

THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 2840

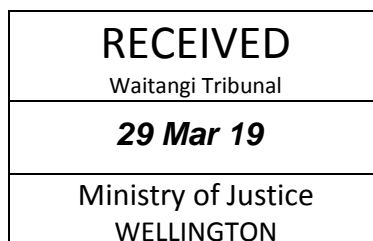
IN THE MATTER of the Treaty of Waitangi Act 1975

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 TANIA MCPHERSON
29 March 2019



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WELLINGTON

I, TANIA MCPHERSON, say:

1. My name is Tania McPherson. I prepared an affidavit, dated 18 February 2019 (Wai 2840 #A33¹), 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. I have read the evidence filed by the Crown and in particular the briefs of evidence of Michael Dreaver, Richard Barker and Leah Campbell and reply as follows.

Ngātiwai response to Crown letters

3. I refer to the affidavit of Michael Dreaver dated 8 March 2019. Paragraph [130] of Mr Dreaver's evidence refers to a letter from the Crown to Ngātiwai (exhibit **MD-38**). The letter was addressed to "*Ngāpuhi and Ngātiwai claimants*" and does not specify the Ngātiwai Trust Board (the **Trust Board**). The Trust Board has no record of having received this letter. I was not aware of the letter until Mr Dreaver's affidavit.
4. At paragraph [155] of Mr Dreaver's evidence he states that Ngātiwai did not respond to a letter from the Minister dated 15 May 2014 (exhibit **MD-52**).² However, Ngātiwai had provided responses, as follows:³
 - (a) by letter, dated 25 July 2014 (document 16 of Exhibit A to my affidavit (#A33)); and
 - (b) by email, dated 30 September 2014 (document 17 of Exhibit A to my affidavit (#A33)) following up with the Crown as to whether they had received the 25 July 2014 letter and requesting information.
5. The Crown then responded by letter dated 14 October 2014 acknowledging receipt of Ngātiwai's letter (see document 18 of Exhibit A to my affidavit (#A33)).

¹ #A33 was a replacement affidavit for earlier evidence filed: brief of evidence dated 24 July 2017 (Wai 2666, #A7(a)) and affidavit dated 23 August 2017 (Wai 2666, #A7(b)).

² See paragraph [147] of Michael Dreaver's brief of evidence dated 8 March 2019 (#A45).

³ See paragraphs [39]-[41] of Tania McPherson's affidavit dated 18 February 2019 (#A33).

6. In response to paragraph [153] of Mr Dreaver's evidence, Ngātiwai did not provide feedback to the Crown in regards to exclusive redress proposed in the Mahurangi area around 18 October 2013 because the Crown had not provided a response on the nature and extent of Marutūāhu's interests in Mahurangi or the extent of exclusivity except in relation to the Coastal Statutory Acknowledgement. The Crown should not therefore have assumed that Ngātiwai consented. Had the Crown convened an upfront hui and explained its processes and proposals this misunderstanding would not have occurred.

Crown's assumption that Ngātiwai had not raised any objections

7. Ngātiwai sent two a letter to the Crown dated 6 June 2013 and 31 October 2013 requesting discussions with the claimants and sought further information on the redress to be provided to Marutūāhu iwi. The letter explicitly stated:
- (a) *"our client does not deny that the claimants have an interest but the documentation does not clarify the nature and extent of the interest"*
 - (b) *"our client Board would oppose any transfer of assets set out in the table at paragraph 1 and 5 in particular"*
 - (c) *"and to what extent any exclusivity is sought with respect to any redress"*
8. The Crown assumed that Ngātiwai had not raised any objections in relation to the Marutūāhū Iwi Record of Agreement (see paragraph [132] of Mr Dreaver's evidence). This is incorrect. Ngātiwai requested information so that it could understand the extent of Marutūāhū's interests and the extent of exclusivity of the redress. This is set out in the letter of Mr Peters at exhibit **MD-39**. The Crown did not provide this information except in relation to the coastal statutory acknowledgement.
9. At no time did Ngātiwai communicate to the Crown that it was satisfied with the redress within the letters dated 6 June 2013 and 31 October 2013, or through any other correspondence with the Crown.
10. From the letters dated 6 June 2013 and 31 October 2013, Ngātiwai expected the Crown would notify Ngātiwai of the nature of those interests, but it did not.
11. On 18 October 2013, OTS wrote to Ngātiwai (and all groups with areas of interest that overlapped with collective redress proposed for the

Marutūāhu Iwi).⁴ The letter provided little detail on the proposed redress. In particular, the one line sentence in the attachment to the letter did not sufficiently inform us of the exclusivity of the RFR redress in respect of Aotea.

12. The Crown was under the wrong impression that because they had not heard from Ngātiwai, Ngātiwai's concerns had been addressed (see paragraph [144] of Mr Dreaver's evidence). This assumption was never checked with us.
13. Paragraph [146] of Mr Dreaver's evidence states that the Minister did not write to Ngātiwai regarding his preliminary decision because there had been no further correspondence from Ngātiwai and Ngātiwai had not raised any further matters. This too was wrong as paragraphs 3 to 6 above show.
14. The Minister should have written to Ngātiwai regarding his preliminary decision. Page 211 of the Crown's letter dated 18 October 2013 (exhibit **MD-47**) states that on 11 November 2013, the Minister was to "*advise iwi of preliminary decision, and if required, the Chief Crown Negotiation or OTS officials will meet with iwi*". However this did not happen.
15. As mentioned above, Ngātiwai had requested further information on the nature and extent of Marutūāhu's interests in Mahurangi or the extent of exclusivity except in relation to the Coastal Statutory Acknowledgement and had not received a response from Crown. We are of the view that we could not provide feedback regarding the exclusive redress proposed in the Mahurangi area given we did not have sufficient information on the proposed redress. This is further reason why an upfront Hui with all overlapping parties would have provided an opportunity for those interests to have been discussed and understood. The Crown however, did not do this and instead corresponded via letters.

⁴ See paragraph [141] of Mr Dreaver's brief of evidence and [**MD-47**] of Mr Dreaver's exhibits.

16. In response to Mr Dreaver's comments at paragraph [183], Ngātiwai had not been provided sufficient information from the Crown on the details of RFR redress at Aotea when they were corresponding with the Crown on the Marutūāhu Iwi ROA despite having requested information.



TANIA MCPHERSON