**THE WAITANGI TRIBUNAL** **WAI 2840**
**TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI** **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.

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# BRIEF OF EVIDENCE OF HAYDN THOMAS EDMONDS

**29 March 2019**

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**I, HAYDN THOMAS EDMONDS,** say**:**

1. My name is Haydn Thomas Edmonds. I prepared two affidavits, dated 21 July 2017 (Wai 2666, #A2, Wai 2840 #A8) and 3 November 2017 (Wai 2666, #A8, Wai 2840 #A17) on behalf of Ngātiwai Trust Board and the iwi of Ngātiwai (**Ngātiwai**).

2. This affidavit responds to the briefs of evidence of Michael Dreaver dated 8 March 2019 (**Dreaver Brief**), Richard John Barker dated 11 March 2019 (**Barker Brief**) and Susan Kiri Leah Campbell dated 14 March 2019 (**Campbell Brief**) filed by the Crown and interested parties between 8 March 2019 and 14 March 2019.

3. In this affidavit, I will address the Crown's evidence in relation to the following:

   (a) The lack of any upfront process to consider and understand the various interests of Ngātiwai and others;

   (b) Engagement between Ngātiwai and Marutūāhu; and

   (c) Tikanga.

**No upfront process to ascertain interests**

4. I have read the Dreaver Brief, Barker Brief and Campbell Brief.

5. In response to the Dreaver Brief, I note that the Crown did not engage with Ngātiwai prior to signing the Record of Agreement with Marutūāhu Iwi on 17 May 2013 (**Record of Agreement**) (paragraph 120 of the Dreaver Brief). There was no upfront kanohi ki te kanohi process to understand and determine the interests of Ngātiwai and other iwi and/or hapū in the relevant areas where redress was potentially to be offered. In my view, we would not be in the position we are currently in if this had happened upfront as such a process would have enabled us to better understand the interests of Marutūāhu and other Hauraki iwi and the Crown would have had an opportunity to understand the interests of Ngātiwai. That would have then informed the process so that tikanga and mana were respected. This is particularly important when Hauraki iwi are not resident in the rohe of Ngātiwai and have no marae. As a matter of tikanga, we need to understand the basis upon which the Crown

considers it appropriate to provide whenua within our rohe or other redress to Hauraki iwi.

6. The Crown did not inform Ngātiwai of the Record of Agreement prior to it being signed. Ngātiwai informed the Crown of its concerns after becoming aware of the Record of Agreement (see MD-39). As the letter states, Ngātiwai did not deny that the claimants (Marutūāhu) have an interest in the Hauraki Gulf but we requested clarification of the nature and extent of those interests. We required this information as Marutūāhu iwi are not resident or visible on Aotea. If they have interests, we need to understand where those interests are and why. In my view, an upfront tikanga based process would have enabled those interests to be explained and known to Ngātiwai. Such a process may well have removed the concerns of Ngātiwai but it did not take place.

7. The Crown also assumed that it was only required to engage with Ngāti Rehua / Ngātiwai ki Aotea and Ngāti Manuhiri and not Ngātiwai. I refer to paragraph 166 of the Dreaver Brief where he refers to a meeting with Spencer Webster (Ngāti Rehua / Ngātiwai ki Aotea) and Paul Majeury. Ngātiwai and the Trust Board were not invited to participate in those initial meetings. Had there been an upfront process and openness to understanding tikanga, Ngātiwai would have had an opportunity to explain our inter-tribal relationships and why Ngātiwai's consent for our hapū to negotiate their own settlements did not extend to exclusion of Ngātiwai from overlapping claims issues involving other iwi, such as Hauraki.

8. Settlement negotiations at the hapū level between Ngāti Manuhiri and Ngāti Rehua / Ngātiwai ki Aotea, were a direct result of the Crown's policy to settle based on geographical areas. Ngātiwai supported the hapū to do this because it did not wish that they be penalised or held back because of the Crown's approach. The Crown then took Ngātiwai's consent for that purpose and assumed that Ngātiwai did not need to be involved in overlapping issues that fell within the rohe of those hapū. The Crown did not first discuss this assumption with Ngātiwai or seek to engage with Ngātiwai and seek our feedback on overlapping claims issues. Instead, the Crown assumed our hapū spoke for the iwi and that hapū represented all Ngātiwai uri within the particular area. These

assumptions are flawed and would not have been there if we had an upfront engagement process.

9. The Crown approach demonstrates the Crown's lack of understanding of whakapapa and tikanga. As a matter of whakapapa, there are Ngātiwai uri who are not captured by the claimant definition for Ngāti Rehua / Ngātiwai ki Aotea. The Crown would have known and understood this had it first engaged with all parties upfront.

**Engagement between Ngātiwai and Marutūāhu**

10. As set out in my previous evidence, Marutūāhu have consistently refused to engage with Ngātiwai. The Crown's evidence indicates that the Crown encouraged Marutūāhu to engage but did nothing when Marutūāhu would not engage. Instead, the Crown proceeded to make decisions thereby removing any importance being put on a tikanga based process where iwi are required to engage. A tikanga process would ensure the mana of tāngata whenua is respected and provide an opportunity to understand the interests of others.

11. I refer to paragraph 126 of the brief of evidence of Leah Campbell. I had one meeting with Mr Majurey in 2013 at a café in Warkworth. In attendance were Mr Majurey, myself, then Ngātiwai CEO Jim Smillie and one other whose name escapes me at present. It was introductory. It was our first meet and greet. We did not discuss Marutūāhu's interests. We exchanged niceties and Mr Majurey outlined their intention to move towards a Treaty settlement. The meeting was brief and there was no discussion of overlapping areas or any detailed settlement issues. It was a first meet and greet only, nothing more.

12. There were no further meetings or discussions with Mr Majurey and none with Marutūāhu iwi (with the exception of a hui with Ngāti Paoa). We attended meetings at which Mr Majurey was present but these had nothing to do with these issues. They related to the possible creation of a Gulf Harbour marine park and involved multiple parties. I note that Leah Campbell's evidence at paragraph 126 refers to advice by Mr Majurey that he had met with Ngātiwai in 2013 and "recently discussed those interests again" with me but Ms Campbell does not provide any detail about when these discussions allegedly occurred. I deny that they did. There have been no hui between Ngātiwai and Marutūāhu.

13. It is not for Mr Majurey to conclude that because Ngātiwai do not accept that Marutūāhu iwi have interests on Aotea that our differences remain irreconcilable and as such "a further meeting would not change the view of either iwi". This is a striking example of a complete disregard for a tikanga (or any) process.

14. I refer to paragraph 138 of Mr McEnteer's evidence. I reiterate that I am not aware of any meetings (other than the 2013 Warkworth meet and greet and the hui with Ngāti Paoa) or discussions about these issues between Ngatiwai and Marutūāhu representatives. There was no opportunity for agreement to be reached when Marutūāhu refused to meet and the Crown did not require such processes to occur. No value was placed on tikanga or mana whenua.

15. We have always had relationships with Marutūāhu but this lack of engagement has reduced the mana of Ngātiwai and its historical land holdings.

**Crown's position on iwi engagement**

16. I refer to paragraph 191 of the Dreaver Brief where he states that "the Crown aimed to provide groups with overlapping interests details of redress offers to Hauraki iwi in a comprehensive fashion as much as possible". No upfront timeline was provided to us regarding the Crown's process. The Crown did not form us of its timetable for initialling deeds of settlements. These were done secretively and we had no visibility of this process nor the process of moving from collective to individual protocol redress. In my view, a fundamental flaw with the Crown's process is that it is not open and transparent. There is no upfront hui to explain the Crown's timeframe and highlight the potential areas that may be impacted by overlapping claims issues. There is no hui to allow iwi to explain their various interests upfront so that we each understand the position of the other and the redress is then crafted to reflect those interests.

17. One of the big concerns with Ngātiwai is that Hauraki have been absent from Aotea for decades. We have not held a hui on Aotea or at Mahurangi with our hapū and the various Hauraki iwi to understand historical interests and to agree, as a matter of tikanga, what they mean. The Crown has never sought to facilitate such a process. Rather, the Crown proposed redress, then asked iwi in writing to comment. Ngātiwai

had requested information as to the interests of Hauraki so we could properly respond but we did not get any substantive response. Marutūāhu then refused to meet with us.

18. The Crown, while "encouraging" Hauraki to meet with us, did nothing when Hauraki refused. This approach provided no incentive for Hauraki to engage in tikanga, to respect mana whenua or to settle in a way that preserves tribal relationships. The Crown, by continuing with settlements without insisting on a tikanga based process, is not acting in good faith or providing iwi with a level playing field for engagement.

**Tikanga Process**

19. I have previously stated Ngātiwai's key concern regarding the absence of any upfront tikanga based process to properly identify and understand the basis of the interests of Ngātiwai and Hauraki iwi within the areas where the Crown has chosen to provide redress to Hauraki iwi.[1]

20. I refer to the brief of evidence of Terrence McEnteer dated 11 March 2019 at paragraph 16 where he states that "…It is notable that some of the claimant iwi in this inquiry demand a "tikanga process" to resolve overlapping claims. It still remains obscure as to what this means in some cases, other than the suspicion that it is really code for having a veto".

21. We all know what tikanga is. It starts at the marae and is about mana. Ngatiwai is not a settled iwi. Ngātiwai does not wish to delay or veto the settlements by Hauraki iwi. This is about respecting the mana of Ngātiwai. This is about the Crown's process in providing redress that is convenient to the Crown (ie, surplus Crown lands) while pushing through settlements in a way that does not provide for an open and transparent process to ensure that tikanga is observed, understood and respected. If this happened, we would not have needed to bring a Waitangi Tribunal claim. We would have had a series of hui with Hauraki iwi and we would have genuinely understood the nature of their interests along our coastline, on Aotea or at Mahurangi. This did not happen. The Crown did nothing when Marutūāhu and others did not wish to meet with us and proceeded with the settlements.

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[1] Refer to Reply Affidavit of Haydn Thomas Edmonds on Behalf of Ngātiwai Trust Board, dated 3 November 2017, paragraph [25] to [30].

22. Mr McEnteer asserts at paragraph 16 of his brief of evidence that no agreements have been dishonoured. While this may be true (there are unrelated commercial arrangements with Ngātiwai relating to fisheries and aquaculture), the point is that there has not been *any* opportunity for an agreement to be reached regarding these issues between Ngātiwai and Marutūāhu. There has been no face to face hui between Ngātiwai and Ngāti Tamaterā because they have refused to meet.

23. In contrast with Marutūāhu, Ngātiwai and Ngāti Hako undertook a tikanga process to address their differences. Ngātiwai requested a tikanga process be adopted. A tikanga process is a structured approach which sets the protocols for engagement and which encourages open dialogue in a respectful environment. A hui took place at Whakapaumaraha Marae, Whananaki on 15 May 2018 between Ngātiwai and Ngāti Hako. It was a very positive hui under the guidance of marae taumata who maintained a respectful exchange of views and facilitated agreed outcomes to be revisited at a further hui to be arranged. Each party took away matters to be considered and connections were reaffirmed. As a result of this hui, it became clear that Ngāti Hako could not establish a connection to Aotea to support a Statement of Association. The hui was beneficial to both parties to clearly understand and discuss the issues between them in the interests of reducing differences. Unfortunately, this process was truncated by the Crown because of pressures on the negotiators to meet the Crown timeline to settle and the agreed further hui could not take place. Despite that, our relationship with Ngāti Hako is strengthened and the understanding of each other's issues is greater because of that partial opportunity to engage. The hui resulted in a preliminary decision from the Minister to remove Ngāti Hako's Statement of Association.

**Conclusion**

24. It is vital to engage with affected iwi about ongoing issues or concessions being made in their area of interest which will impact on the occupiers of that land. The notion that an iwi does not need to engage with another iwi when the Crown is giving away contested land in respect of which other iwi have had continuous occupation demonstrates the injustice in the Crown's approach to Marutūāhu's claims.

25. When no Tikanga process occurs, the Crown denies an opportunity for the issues to be discussed and understood. When there is a failure or refusal to engage, as with Marutūāhu, the Crown's response should be to not allow negotiations to continue until engagement has taken place.

26. The Crown should have brought all parties together at the outset. This would have avoided a lot of the issues and injustice that has occurred.

**HAYDN THOMAS EDMONDS**