

THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 2840
WAI 2666

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.

BRIEF OF EVIDENCE OF APERAHAMA KEREPE TI EDWARDS

29 March 2019

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Waitangi Tribunal

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Ministry of Justice
WELLINGTON

KAHUI
LEGAL

PO Box 1654

Telephone: (04) 495 9999

Facsimile: (04) 495 9990

Counsel: M Mahuika / K Tahana

WELLINGTON

MCT-102021-1-990-V2

TTP-102021-1-952-V2

I, APERAHAMA KEREPE TI EDWARDS, say:

1. My name is Aperahama Kerepeti Edwards. I prepared an affidavit dated 21 July 2017 (Wai 2666, #A3) on behalf of the Ngātiwai Trust Board and the iwi of Ngātiwai (**Ngātiwai**) in relation to the Crown's settlement policy regarding overlapping claims and the proposed redress in the Hauraki Collective, Marutūāhu Collective and individual Hauraki settlements.
2. This affidavit responds to evidence recently filed by the Crown and interested parties in relation to Aotea and Mahurangi.

Aotea

Exclusion of Ngātiwai in overlapping discussions

3. The evidence filed by Ngātiwai in support of its application for urgency explains in detail the mana whenua, kaitiakitanga and ahi kā that Ngātiwai has exercised and continues to exercise over Aotea.
4. I refer to paragraph 111 of the brief of evidence of Leah Campbell where she says that in 2014 the Crown was discussing the proposed redress with Ngāti Rehua-Ngātiwai ki Aotea on the basis that they represented Ngātiwai interests on Aotea. The Crown did not discuss this assumption with Ngātiwai or seek our input at the commencement of discussions so that the Crown understood the whakapapa and those interests of Ngātiwai that are not represented by Ngāti Rehua-Ngatiwai ki Aotea. As a result, Ngātiwai were excluded from those discussions and were not part of the negotiations and development of redress in relation to Aotea until. The Crown wrongly assumed that there were no Ngātiwai interests on Aotea separate from Ngāti Rehua.
5. Ko Te Rangihokaia tētahi o ngā tupuna nui o Ngātiwai. Ko Te Wairua te ingoa o tana matua he uri nā Manaia. Hei tā tētahi korero whakamārama i huaina a Ngātiwai hei maharatanga ki te matenga o Te Wairua, engari ara atu anō ngā whakamaramatanga mō te ingoa o Ngātiwai. I moe a Te

Rangihokaia ia Tukituki nō te takiwā ki Tamaki ka puta ko ā rao tamariki ko Rehua, Haua, Repo me Hikihiki. Hei taa ngā kōrero he wharengaro tenei o ngāti Rehua engari te katoa atu i whai uri. Ko te hekenga o Hikihiki ma tana tamaiti a Ranginui kua mau ki raro iho i te marumaru o Ngati Rehua Ngatiwai ki Aotea engari te heke o Haua e mana tonu ana ki runga i ngā motu o Ngatiwai ki te moana.

6. Ara atu anō ngā tūpuna o Ngātiwai I whai panga ki te motu o Aotea mai rano I a Manaia me ana tohoraha e tu kohatu toni mai na. Ko Te Rangitukiwaho taku tupuna no Ngati Toki hapū o Ngatiwai I mate ki te pakanga o Te Mauparaoa ki runga o Aotea.
7. While Ngātiwai agreed to support Ngāti Rehua’s separate settlement and made no submission opposing the Ngāti Rehua – Ngātiwai ki Aotea Trust’s mandate (see para [157] of the affidavit of Michael Dreaver dated 8 March 2019), this was by no means consent by Ngātiwai to be excluded from overlapping claims discussions regarding Aotea. Para [184] of Mr Dreaver’s evidence states that “...the Crown was talking with Ngāti Rehua on the basis they represent Ngātiwai interests on Aotea”; while Ngāti Rehua are a hapū of Ngātiwai, they are not representative of all the Ngātiwai tupuna in relation to Aotea and therefore engaging with Ngāti Rehua alone is not sufficient. In exhibit **MD-78** to Mr Dreaver’s evidence, Ngātiwai clearly indicated to the Minister that Ngātiwai, together with Ngāti Rehua, has mana whenua over all of Aotea and surrounding islands.
8. Para [30] of the affidavit of Lillian Marie Anderson dated 8 March 2019 provides that in signing an agreement in principle with Ngāti Rehua, the Crown and Ngāti Rehua agreed that the proposed redress for Ngāti Rehua at Aotea, in particular the right of first refusal redress, was subject to addressing overlapping claims with the Marutūāhu iwi. Ngātiwai do not dispute the proposed redress for Ngāti Rehua at Aotea, given that they are one of our hapū, and therefore exercise mana whenua over Aotea. However, we Ngātiwai should have been involved upfront and a process undertaken so that the Crown understood the nature of our interests and any interests of Hauraki. We did not and have not had this opportunity to

engage kanohi ki te kanohi other than with Hako. That engagement resulted in Hako not being able to explain their interests on Aotea to us. As a result Aotea is no longer included in the statement of association for Hako. The same tikanga based engagement should have happened with all other iwi of Hauraki who are receiving redress on Aotea. Marutūāhu do not exercise mana whenua, kaitiakitanga or ahi kā over Aotea as we and our Ngāti Rehua whanaunga do. If the Crown was concerned about keeping mana intact, at a minimum, it should have facilitated a hui for all parties on Aotea so that kōrero could be undertaken to understand each other's interests and how, as a matter of tikanga, they could be appropriately acknowledged as part of the redress offered to Hauraki.

9. The Crown made no attempt to understand the interplay between Ngātiwai and our and hapū or between Ngātiwai and Marutūāhu prior to engagement. The Crown did not facilitate a wānanga between Ngātiwai and our hapū as it did with Hauraki iwi. The Crown did not consult tikanga experts – only historians. No upfront hui were convened on Aotea to discuss and understand the varying interests. The Crown should have had upfront, clear, visible and agreed process consistent with tikanga to understand the varying interests as between iwi (such as Ngātiwai) and hapū (such as Ngāti Rehua) and as between the hau kainga and others such as Hauraki.

Engagement with Marutūāhu

10. Para [186] of Mr Dreaver's evidence states that the Crown advised Marutūāhu that Ngātiwai wanted to meet to discuss redress. However, Marutūāhu did not engage with us despite our invitations. Para [17] of the affidavit of Terrence John McEnteer dated 10 March 2019 states that:

“During our engagement with various iwi over many years, we have met face to face, had intensive discussions and negotiations, agreed some matters but not all, compromised, and reached good faith agreements with hongis, handshakes and signed agreements. Not once have we dishonoured any of our agreements. That is an important part of our tikanga.”

11. While this statement may apply to Marutūāhu and other iwi and overlapping groups, it certainly cannot apply to Ngātiwai in respect of Aotea. I refer in particular to para [21] of Lewis (Opo) Iraia Ngawaka's affidavit dated 23 August 2018 regarding Hauraki having not once come to Aotea to discuss issues with Ngātiwai or Ngāti Rehua. Ngātiwai want to engage kanohi ki te kanohi so that Ngātiwai understand the position of Marutūāhu. Not once has Marutūāhu offered to come to Aotea to kōrero in accordance with tikanga. Para [138] of the affidavit of Mr McEnteer's evidence refers to "*hui being held between Ngāti Wai and Marutūāhu representatives*". No such hui ever occurred other than an introductory meeting at a café in Warkworth in October 2013 that was organised by Michael Dreaver. This proceeding may not have been necessary had that happened. It is therefore wrong for Mr McEnteer to assume a "*strong relationship*" exists when one refuses to meet (see para [138] of Mr McEnteer's affidavit).
12. Ngātiwai do not dispute that Marutūāhu had in the past a presence on Aotea. Para [139] of Mr McEnteer's evidence asserts that Marutūāhu are not foreigners at Aotea or the mainland. Ngātiwai agree that Marutūāhu are not foreigners and we have not claimed this but they are no longer present on Aotea and have not been for some decades. However, Marutūāhu's presence on Aotea does not equate to them exercising (or continuing to exercise) mana whenua, kaitiakitanga or ahi kā status. These rest with Ngātiwai and Ngāti Rehua alone.

Aotea Name Change

13. I refer to the affidavit of Leah Campbell dated 14 March 2019 and in a particular paras [68] and [72] to [74] regarding the Aotea name change. There was no engagement whatsoever with Ngātiwai around the Aotea name change. I endorse the comments made by my relation Mr Ngawaka in his affidavit in relation to Aotea and specifically the name change issue. The fact that no engagement occurred with Ngātiwai is offensive and inappropriate.

Mahurangi

14. I refer to paras [127] and [129] of the affidavit of Mr Dreaver regarding (among other things) the Crown's recognition of the historical presence, association and certain customary rights of Marutūāhu in the Mahurangi coastal area from Kawau Island south and the southern Mahurangi Harbour area, and the potential redress proposed in the Mahurangi area specified in the Marutūāhu Record of Agreement, including the coastal statutory acknowledgement. In response:

- (a) the Crown did not follow any process to understand the other interests in Mahurangi other than Marutūāhu. A wānanga was held with Marutūāhu, but no similar process was undertaken with other iwi with interests in the area;
- (b) consideration of overlaps occurred after understanding interests. This should have occurred at the same time and prior to developing redress;
- (c) unlike Ngāti Manuhiri, Ngātiwai were not even included as a potential interested iwi; and
- (d) the coastal statutory acknowledgement was included in the Marutūāhu Record of Agreement without any discussion with Ngātiwai.

15. The affidavit of Mr Dreaver at paras [130] to [147] summarises the correspondence trail and meetings between the Crown, Marutūāhu and Ngātiwai regarding (among other things) engagement, overlapping claims and the Marutūāhu Record of Agreement. In particular, Mr Dreaver states that:

- (a) *“Neither I nor OTS heard anything further from Ngātiwai at this point and we were therefore of the impression all concerns of Ngātiwai in relation to*

the collective redress contained in the Marutūāhu Iwi Record of Agreement had been addressed” [144]

(b) *“The Minister did not write to Ngātiwai regarding his preliminary decision as because there had been no further correspondence from Ngātiwai regarding the coastal statutory acknowledgement and Ngātiwai hadn’t raised any further matters. I considered the matter was resolved to the satisfaction of the Crown” [146]*

(c) *“A letter from the Minister to Ngātiwai on 15 May 2014 advised the Crown’s view that Ngātiwai’s concerns had been addressed and in relation to the coastal statutory acknowledgement, as the redress is non-exclusive it was the Minister’s decision to maintain this redress” [147]*

16. It is careless for the Crown to assume that Ngātiwai’s concerns had been properly addressed or resolved due to lack of correspondence.

17. In my view, the Minister should have written to Ngātiwai regarding his preliminary decision regardless of not receiving correspondence after 6 June and 31 August 2013 from Ngātiwai. The exhibit marked **MD-47** to the affidavit of Mr Dreaver at page 211 (consultation timeframes table) states that on 11 November 2013, the Minister was to *“advise iwi of preliminary decision, and if required, the Chief Crown Negotiator or OTS officials will meet with iwi”*. The expectation was that the Crown would provide Ngātiwai with a response to the 6 June and 31 July 2013 correspondence and notify Ngātiwai of any preliminary decisions, but this did not occur. At no time did Ngātiwai communicate to the Crown that its concerns were addressed or resolved.

Conclusion

18. In my view the Crown did not set a sound foundation for a successful overlapping claims process between Ngātiwai and our hapū Ngāti Rehua and Ngāti Manuhiri or between Hauraki iwi and Ngātiwai at the outset. Had the Crown taken the same approach it did with Hauraki Iwi and facilitated a wānanga between Ngātiwai, Ngāti Rehua and Ngāti Manuhiri

so that everyone understood how various interests were to be represented in negotiations we would not be here today. Had the Crown facilitated a wānanga between Ngātiwai (including our hapū) and Hauraki iwi to understand how everyone's interests were to be dealt with we would not be here today.

19. Instead, it appears to me that Ngātiwai were not even on the Crown's radar at the time the Crown were facilitating overlapping claims discussions between Ngāti Rehua and Hauraki iwi particularly in relation to Aotea. It was not right for the Crown to assume that Ngāti Rehua represented all Ngātiwai interests on Aotea without checking this assumption with Ngātiwai and this should have occurred at the very beginning.



APERAHAMA KIRIPETI EDWARDS