūāhu iwi in relation to Aotea;

(c) offering the Aotea Name Change Redress to the Hauraki Collective will:

(i) erode the customary rights and tikanga of Ngātiwai hapū on Aotea;

(ii) create divisions and further damage the relationship between Ngātiwai and Marutūāhu;

(iii) undermine the Treaty relationship between the Crown and Ngātiwai;

(d) the proposed Aotea Name Change Redress ignores the *Da Silva* Decision, which determined the owners of the islands and rock outcrops to be Ngāti Rehua, to hold the same as kaitiaki for themselves and, in accordance with the tikanga of whanaungatanga, for Ngātiwai ki Aotea and Marutūāhu ki Aotea.

37. If the name is changed by reason of the legislation giving effect to the Hauraki Collective Deed and not by reason of the significance of Aotea to Ngātiwai (which includes Ngāti Rehua Ngātiwai ki Aotea), this undermines the mana whenua and mana moana of Ngāti Rehua and Ngātiwai.

Hauraki Collective Fisheries RFR

Background

38. Under the Māori Fisheries Act 2004 (the **Māori Fisheries Act**), Te Ohu Kai Moana (**Te Ohu**) is required to allocate commercial settlement assets to iwi. Cultural or customary fishing provisions are available separately under section 186 of the Fisheries Act 1996 and subsequent regulations. The basis

upon which the commercial fisheries settlement assets, including settlement quota, are to be allocated is set out in Part 3 of the Māori Fisheries Act.

39. The basis for the allocation of settlement quota is set out in sections 140 and 141 of the Māori Fisheries Act:

    (a) in accordance with section 140 of the Māori Fisheries Act, in relation to inshore quota, Te Ohu must, after setting aside any harbour quota, allocate to each iwi the same proportion of the settlement quota for each quota management stock that the iwi coastline bears to the total coastline of the quota management area for that stock (as determined in accordance with section 11 and Schedule 6 of the Māori Fisheries Act);

    (b) in accordance with section 141 of the Māori Fisheries Act, in relation to deepwater quota, Te Ohu must:

        (i) divide the total settlement quota for each quota management stock into 2 parcels, comprising 25% and 75% of the total amount respectively; and

        (ii) allocate to each iwi an amount from the 25% parcel on the same basis as the allocation of inshore quota; and

        (iii) allocate the 75% parcel to each iwi in accordance with the percentages specified in column 3 of Schedule 3.

40. Coastline entitlements can be agreed by iwi or determined by Te Ohu in accordance with Schedule 6 of the Māori Fisheries Act.

41. In accordance with the allocation policies of Te Ohu as set out in *He Kawai Amokura*, there are two possible methods of agreeing coastline lengths between iwi in relation to a fishery:

    (a) first, mandated iwi organisations (**MIO**) can reach agreement regarding their coastal boundaries and Te Ohu will calculate each iwi's respective length of coastline within the coastline of the quota management area (**QMA**) for which quota is to be allocated; or

(b) second, where MIO do not wish to record or fix specific boundary points, the iwi may agree the percentage of the coastline for the fishery that should be used to calculate each iwi's entitlement.

42. In relation to the QMA within the Ngātiwai Rohe, the relevant MIO's did not wish to record or fix specific boundary points so an agreement has been reached regarding agreed percentages for allocation purposes (**Coastline Agreements**).

Engagement – Hauraki Collective Fisheries RFR

43. The Crown did not seek the Trust Board's feedback on the Fisheries RFR redress mechanism at the outset rather it requested the Trust Board's feedback on the Hauraki Collective Fisheries RFR Area. This occurred on 18 January 2017, after the Hauraki Collective Deed was initialled on 22 December 2016. The Crown proposed 10 working days for the Trust Board to respond to the proposed Hauraki Collective Fisheries RFR and proposed that a final decision be reached by 28 February 2017.

44. By letters dated 31 January 2017 and 15 March 2017, the Trust Board notified the Crown of its concerns with the Hauraki Collective Fisheries RFR as follows:

(a) the Crown had not engaged with the Trust Board earlier in relation to the Hauraki Collective Fisheries RFR;

(b) Hauraki Collective negotiators appeared unwilling to meet with the Trust Board; and

(c) the Hauraki Collective Fisheries RFR was inconsistent with allocation policies under the Māori Fisheries Act.

45. On 6 April 2017, the Minister notified the Trust Board that he had made a preliminary decision to revise the Area to which the Hauraki Collective Fisheries RFR applied so that the Hauraki Collective Fisheries RFR would apply to a Coastline Length rather than an Area.

46. Between April to May 2017, the Trust Board continued to inform the Crown through correspondence and meetings of its concerns regarding the Hauraki Collective Fisheries RFR, as follows:

(a) the use of a coastline map to depict Hauraki's interests was inappropriate given the allocation policies under the Māori Fisheries Act; and

(b) concern that the Hauraki Collective Fisheries RFR is exclusive as quota is a finite resource and allocating the wrong percentage to the Hauraki Collective would deprive other iwi from having a RFR in relation to that same quota percentage.

47. By letter dated 13 July 2017, the Crown notified the Trust Board of its final decision in relation to the Hauraki Collective Fisheries RFR. The Crown proposed that the Hauraki Collective Fisheries RFR map to be included in the Hauraki Collective Deed not include coastline but markers of the northern (Te Arai Point) and southern (Waiorooro River) points. The Crown confirmed that it will offer the Hauraki Collective Fisheries RFR based on the allocation policies under the Māori Fisheries Act.

48. In response to the Crown's final decision of 13 July 2017, on 19 July 2017, the Trust Board notified the Crown of its concern that the inclusion of boundary points as part of the Hauraki Collective Fisheries RFR was inconsistent with the allocation policies under the Māori Fisheries Act and requested that the Crown remove the fixed boundary points.

Issues – Hauraki Collective Fisheries RFR

49. Ngātiwai has the following concerns regarding the Hauraki Collective Fisheries RFR:

(a) the Crown failed to fully inform itself of the allocation policies under the Māori Fisheries Act prior to including the Hauraki Collective Fisheries RFR in the Hauraki Collective Deed as cultural redress;

(b) while accepting that the Hauraki Collective Fisheries RFR will be allocated based on the allocation policies under the Māori Fisheries Act, the Crown has proceeded to include a map for the Hauraki Collective Fisheries RFR that records fixed boundary points;

(c) the inclusion of a map with fixed boundary points as part of the Hauraki Collective Fisheries RFR is contrary to the Coastline Agreement and

the allocation policies under the Māori Fisheries Act and unnecessarily creates discord between Ngātiwai and the iwi of Hauraki; and

(d) the cultural redress classification of the Hauraki Collective Fisheries RFR is contrary to the arrangements reached between iwi under the Māori Fisheries Act 2004 and wrongly creates an impression that the redress has a cultural basis based on the boundary points specified in the map. This is offensive to Ngātiwai and fails to take account of tikanga Māori.

Protocols Redress – Hauraki Collective Deed

50. The Hauraki Collective Deed provides for individual protocols between each iwi of Hauraki and the Ministry for Primary Industries which will require the Ministry to have particular regard to the "Statement of Pare Hauraki World View" when exercising functions under the Fisheries Act 1996, the Forests Act 1949 and the Biosecurity Act 1993.

51. Taonga tūturu and Ministry for Primary Industries protocols (**Protocols Redress**) have subsequently been included in individual deeds of settlement for Ngāti Paoa, Ngāti Whanaunga, Ngāti Maru, and Ngāti Tamaterā, with areas which overlap with the Ngātiwai Rohe. The protocols wrongfully infer that that these iwi derive their status as tangata whenua within their respective protocol areas, which is contrary to tikanga Māori and an affront to the mana of Ngātiwai.

Engagement – Protocols Redress

52. On 13 January 2017, the Crown requested the Trust Board's views on the proposed protocol area map for taonga tūturu and primary industries protocols with the individual iwi of Hako, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Rahiri Tumutumu, Ngāti Tamatera, Ngāti Tara Tokanui, Ngāti Whanaunga and Patukirikiri, which areas overlapped with the Ngātiwai Rohe. The timeframe for engagement between the Trust Board with these ten groups and for a response to be provided was by 31 January 2017. Taking into account Auckland Anniversary Day on Monday the 30th of January that allowed eleven working days. At this stage, the protocols area was a collective one that was to apply to all iwi of Hauraki. The Crown advised that the protocols were not Hauraki Collective redress (but rather

individual iwi redress). The Crown encouraged the Trust Board to engage directly with the negotiators for those 10 iwi.

53. On the same day, the Trust Board requested that the Crown;

    (a) provide an eight week extension to prepare a response,

    (b) arrange a meeting to discuss the detail in the proposals and potential consequences for Ngātiwai,

    (c) provide funding to enable Ngātiwai to prepare a response; and

    (d) organise hui with the 10 parties listed in the letter regarding the proposed Protocol Area map.

54. On 31 January 2017, the Crown met with the Trust Board to discuss the Hauraki Collective Fisheries RFR and Protocols Redress.

55. On 15 February 2017, the Trust Board notified the Crown that it was involved in trustee elections and that it would assist if the Crown would encourage those Hauraki iwi to contact the Trust Board directly to arrange hui rather than leaving this responsibility up to the Trust Board.

56. On 27 February 2017, the Crown advised that it had considered feedback and proposed to amend the protocol areas such that the protocol area was specific to each individual iwi of Hauraki. The Crown requested the Trust Board's views on the revised protocol areas for the individual iwi of Ngāti Maru, Ngāti Whanaunga, Ngāti Paoa and Ngāti Tamaterā which areas overlapped with the Ngātiwai Rohe. The Crown again encouraged the Trust Board to engage directly with the negotiators for those iwi.

57. On 15 March 2017, the Trust Board provided a submission to the Crown setting out its concerns with the proposed protocol areas as follows:

    (a) that the protocol areas must not diminish the mana whenua and mana moana and kaitiakitanga exercised at and since 1840, by Ngātiwai and its hapū. In particular, the Trust Board expressed concern at recognising protocol areas at Mahurangi and north of Matakanakana;

    (b) that the protocol areas for Ngāti Maru, Ngāti Whanaunga and Ngāti Paoa should not extend north to Te Arai Point as that boundary has no traditional or historical basis;

(c) Te Hauturu o Toi should not be included in the protocol areas for Ngāti Maru and Ngāti Whanaunga;

(d) the Trust Board's existing protocols and relationships with the Crown, local government and tertiary institutions may be compromised or diminished if the proposed protocol areas were recognised;

(e) no information was provided to the Trust Board by any of the concerned iwi of Hauraki that sets out the basis for any enduring customary rights held by those iwi in the Mahurangi area and in the northern Matakanakana – Te Arai area or extending east to Hauturu; and

(f) recognising interests of Hauraki through the proposed protocol areas when such interests are not based on tikanga would create a further injustice to Ngātiwai.

58. The Trust Board has proactively sought to engage with Hauraki iwi on overlapping issues and on 16 June 2017, wrote to all Hauraki iwi for which it had contact details to make a final request for direct (face to face) engagement to discuss individual iwi settlements and the collective settlements.

59. On 12 July 2017, the Minister advised the Trust Board of his preliminary decision to revise the protocol areas for Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā and Ngāti Whanaunga reducing the area on the mainland to follow the boundary of the Mahurangi-Omaha purchase and remove Haututu (Little Barrier Island) and the waters around the island.

60. On 14 July 2017, the Trust Board wrote to the Minister advising him of their concerns and requesting his urgent intervention before the overlapping claims matters became irreversible. The Trust Board also put the Minister on notice of its intention to challenge the Crown's actions and that this may or may not include litigation if necessary.

61. On the following dates, the Crown initialled the relevant deeds of settlement containing the Protocols Redress, without informing Ngātiwai of the timing or process for progression of the Protocols Redress:

(a) Ngāti Paoa Deed of Settlement – initialled on 18 August 2017;

(b) Ngāti Whanaunga Deed of Settlement – initialled on 25 August 2017;

(c) Ngāti Maru Deed of Settlement – initialled on 8 September 2017; and

(d) Ngāti Tamaterā Deed of Settlement – initialled on 20 September 2017.

62. On 26 July 2018, the Minister wrote to the Trust Board confirming that "the overlapping claims process for protocols redress is still underway for Ngāti Maru, Ngāti Pāoa, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri. The overlapping claims process is still underway for Hako in relation to their proposed Tāmaki statement of association and is yet to commence for their protocols area and coastal statutory acknowledgement area." Despite the letter, Ngātiwai has not been invited to participate in this overlapping claims process for protocol redress and has no visibility of the timeframes or process of the Crown in progressing overlapping claims regarding the Protocols Redress.

Issues – Protocols Redress

63. Ngātiwai has the following concerns regarding the Protocols Redress:

(a) the Crown did not consult with Ngātiwai on the proposed protocols redress prior to:

(i) offering redress to individual iwi of Hauraki;

(ii) initialling the Hauraki Collective Deed;

(iii) signing the Hako Agreement in Principle;

(b) the Crown did not consider the impact of the Protocols Redress on existing protocols between Ngātiwai and Crown agencies;

(c) the Crown did not have a process consistent with tikanga by which the customary interests of Hauraki iwi were established in relation to those parts of the Protocols Redress that overlap with the Ngātiwai Rohe;

(d) the Crown has not appropriately acknowledged Ngātiwai customary interests and mana whenua or mana moana within the overlapping areas that are a part of the proposed protocol areas;

(e) providing the Protocols Redress will be objectively viewed as a recognition by the Crown that those Hauraki iwi have customary interests within the Ngātiwai Rohe when no process has been followed to determine such interests; and

(f) providing the Protocol Redress will create divisions between iwi of Hauraki and Ngātiwai.

MARUTŪĀHU COLLECTIVE DEED

Record of Agreement

64. The record of agreement between the Crown and the Marutūāhu Collective dated 17 May 2013 (the **Record of Agreement**) provided for, among other things, the following:

(a) Acknowledgement:

"the Crown's acknowledgements of the statements by Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri of their spiritual, cultural, customary, historical, and traditional association with Tikapa Moana, in particular the coastal area from Te Arai Point east to Great Barrier Island (Aotea Island) and southwards to include the Waitemata Harbour, the Tamaki Strait and the Firth of Thames, including the motu in that area, as a statutory area to the extent that the area is owned by the Crown" (clause 4.8.1)"

(b) a coastal statutory acknowledgement or other redress of a similar nature for the coastal area from Te Arai Point east to Aotea/Great Barrier Island and southwards to include the Waitematā Harbour, the Tāmaki Strait and the Firth of Thames, including the motu within that area (**Coastal Statutory Acknowledgement**);

(c) the parties will "explore RFR redress for the Marutūāhu Iwi in respect of Great Barrier Island (Aotea Island) subject to the resolution of overlapping claims, in particular with Ngāti Rehua." (clause 5.30);

(d) collective cultural redress properties, comprising:

(i) Te Kawau Tu Maro (1.5495 ha);

(ii) Martutūāhu property at Mahurangi (8.1450 ha); and

(iii) Moutohora Property (Motuora) (2.5 ha).

65. On the basis of the Crown's acknowledgement set out in paragraph 64 above, exclusive and non-exclusive cultural redress has been included in the Marutūāhu Collective Deed (see paragraphs 19(c) above and for individual iwi of Marutūāhu deeds of settlement see paragraph 19(e)for Ngāti Whanaunga, 19(f) for Ngāti Maru, 19(g) for Ngāti Tamaterā and 19(h) for Te Patukirikiri).

Engagement – Marutūāhu Collective Redress

66. In response to the Record of Agreement, on 6 June 2013 the Trust Board notified the Crown of Ngātiwai's interests in those overlapping areas where the Marutūāhu Collective were seeking redress and expressed its opposition to the transfer of any properties on Aotea to Marutūāhu.

67. On 1 July 2013, the Minister acknowledged Ngātiwai's request to engage with Marutūāhu, expressed his support for that engagement to take place and informed the Trust Board of the Crown chief negotiator for Tāmaki Makaurau, Michael Dreaver. The Trust Board met with Mr Dreaver on 4 October 2013 to start a relationship.

68. On 4 October 2013, the Crown informed the Trust Board that it was entering into the final stage of negotiations for the settlement of historical claims of Hauraki iwi and encouraged the Trust Board to engage directly with Marutūāhu and the Hauraki iwi. The Crown proposed to release final decisions on overlapping claims by 19 November 2013.

69. On 18 October 2013, the Crown notified the Trust Board that it was proposing to offer commercial redress to the Marutūāhu Collective, which included RFR redress in respect of Aotea. The notification did not specify the proposed properties to be included within the RFR redress. The Crown requested feedback by 30 October 2013.

70. On 1 April 2014, the Trust Board notified the Crown that:

(a) it challenged the Marutūāhu claims on the mainland north of Takatu Point and the coastal environs between Aotea and any point on the main land north of Takatu Point; and

(b) the Trust Board's attempts to discuss matters with Marutūāhu had been unsuccessful.

71. Between April 2014 to July 2016, the Trust Board continued to notify the Crown of its concerns regarding redress being offered to iwi of Marutūāhu in relation to Aotea, as follows:

(a) informing the Crown of Ngātiwai's interests on Aotea, which interests are separate to its hapū, Ngāti Rehua. This was in response to the Crown's position of 14 October 2014 that it considered it appropriate to engage with Ngāti Rehua and requesting Ngātiwai to outline its separate interests;

(b) the lack of information provided to Ngātiwai regarding revised redress being offered to Marutūāhu;

(c) the importance of the Māori Land Court findings in the *Da Silva* Decision in determining Treaty redress on Aotea; and

(d) requesting evidence of the customary interests and association of Marutūāhu iwi in relation to sites being offered to such iwi as redress.

72. Notwithstanding the Trust Board's request to be involved in any overlapping issues regarding Aotea, the Crown:

(a) did not notify the Trust Board or seek the Trust Board's input in relation to a preliminary decision of 18 July 2014 by the Minister regarding overlapping claims between Marutūāhu and Ngāti Rehua-Ngātiwai ki Aotea;

(b) did not invite the Trust Board to participate in discussions between Marutūāhu and Ngāti Rehua-Ngātiwai ki Aotea regarding overlapping claims on Aotea;

(c) requested that the Trust Board outline its separate interests on Aotea despite the Crown acknowledging that Ngātiwai is the relevant iwi in relation to Aotea; and

(d) did not involve the Trust Board in its overlapping claims process in relation to Marutūāhu and Ngāti Rehua-Ngātiwai ki Aotea until August 2016 after the Crown had determined to offer redress to individual iwi rather than the Marutūāhu Collective.

73. On 27 July 2018, the Crown initialled the Marutūāhu Collective Deed which includes:

(a) the following exclusive collective redress:

(i) fee simple estate in the Moutohora property (**Motuora**) (as shown on deed plan OTS-403-09), currently being part Motuora Island Recreation Reserve;

(ii) fee simple estate in the Marutūāhu property (**Mahurangi**), currently being part Mahurangi Scenic Reserve (as shown on deed plan OTS-403-08); and

(iii) fee simple estate in Te Kawau Tu Maro property (**Kawau**) being part Kawau Island Historic Reserve (as shown on deed plan OTS-403-18);

(b) a Statement of Association to an area that includes Mahurangi, Orewa, Pakiri and Te Tii; and

(c) a Coastal Statutory Acknowledgement (as shown on deed plan OTS-403-01) in relation to the coastal area from Te Arai Point east to Aotea (Great Barrier Island);

Engagement – Individual Marutūāhu Iwi Deeds

74. On 22 August 2016, the Crown requested feedback on the following redress being offered to Ngāti Maru, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri:

(a) vesting of Tryphena Hall Local Purpose (Site for Community Buildings) (in Ngāti Whanaunga);

(b) Cape Barrier Conservation Area and Cape Barrier Marginal Strip (in Ngāti Maru);

(c) vesting of Tryphena North Conservation Area and Hilltop Recreation Reserve (in Ngāti Tamaterā);

(d) Statutory Acknowledgement and Deed of Recognition for Whangapoua Conservation Area (to Ngāti Maru); and

(e) shared RFRs over specified conservation land on Aotea (shared by Ngāti Maru, Te Patukirikiri and Ngāti Tamaterā).

75. The Crown proposed that it inform the overlapping groups of its final decision by 4 October 2016.

76. The Trust Board responded to the Crown's request for feedback on 20 September 2016 by reiterating its concerns, as follows:

(a) the Trust Board was only able to provide a preliminary response because insufficient information had been provided by the Crown, despite the Trust Board's requests for a Crown land audit and associated maps for Aotea;

(b) concern that the Trust Board had been excluded from the overlapping claims processes in relation to Aotea;

(c) the proposed redress not being based on customary rights or tikanga Māori;

(d) the proposed vesting of property and rights of first refusal would "unalterably disrupt and diminish Ngātiwai, including Ngāti Rehua, rangatiratanga and kaitiakitanga on Aotea";

(e) acknowledging that the Trust Board does not oppose cultural redress (e.g. statutory acknowledgements) in relation to specific land parcels on Aotea, or to the coastal environment, where an iwi can describe and document the cultural or historical association with the relevant place. Such evidence had not been provided to Ngātiwai;

(f) despite the Crown undertaking its own investigation into the *Da Silva* Decision, it did not request any feedback from the Trust Board (who was a party to the proceeding) regarding the decision, matters of tikanga, whanaungatanga or kaitiakitanga;

(g) offering the vesting of property to iwi of Marutūāhu was contrary to the mana whenua and kaitiakitanga of Ngātiwai, which includes Ngāti Rehua- Ngātiwai ki Aotea. It would "create a dynamic in relation to the Māori occupation of Aotea that has never existed previously, and certainly not for over 160 years"; and

(h) Ngātiwai provided specific concerns in relation to each property being offered as redress.

77. On 10 October 2016, the Minister wrote to the Trust Board with his preliminary decision, which was to maintain the offer advised on 22 August 2016.

78. On 11 November 2016, the Minister confirmed his final decision, which was to confirm his preliminary decision. This redress has been incorporated into individual iwi deeds of settlement for Ngāti Maru, Ngāti Tamaterā, Ngāti Whanaunga, and Te Patukirikiri.

Issues – Marutūāhu Collective and Individual Iwi Deeds of Settlement

79. Ngātiwai has the following concerns regarding the Marutūāhu Collective and individual Iwi Deeds of Settlement:

(a) the Crown, prior to offering any redress to Marutūāhu on Aotea, did not engage in any tikanga process to first understand, as a matter of tikanga, the nature of interests of Ngātiwai (including Ngāti Rehua-Ngātiwai ki Aotea) on Aotea and the iwi of Marutūāhu. Had the Crown followed such a process upfront, this claim may not have been necessary;

(b) the Crown then excluded Ngātiwai from the overlapping claims process in relation to Aotea from October 2013 to July 2016 on the wrong assumption that it could engage with Ngāti Rehua-Ngātiwai ki Aotea to the exclusion of Ngātiwai;

(c) no process, based on tikanga, was used to identify the relevant customary interests of Marutūāhu iwi in relation to Aotea;

(i) despite requests to the Crown for information as to the basis for recognising Marutūāhu interests on Aotea, the information

provided was insufficient to justify the nature and extent of the redress offered;

(ii) offering the redress in relation to Aotea:

- will be objectively viewed as a recognition by the Crown that Marutūāhu iwi have mana whenua on Aotea;
- will create legal rights in Aotea for Marutūāhu and the individual iwi who are receiving redress in their individual settlements including Ngāti Maru, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri that are inconsistent with tikanga and the Treaty of Waitangi and which:
- erode the customary rights and tikanga of Ngātiwai hapū on Aotea;
- create divisions and further damage the relationship between Ngātiwai and Marutūāhu;
- undermine the Treaty relationship between the Crown and Ngātiwai;
- preclude Ngātiwai hapū from purchasing the particular surplus Crown land on Aotea ;
- precludes the Crown from offering such land to Ngātiwai hapū; and

(iii) the proposed redress ignores the *Da Silva* Decision, which determined the owners of the islands and rock outcrops to be Ngāti Rehua, to hold the same as kaitiaki for themselves and, in accordance with the tikanga of whanaungatanga, for Ngātiwai ki Aotea and Marutūāhu ki Aotea.

80. As mentioned above at paragraph 61, individual Deeds of Settlement for Ngāti Maru, Ngāti Whanaunga and Ngāti Tamaterā have been initialled. On 7 October 2018, the Crown signed a Deed of Settlement with Te Patukirikiri containing the shared RFR in relation to the Aotea RFR Properties.

81. Between 11 November 2016 and August 2017, when the Crown initialled the Ngāti Paoa Deed of Settlement the Crown did not inform Ngātiwai or seek any input from Ngātiwai in relation to the proposed statement of association offered to Ngāti Paoa in relation to Mahurangi and Motuora.

82. On 16 June 2017, Ngātiwai sought to engage directly with Ngāti Paoa but was informed by Ngāti Paoa on 12 July 2017 that Ngātiwai should first engage with the Hauraki Collective and Marutūāhu. Representatives for those collectives have not agreed to engage with Ngātiwai so this is not possible despite Ngātiwai's requests for engagement.

83. On 23 May 2018, Ngātiwai met with Ngāti Pāoa to try to better understand the nature of the redress being offered and the basis for Ngāti Paoa's interests within the Ngātiwai Rohe. At no time did the Crown facilitate any tikanga-based discussions.

84. On 14 June 2018, the Trust Board notified the Crown that Ngātiwai had commenced tikanga based discussions with Ngāti Paoa.

85. By letters dated 14 June 2018 and 6 July 2018, the Trust Board requested the Minister to take no further steps to finalise any of the relevant settlements or intervene in the tikanga process that Ngātiwai had initiated so that the process could be completed.

86.

NGĀTI WHANAUNGA DEED OF SETTLEMENT

87. The Crown has offered redress to Ngāti Whanaunga, set out in paragraph 19(e) above.

88. On 1 March 2017, the Crown requested the Trust Board's response to the proposed redress.

89. On 15 March 2017, the Trust Board notified the Crown that it opposed the redress and provided a preliminary response, as follows:

    (a) no information was provided as to the basis for offering the redress;

    (b) the Trust Board had not been consulted in relation to the redress;

(c) Ngātiwai is not aware of any customary relationship between Ngāti Whanaunga within the redress area;

(d) Ngātiwai have ancestral interests in Otanerua (included within the proposed redress area);

(e) Ngātiwai is unaware of the basis for providing redress at Orewa. The land was traditionally known as Te Tahuna and has no relevance to "Te Waimai o Te Tumu", which is some distance from Orewa; and

(f) the Trust Board consider the claim for redress at Otanerua as "opportunistic, completely unsubstantiated, and inappropriate according to tikanga Māori".

90. On 16 May 2017, the Crown responded to the Trust Board's submission of 15 March 2017 noting that the proposed redress falls outside of the Ngātiwai area of interest, as shown on page 9 of the Ngātiwai Deed of Mandate.

91. On 30 May 2017, the Trust Board responded to the Crown, as follows:

(a) the Trust Board had raised matters of historical fact regarding the proposed redress and in particular, the incorrect reference to "Te Tumu o Waimai"; and

(b) tikanga recognises that iwi have ancestral associations with areas that are not within their formal Rohe.

92. On 25 August 2017, the Crown initialled the Ngāti Whanaunga Deed of Settlement.

Issues – Ngāti Whanaunga Deed of Settlement

93. Ngātiwai has the following concerns regarding the redress offered to Ngāti Whanaunga:

(a) no process, based on tikanga, was used to identify the relevant customary interests of Ngāti Whanaunga in relation to the Whanaunga Redress;

(b) the Crown has proceeded on the assumption that Ngātiwai has no customary interests in relation to the Ngāti Whanaunga Redress

because the redress area is not within the map depicting the formal Ngātiwai Rohe;

(c) offering the redress, will create rights for Ngāti Whanaunga that are inconsistent with tikanga and history and which:

(a) erode the customary rights of Ngātiwai; and

(b) create divisions and further damage the relationship between Ngātiwai and Ngāti Whanaunga.

NGĀTI MARU DEED OF SETTLEMENT

94. In September 2017, the Crown initialled the Ngāti Maru Deed of Settlement incorporating the redress at paragraph 19(f) above.

95. Ngātiwai has the following concerns regarding the Ngāti Maru redress:

(a) no process, based on tikanga, was used to identify the relevant customary interests of Ngāti Maru in relation to those areas that overlap with the Ngātiwai Rohe;

(b) offering the redress to Ngāti Maru will create rights for Ngāti Maru that are inconsistent with tikanga and history and which:

(a) erode the customary rights of Ngātiwai; and

(b) create divisions and further damage the relationship between Ngātiwai and Ngāti Maru; and

(c) preclude Ngātiwai from purchasing Crown land within Ngātiwai Rohe that has been offered to Ngāti Maru.

NGĀTI TAMATERĀ DEED OF SETTLEMENT

96. In September 2017, the Crown initialled the Ngāti Tamaterā Deed of Settlement incorporating the redress at paragraph 19(g) above.

97. The Crown did not request the views of Ngātiwai at any time in relation to the Ngāti Tamaterā (or Ngāti Maru) place holder statements of association or statutory acknowledgements in relation to the Whangapoua conservation area notwithstanding that the Crown requested input from Ngātiwai regarding a Statement of Association for Hako in relation to Aotea.

98. The Crown was aware that the Trust Board had concerns in relation to land on Aotea and had filed an urgency application with the Waitangi Tribunal challenging the Crown's overlapping claims process.

99. Ngātiwai has the following concerns regarding the Ngāti Tamaterā redress:

    (a) no process, based on tikanga, was used to identify the relevant customary interests of Ngāti Tamaterā in relation to those areas that overlap with the Ngātiwai Rohe;

    (b) offering the redress to Ngāti Tamaterā will create rights for Ngāti Tamaterā that are inconsistent with tikanga and history and which:

        (i) erode of the customary rights and tikanga of Ngātiwai;

        (ii) create divisions and further damage the relationship between Ngātiwai and Ngāti Tamaterā; and

        (iii) undermine the Treaty relationship between the Crown and Ngatiwai;

        (iv) preclude the Crown from offering the exclusive redress that has been provided to Ngāti Tamaterā within the Ngātiwai Rohe to Ngātiwai.

TE PATUKIRIKIRI DEED OF SETTLEMENT

100. On 7 October 2018, the Crown signed a deed of settlement with Te Patukirikiri containing a shared RFR in relation to the Aotea RFR Properties.

101. Ngātiwai has the same concerns in relation to this redress as have been noted above, in terms of:

    (a) erosion of the customary rights and tikanga of Ngātiwai hapū on Aotea;

    (b) create divisions and further damage the relationship between Ngātiwai and Marutūāhu;

    (c) undermine the Treaty relationship between the Crown and Ngātiwai;

    (d) precludes the Crown from offering an RFR in relation to the Aotea RFR Properties to Ngātiwai hapū.

BREACHES OF THE TREATY OF WAITANGI

102. The Claimants allege that the Crown has breached the principles of the Treaty of Waitangi by:

(a) the Crown failing to act in good faith to the Claimants by:

(i) not recognising the mana whenua, mana moana, kaitiakitanga and rangatiratanga of Ngātiwai within the Ngātiwai Rohe and in particular, in relation to the overlapping areas;

(ii) acknowledging that the Claimants be involved in an overlapping claims processes in relation to proposed redress for Marutūāhu on Aotea and then excluding the Claimants from that process for approximately two years while negotiations were ongoing;

(iii) not providing the Claimants with visibility of its overall work program in relation to the various Hauraki settlements (Hauraki Collective, Marutūāhu Collective and each individual iwi settlement) so that the Claimants had sufficient notice to enable them to properly respond to requests by the Crown for feedback on overlapping claims;

(iv) not engaging with the Claimants in relation to the Hauraki Deed of Settlement until after it was initialled;

(b) the Crown failing to act proactively and on a fully informed basis by:

(i) proposing the Hauraki Collective Fisheries RFR without first informing itself as to the allocation methodologies and policies developed under the Māori Fisheries Act and the impact of its proposed redress on inter-iwi relationships under the Māori Fisheries Act;

(ii) requesting iwi to engage directly with each other without proactively facilitating an appropriate engagement process that ensure iwi actually engage;

(c) the Crown failing to act in accordance with tikanga by:

(i) excluding the Claimants from the overlapping claims process in relation to Marutūāhu and Aotea notwithstanding that Aotea is within the Ngātiwai Rohe;

(ii) failing to have a process that ensures that customary interests in overlapping areas are appropriately investigated and recognised in a manner that is consistent with tikanga;

(iii) failing to have a process based on tikanga that enables disputes between iwi with overlapping claims to be resolved in accordance with tikanga;

(d) the Crown failing to act with appropriate acknowledgement of the customary interests, mana whenua, mana moana, kaitiakitanga and rangatiratanga of the Claimants by:

(i) proceeding on the assumption that the grant of non-exclusive cultural redress to Hauraki in overlapping areas within the Ngātiwai Rohe has no impact on the rights and interests of Ngātiwai;

(ii) proceeding on the assumption that the grant of commercial redress to Hauraki iwi within the Ngātiwai Rohe has no impact on the rights and customary interests of Ngātiwai;

(iii) the Crown creating divisions and damaging the relationships between Ngātiwai and iwi of Hauraki by including a map with fixed boundary points as part of the Hauraki Collective Fisheries RFR in circumstances where Ngātiwai and iwi of Hauraki have previously agreed that fixed boundary points are inappropriate;

(e) by the Crown failing to preserve amicable tribal relationships by:

(i) proposing to offer the Proposed Hauraki Redress in relation to overlapping areas within the Ngātiwai Rohe without providing sufficient information to Ngātiwai as to the basis for iwi of Hauraki having interests within the Ngātiwai Rohe;

(ii) not taking any action to ensure that iwi of Hauraki are required to engage directly with Ngātiwai as part of the overlapping claims

process and proceeding to offer the Proposed Hauraki Redress notwithstanding the absence of direct engagement;

(f) by the Crown failing to adequately take into account the concerns of Ngātiwai in relation to the Proposed Hauraki Redress.

PREJUDICE SUFFERED

104. If the Proposed Hauraki Redress is incorporated into, or not removed from, the final deeds of settlement between the Crown and the Hauraki Collective, the Marutūāhu Collective and/or the individual Hauraki iwi and given legal effect through settlement legislation, the rights and interests of Ngātiwai will be significantly and irreversibly prejudiced including (but not limited to) the following:

(a) the Proposed Hauraki Redress inappropriately extends into the Ngātiwai Rohe without the consent of Ngātiwai;

(b) the Proposed Hauraki Redress will undermine the mana whenua, rangatiratanga, mana moana and tikanga of Ngātiwai;

(c) the Proposed Hauraki Redress will create divisions and damage relationships between Ngātiwai and the iwi of Hauraki; and

(d) the partnership between the Crown and Ngātiwai has been damaged due to the need for Ngātiwai to commence this claim to ensure its interests are adequately protected.

RELIEF SOUGHT

Findings

105. The Claimants seek the following relief by way of findings that:

(a) the Claimants' claims are well founded;

(b) the Crown's overlapping claims policy and practice is inconsistent with the principles of the Treaty of Waitangi;

(c) the Crown has acted inconsistent with its overlapping claims policy

(d) the Crown in proposing redress for the Hauraki Collective, the Marutūāhu Collective and certain iwi of Hauraki within the Ngātiwai Rohe has:

(i) in breach of the principles of the Treaty of Waitangi:

- failed to undertake an appropriate process based on tikanga to assess the customary interests of Hauraki and Ngātiwai in the overlapping areas;
- failed to take account of tikanga when offering redress to iwi of Hauraki in the Ngātiwai Rohe;

(ii) undermined the mana, rangatiratanga, tikanga and customary interests of Ngātiwai;

(iii) recognised interests of Hauraki iwi that are contrary to the findings in the *Da Silva* Decision; and

(iv) failed to act in accordance with the Treaty relationship between the Crown and Ngātiwai;

(e) the Crown has breached the principles of the Treaty by its failure to adequately consult with the Trust Board and Ngātiwai when developing:

(i) the terms of:

- the Hauraki Collective Deed (which has now been signed);
- the Marutūāhu Collective Deed, the Ngāti Paoa Deed of Settlement, the Ngāti Maru Deed of Settlement, the Ngāti Whanaunga Deed of Settlement, the Ngāti Tamaterā Deed of Settlement and the Patukirikiri Deed of Settlement;

(f) the Crown has breached the principles of the Treaty by its failure to act in good faith; and

(g) such other findings and relief as the Tribunal sees fit.

Recommendations

106. The Claimant, on behalf of Ngātiwai, asks the Tribunal to recommend that:

(a) the Crown revise its overlapping claims policy so that it is consistent with the principles of the Treaty of Waitangi (which requires that the policy is consistent with tikanga);

(b) the Crown, in relation to the Hauraki Collective Fisheries RFR Redress:

(i) remove the map containing fixed boundary points to which the Hauraki Collective Fisheries RFR relates before proceeding to introduce settlement legislation in relation to the Hauraki Deed of Settlement;

(c) the Crown does not further progress any redress in so far as such redress relates to areas that overlap with the customary interests of Ngātiwai;

(d) the Crown establish an independent process based on tikanga to determine the customary interests of Hauraki iwi and Ngātiwai within the Ngātiwai Rohe; and

(e) an independent dispute resolution process is established between the Crown, Hauraki iwi and Ngātiwai to consider the customary interests above and to determine appropriate terms of any settlement redress to be offered to Hauraki iwi within the Ngātiwai Rohe.

AMENDMENT

107. The Claimants reserve the right to amend this Amended Statement of Claim.

DATED this 29th day of December 2018

M K MAHUIKA / M C TUKAPUA

Counsel for the Claimant

TO: The Registrar, Waitangi Tribunal, Wellington

AND TO: Crown Law Office

AND TO: Interested parties

This **AMENDED STATEMENT OF CLAIM** is filed by **M K MAHUIKA** solicitor for the above named Claimants of the firm of Kahui Legal.

The address for service on the above named Claimant is at the offices of Kahui Legal, Level 11, Initilecta Centre, 15 Murphy Street, Wellington 6011, PO Box 1654, Wellington 6140.

Documents for service on the above named Claimant may be left at the address for service or may be:

(a) posted to the solicitor at Kahui Legal, PO Box 1654, Wellington;

(b) emailed to the solicitors at Matanuku@kahuilegal.co.nz and Matewai@kahuilegal.co.nz or

(c) transmitted to the solicitor by facsimile to Facsimile No. (04) 495 9990.