OFFICIAL

Wai 2616, #2.5.16
Wai 2653, #2.5.12
Wai 2666, #2.5.10
Wai 2678, #2.5.11
Wai 2735, #2.5.11
Wai 2754, #2.5.5

WAITANGI TRIBUNAL

Wai 2616
Wai 2653
Wai 2666
Wai 2678
Wai 2735
Wai 2754

CONCERNING the Treaty of Waitangi Act 1975

AND applications for an urgent hearing in relation to individual and collective Deeds of Settlement for the Iwi of Hauraki

---

DECISION
ON APPLICATIONS FOR AN URGENT HEARING

9 November 2018

Introduction

1. This decision determines six applications for urgent hearing into the Crown's recognition of individual and collective deeds of settlement for iwi of Hauraki.

2. These applications allege that the Crown has breached the principles of the Treaty of Waitangi through its overlapping claims policies and processes and incorrectly allocated redress to iwi of Hauraki.

Background

3. In 2009, the 12 iwi of Hauraki formed the Hauraki Collective (Hauraki) for the purpose of negotiating a Treaty settlement. Those iwi are Hako, Ngāi Tai ki Tāmaki, Ngāti Hei, Ngāti Maru, Ngāti Paoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāti Rāhiri Tumutumu, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngaati Whanaunga and Te Patukirikiri.

4. The 12 iwi have individual mandates to negotiate the settlement of their claims and will also receive redress through collective redress deeds where they have shared interests.

5. The Marutūāhu Iwi Collective Redress Deed (Marutūāhu Redress Deed) initialled on 27 July 2018 will provide collective redress to five iwi of Hauraki, including Ngāti Maru, Ngāti Pāoa, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri.

6. The Pare Hauraki Collective Redress Deed (Hauraki Redress Deed) initialled on 22 December 2016 and signed on 2 August 2018, will provide cultural and commercial redress to the 12 iwi listed at paragraph 3 above.

7. The collective redress deeds do not settle historical claims. The historical claims of each iwi will be settled through their individual deeds of settlement.

The applicants

8. Wai 2616, the Hauraki Collective Deed of Settlement (Ngāi Te Rangi) claim, was filed by Charlie Tawhiao (Chairman) on behalf of the Ngāi Te Rangi Settlement Trust on 14 March 2017 (Wai 2616, #1.1.1). Ngāi Te Rangi are an iwi of Tauranga Moana and the Ngāi Te Rangi Settlement Trust is the post-settlement governance entity for Ngāi Te Rangi.

9. Wai 2653, the Hauraki Collective Deed of Settlement (Te Whakakitenga) claim**,** was filed by Stanley Rahui Papa on behalf of Te Whakakitenga o Waikato Incorporated and the iwi of Waikato-Tainui on 5 April 2017 (Wai 2653, #1.1.1). Te Whakakitenga is the representative tribal authority for the iwi of Waikato-Tainui and is the trustee of the Waikato Raupatu Lands Trust and of the Waikato Raupatu River Trust.

10. Wai 2666, the Hauraki Collective Deed of Settlement (Ngātiwai) claim, was filed by Haydn Thomas Edmonds on behalf of the Ngātiwai Trust Board and the iwi of Ngātiwai on 24 July 2017 (Wai 2666, #1.1.1). The Ngātiwai Trust Board was incorporated as a charitable trust under the Charitable Trusts Act 1957 for the purpose of addressing the collective needs of Ngātiwai iwi.

11. Wai 2678, the Hauraki Mandate (Ngāti Manuhiri) claim, was filed by Terrence Leslie (Mook) Hohneck on behalf of the Ngāti Manuhiri Settlement Trust on 14 September 2017

(Wai 2678, #1.1.1). The Ngāti Manuhiri Settlement Trust is the post-settlement governance entity for Ngāti Manuhiri.

12. Wai 2735, the Ngāti Porou ki Hauraki claim, was filed by John Tamihere, lead negotiator for Te Rūnanga o Ngāti Porou ki Hauraki, on behalf of himself and Ngāti Porou ki Hauraki. Ngāti Porou ki Hauraki are one of the 12 iwi included in the Pare Hauraki Collective Redress Deed.

13. Wai 2754, the Hauraki Collective Deed of Settlement (Ngāti Ranginui) claim, was filed by Ronald Te Pio Kawe on behalf of Ngā Hapū o Ngāti Ranginui Settlement Trust and Ngā Hapū o Ngāti Ranginui. Ngāti Ranginui are an iwi of Tauranga Moana. Ngā Hapū o Ngāti Ranginui Settlement Trust is established as the post-settlement governance entity for Ngāti Ranginui following settlement.

Parties' submissions – overlapping claims and proposed redress

14. At the heart of these applications is the Crown's overlapping claims policy and processes and the proposed redress that has been offered to iwi of Hauraki. The submissions for the applicants, and the Crown response, are summarised below.

Wai 2616: Ngāi Te Rangi

15. The applicants submit that on 22 December 2016, the Crown initialled the Hauraki Redress Deed, which inappropriately and incorrectly provides Hauraki with redress that extends into the heart of Ngāi Te Rangi (Wai 2616, #1.1.1).

16. Following the offer of cultural and commercial redress to Hauraki listed at paragraph 3 of the applicants' statement of claim (Wai 2616, #1.1.1), the applicants withdrew their support for previously negotiated redress, including the allocation of the Athenree Forest, properties in Tauranga Moana and the Kaimai Statutory Acknowledgement (Wai 2616, #1.1.1)

17. The applicants' position is that the negotiated outcomes for the redress resulted from pressures to achieve a timely Treaty settlement (Wai 2616, #3.1.1). They state that all redress concerning the Ngāi Te Rangi rohe should be removed from the Hauraki Redress Deed. Redress relating to the Tauranga Moana Framework (TMF) is included in the Deed in a manner that preserves the ability of Hauraki to participate in the Framework as an equal partner. This has been provided by the Crown, in the face of years of consistent and clear opposition from Ngāi Te Rangi to Hauraki gaining that particular redress (Wai 2616, #3.1.1).

18. The applicants submit that they were only informed of the nature and extent of the redress three days prior to the initialling of the Hauraki Redress Deed and that some of the redress in issue has not been through an overlapping claims process (Wai 2616, #3.1.1).

19. Ngāi Te Rangi do not deny that Hauraki has some historical connections with Tauranga Moana, however, they assert that those historical interests do not give Hauraki a right to obtain settlement redress in Tauranga Moana that essentially elevates their status to iwi with mana whenua, mana moana and rangatiratanga (Wai 2616, #3.1.1).

20. Ngāi Te Rangi has always maintained that it is their iwi, together with Ngāti Ranginui and Ngāti Pukenga who hold mana whenua, mana moana and rangatiratanga over Tauranga Moana, not Hauraki (Wai 2616, #3.1.1).

21. The Crown submits that they are not in a position to either oppose or not oppose the application (Wai 2616, #3.1.04, #3.1.13, #3.1.15).

22. On 17 August 2018, the Crown filed an update on the redress of concern to the applicants (Wai 2616, #3.1.39). The Crown highlighted that: the TMF is not included in the Hauraki Redress Deed or any draft Hauraki legislation, the conservation framework area no longer overlaps with Tauranga Moana, redress concerning fisheries has been finalised, nine fewer 'first right of refusal' properties are to be offered to Hauraki and there have been no changes regarding commercial properties, the Kaimai-Mamaku Range Acknowledgement and the Athenree Forest.

23. In response to the Crown, the applicants submit that the current wording regarding the TMF as contained in the deed is not resolved and needs to be included in a Tribunal inquiry (Wai 2616, #3.1.40).

24. The applicants contend that the Crown has not responded to the applicants' key issue regarding overlapping claims issues as it has said that it does not dictate tikanga resolutions but at the same time that it cannot be bound by the outcome of a tikanga process (Wai 2616, #3.1.40).

25. The applicants submit the table of redress provided by the Crown does not include the full extent of the redress that Ngāi Te Rangi oppose. Ngāi Te Rangi has not been provided with any of the individual deeds and are concerned that the deeds may contain redress of concern to the applicants (Wai 2616, #3.1.40).

Wai 2653: Waikato-Tainui

26. The applicants are concerned that the Crown's policy, process and treatment of overlapping claims and related redress will undermine their settlements (Wai 2653, #1.1.1). On 4 July 2018, this application was adjourned sine die to allow for further engagement with the Crown. No resolution was reached and the applicants filed on 24 August 2018, requesting to proceed to an urgent hearing (Wai 2653, #3.1.13).

27. Waikato-Tainui entered into the 1995 Raupatu Lands Settlement with the Crown, which established the rights and redress afforded to Waikato-Tainui following the 1863 to 1865 Crown land confiscation (Wai 2653, #1.1.1). A further settlement occurred on 22 August 2008 when the Waikato-Tainui River Settlement was signed, with a revised 2009 Waikato River Deed relating to the restoration, protection, co-governance and co-management of the Waikato river entered into on 17 December 2009 (Wai 2653, #1.1.1).

28. The applicants state that the Hauraki Redress Deed undermines Waikato-Tainui's first right of refusal over certain properties, allocates a right of second refusal to Hauraki, extends Hauraki's area of redress into the Waikato claim area, establishes governance and management arrangements over catchments of the Mangatangi River, Mangataawhiri Stream and Whangamarino Wetland and establishes the Waihou Piako Coromandel Catchment Authority (Wai 2653, #1.1.1).

29. The applicants contend they have raised these concerns with the Crown but have not reached a satisfactory result (Wai 2653, #1.1.1).

30. The Crown has not filed a substantive response opposing or supporting the application for urgent hearing, but did file an update on the redress offered to iwi of Hauraki on 17 August 2018 (Wai 2653, #3.1.12). The only change relates to the governance arrangements of the upper and lower catchments of the Mangatangi River, Mangataawhiri Stream and Whangamarino Wetland. The Waikato Regional Council, Waikato District Council and Hauraki are now empowered to enter into joint management agreements concerning this (Wai 2653, #3.1.12).

31. The Wai 2653 applicants submit that despite communications with the Crown, no agreements were reached and no tikanga-based engagement or resolution process has been undertaken between Waikato-Tainui and Hauraki (Wai 2653, # 3.1.13). The applicants expected that following the signing of the Hauraki Redress Deed, the proposed tikanga-based resolution process would occur, but this has not been the case (Wai 2653, #3.1.13).

Wai 2666: Ngātiwai

32. The Ngātiwai Trust Board has been recognised by the Crown as having the mandate to represent Ngātiwai for Treaty of Waitangi settlement negotiations. The Trust Board is comprised of 14 trustees representing affiliated marae in the Ngātiwai rohe. The iwi of Ngātiwai includes the 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 (Wai 2666, #1.1.1).

33. The Ngātiwai rohe extends from Tapeka Point in the Bay of Islands to Matakana 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) (Wai 2666, #1.1.1).

34. The applicants submit that prior to 1840, Ngātiwai exercised, and continues to exercise, ahi kaa, mana whenua, rangatiratanga and kaitiakitanga within the Ngātiwai rohe (Wai 2666, #1.1.1).

35. This application concerns the Crown's policies, and related acts and omissions concerning the overlapping claims process and the offer of redress to the Hauraki Collective. Specifically, the grant to the Hauraki Collective of a right of first refusal to purchase certain fisheries quota, protocol redress, redress offered on Aotea, redress offered in the Marutūāhu Collective Redress Deed, and redress offered to Ngāti Whanaunga.

36. The applicants say that they have raised their concerns regarding the above issues and redress with the Crown but have had no resolution to date. The applicants highlight the similarity of issues raised in the other applications for urgent hearing regarding overlapping claims and redress offered to Hauraki (Wai 2666, #1.1.1).

37. The applicants submit that the engagement of the Crown with the Trust Board and its decision making is unreasonable and inconsistent with the principles of the Treaty of Waitangi. The Crown has not engaged with the Trust Board in the development of proposed redress to be offered to Hauraki and only engaged after redress proposals had been formulated. Further, the Crown 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 (Wai 2666, #1.1.1).

38. On 6 October 2017, the Crown filed opposing the application, stating that the overlapping claims process has been fair, robust and Treaty compliant (Wai 2666, #3.1.6).

39. The Crown submits that it has engaged with Ngātiwai on areas of interest or where it was anticipated there may be areas of concern to Ngātiwai. Further, that although Ngātiwai are not satisfied with decisions made, disagreement among iwi over Treaty settlements is often a source of ongoing dispute and the Crown can only do so much to assist with the resolution of disputes among settlement groups and other groups (Wai 2666, #3.1.6).

40. The Crown submits redress of concern to Ngātiwai is either not exclusive redress or falls outside the Ngātiwai area of interest, and therefore no prejudice is likely to be suffered by the applicant (Wai 2666, #3.1.6).

41. The Crown argues urgency is only granted in exceptional circumstances and this applicant has not provided any information as to how the urgency criteria applies to each of the various Treaty settlements or redress from which prejudice is said to arise (Wai 2666, #3.1.6).

42. In response, the Wai 2666 applicants submit that their claim relates to the Crowns' overlapping claims policy and process and not simply the redress offered. The applicant lists a table of Crown actions that progressed the Hauraki settlements, such as introducing the Ngāi Tai ki Tāmaki Claims Settlement Bill to Parliament (since enacted), initialling the individual deeds of settlement for Ngāti Pāoa, Ngāti Whanaunga, Te Patukirikiri, Ngāti Maru and Ngāti Tamaterā, initialling the Marutūāhu Collective Redress Deed and signing the Pare Hauraki Collective Redress Deed. They note that they were not informed of any of the above actions except the signing of the Pare Hauraki Collective Redress Deed (Wai 2666, #3.1.28).

Wai 2678: Ngāti Manuhiri

43. The applicant submits that due to the initialling of the Ngāti Paoa Deed and Ngāti Whanaunga Deeds, the Crown has undermined the Ngāti Manuhiri settlement and their Treaty partner relationship with Ngāti Manuhiri (Wai 2678, #1.1.1).

44. In the Ngāti Manuhiri Deed of Settlement, the process by which Ngāti Manuhiri were alienated from their lands is described. The Crown purchased 110,000 acres of land in the Mahurangi area, alienating Ngāti Manuhiri from their land and resources. In 2012, the Crown acknowledged its breaches of the Treaty of Waitangi and the effect on Ngāti Manuhiri's ability to exercise mana whenua and mana motuhake within their rohe (Wai 2678, #1.1.1).

45. The applicants state on 12 July 2017, the Minister for Treaty of Waitangi Negotiations made a preliminary decision (protocol decision) to include a Taonga Tūturu Protocol and an MPI protocol in the Treaty settlements of Ngāti Paoa, Ngāti Maru, Ngāti Tamatera and Ngāti Whanaunga (Wai 2678, #1.1.1). The protocol decision was opposed by Ngāti Manuhiri on 24 July 2017, on the basis that they exercise mana whenua rights over the area being offered to Marutūāhu, and that Marutūāhu derive their rights in the area from the 1841 Mahurangi purchase. As Marutūāhu were a part of that purchase, and the purchase was a Treaty breach, the applicants submit that the purchase could not form the basis for redress or create historical associations to the area in accordance with tikanga (Wai 2678, #1.1.1).

46. The applicants argue on 11 August 2017, Ngāti Manuhiri representatives met with the Minister's officials to discuss the protocol decision, the officials committed to review the protocol decision in light of Ngāti Manuhiri's objections (Wai 2678, #1.1.1).

47. On 18 August 2017, the Crown initialled the Taonga Tūturu and MPI protocol redress. Ngāti Manuhiri claim they were not given notice of the initialling ceremony (Wai 2678, #1.1.1).

48. On 25 August 2017, the Crown initialled a Deed of Settlement with Ngāti Whanaunga, who are a Marutūāhu tribe. Again, Ngāti Manuhiri assert they had objected to the Taonga Tūturu and MPI protocol redress and were only informed of its initialling hours before it occurred (Wai 2678, #1.1.1).

49. On 15 November 2017, the Crown submitted that the application for urgency was premature as the Protocol redress referred to in the application was included in preliminary decisions only (Wai 2678, #3.1.2).

50. The Crown also disputes the allegation that they have not approached Ngāti Manuhiri since the claim was filed (Wai 2678, #3.1.12). They assert officials from the Office of Treaty Settlements wrote to Ngāti Manuhiri on 6 October 2017, 13 April 2018 and requested to meet with Ngāti Manuhiri on 15 May 2018. The Crown says it did not receive a response (Wai 2678, #3.1.12).

51. The Crown opposes the assertions that it is unorthodox to initial a deed whilst overlapping claims engagements are still underway or to introduce all remaining Hauraki legislation as an omnibus bill (Wai 2678, #3.1.12).

52. The applicants reiterate their position that the Crown has not approached Ngāti Manuhiri to resolve any issues with the protocol decisions since this claim was filed. They also clarify the unorthodox Crown conduct they refer to as the introduction of omnibus legislation (Wai 2678, #3.1.6).

Wai 2735: Ngāti Porou ki Hauraki

53. Ngāti Porou ki Hauraki are currently included in the Pare Hauraki Collective Redress Deed and are in the process of progressing their individual Deed of Settlement with the Crown (Wai 2735, #1.1.1). Ngāti Porou ki Hauraki joined the Hauraki Collective in 2010, reflecting the Crown's policy to negotiate with large natural groups and Ngāti Porou ki Hauraki's desire to progress their settlement negotiations (Wai 2375, #1.1.1).

54. Ngāti Porou ki Hauraki's area of interest runs from Katikati to Tairua and from Whangapoua to Poihakena and the Tai Tamahine Coastline of the Hauraki District (Wai 2735, #1.1.1).

55. The applicants submit that the Crown's process suffers from procedural flaws and lacks elements of natural justice. They allege that they were denied access to funding and resources to negotiate their own settlement, excluded from research commissions, denied access to the Crown and that although the Hauraki Collective had the appearance of democracy, Ngāti Porou ki Hauraki were not given an effective voice in negotiations (Wai 2735, #1.1.1). The applicants submit that they now face a settlement in which they have had insufficient representation and have been undermined and marginalised (Wai 2735, #1.1.1).

56. The Crown submits that the application does not satisfy the Tribunal's criteria for granting an urgent inquiry and ought to be dismissed (Wai 2735, #3.1.12). The applicants are able to make submissions during the select committee process and therefore, have an alternative remedy available to them (Wai 2735, 3.1.12).

57. The Crown asserts that a number of the issues raised by the applicant are matters to be settled between Ngāti Porou ki Hauraki and individual iwi of Hauraki (Wai 2735, #3.1.12). The Crown denies that Ngāti Porou ki Hauraki have been excluded from settlement negotiations, denied funding, excluded from research and denied access to the Crown (Wai 2735, #3.1.12).

58. In reply, the applicants submit that the select committee process is not an alternative remedy and that the Crown's extension request to reply to this application was prejudicial to the applicants (Wai 2735, #3.1.13). They reject that the issues raised are matters between Ngāti Porou ki Hauraki and the Collective and contend the Crown are causing division and disunity within the Collective (Wai 2735, #3.1.13). Further, the applicant states that the Crown is making certain assertions and submissions that are not backed by evidence or able to be tested (Wai 2735, #3.1.13).

Wai 2754: Ngāti Ranginui

59. The Ngāti Ranginui area of interest extends from Ngā Kurī-a-Wharei, northwest of Tauranga, inland to the summit of Mount Te Aroha, extending south-east along the Kaimai Range to Pūwhenua and extending south to the Mangorewa River. From the Mangorewa River the rohe extends north-east to Otānewainuku and to coastal Wairakei (Wai 2754, #1.1.1).

60. The applicants are concerned with the Crown's inclusion of the TMF in the Pare Hauraki Collective Redress Deed, specifically clause 22 of the Hauraki Redress Deed, and the establishment of a Conservation Moana Framework and a Minerals Relationship Agreement.

61. The applicants state that the TMF is of immense importance to them and is a fundamental component of their settlement redress. They acknowledge the Waitangi Tribunal's Te Raupatu o Tauranga Moana: Report on the Tauranga Confiscation Claims, which identified payments made to Hauraki tūpuna through Crown purchases in the Te Puna – Katikati block. They dispute that these purchases provide Hauraki with the relative interests akin to mana whenua within Tauranga Moana. They argue by including

clause 22, the Crown are effectively enabling Hauraki to determine the TMF parameters, which undermines any future tikanga process. Clause 22 means the TMF will only be given effect in legislation if agreed to by Hauraki. The applicants submit this gives Hauraki the power to veto the TMF (Wai 2754, #1.1.1).

62. The Crown opposes the application for urgency, stating that this application does not meet the high threshold required and that Ngāti Ranginui has not made out the grounds for urgency (Wai 2754, #3.1.7).

63. The Crown submits the applicant has not demonstrated significant and irreversible prejudice as the redress offered to Hauraki is not exclusive. With respect to the TMF, the Crown says its process has been open, fair and robust, and iwi of Tauranga will be protected and enhanced through a tikanga-based process. The Crown also asserts, given the nature of Hauraki's interests, their approach in the TMF is justified (Wai 2754, #3.1.7).

64. In reply, the applicants submit that the threshold for urgency does not rely on the applicants proving that they 'will' suffer irreversible prejudice but that they are 'likely to' (Wai 2574, #3.1.8 at [4]). Further, that although the Crown has denied that clause 22.6 creates a veto, the clause provides that Hauraki must be satisfied with the resolution of the matters listed in clause 22.6.1 to 22.6.3 before any legislation to give effect to the TMF will be introduced by the Crown. The applicants submit that this, in effect, is a veto (Wai 2574, #3.1.8).

65. The applicants submit that the Crown's alleged consultation occurred either too late in the process (in respect of the Conservation Framework Area) or did not occur at all (in respect of the Minerals Relationship Agreement). They submit it is difficult to see how this can be described as an 'open, fair and robust' process (Wai 2574, #3.1.8 at [22]).

66. The applicants contend whether the Crown's decision to offer the Relationship Redress is 'justified' or not in light of the findings in the Tauranga Moana Raupatu Report is a matter which goes to substance, and accordingly it should be determined at a substantive hearing (Wai 2574, #3.1.8 at [24]). The applicant accepts that the Tribunal found that Marutūāhu had 'claims' in the Katikati block and 'relatively limited portions of the Te Puna block, such as at Ongare', however, the Tauranga Moana Raupatu Report was not a comprehensive assessment of the nature and extent of Hauraki's interests in the Te Puna-Katikati blocks (Wai 2574, #3.1.8 at [24]). Ngāti Ranginui submits that such an assessment has yet to be undertaken by the Tribunal or the Crown (Wai 2574, #3.1.8).

Discussion

67. We emphasise that we are only considering the applications for urgency. We are not considering the substantive merits of these claims. It is only if urgency is granted that we will proceed to hear the substantive claims.[1] The Tribunal's criteria for urgency are set out in the *Guide to Practice and Procedure*:

[1] Wai 2616, #2.5.010.

In deciding an urgency application, the Tribunal has a regard to a number of factors. Of particular importance is whether:

- The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
- There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- The claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- The claim or claims challenge an important current or pending Crown action or policy;
- An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
- Any other grounds justifying urgency have been made out.

Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

68. Each application alleges that the Crown has breached the principles of the Treaty of Waitangi through its overlapping claims policies and processes and as a result has incorrectly allocated redress to iwi of Hauraki. Although the individual redress is specific to each claim, the Crown policy, process and its alleged flaws resulting in the redress offered remain similar and consistent throughout. These are important Crown policies affecting all applicant groups.

69. Although Ngāti Porou ki Hauraki question the democracy of the Hauraki Collective, their claim also concerns the Crown's overlapping claims policies and processes, and how this has been implemented between them and other iwi in the Hauraki Collective.

70. The contested redress throughout these applications is said to undermine existing and potential settlements, as well as the mana whenua and mana moana rights of the applicants. The particular redress complained of is specific to each application: it is both cultural and commercial; exclusive and non-exclusive. The Crown has worked to remove or alter some of the contested redress offered to Hauraki. However, there remains considerable redress in dispute.

71. As well as addressing the substance of the redress offered to Hauraki, the applications also challenge the process by which the Crown arrived at those offers. The applicants allege that they were either excluded from, or only sporadically included in, the negotiations, resulting in redress that they have not fully considered or consented to. There are allegations of unequal treatment and funding, marginalisation and late engagement with groups only once redress was finalised.

72. Further, where the Crown has chosen to respond to the applications, there has been little or no evidence provided in support of its own arguments. Affidavit evidence was filed by the Crown in response to the Ngātiwai and Ngāti Manuhiri applications. For all other applications, the Crown has not filed any substantive evidence. Instead, an

affidavit from Susan Campbell, from the Office of Treaty Settlements, was filed affirming the facts set out in memoranda from Crown counsel. This is not only unorthodox but is an inadequate approach to properly address evidential issues. As a process in which the Crown is intimately involved, it seems reasonable to expect that evidence (albeit from a Crown perspective) would be readily available that could be provided to this Tribunal; and able to be tested, rebutted, or disputed by applicants, where necessary.

73. The Ngātiwai application raises the Crown's engagement or lack of engagement, which is a common complaint across all these applications. In our view, it is significant that all of these applicants are not a dissenting minority to a settlement, but rather large representative bodies mandated to speak on behalf of their respective iwi and hapū. These are the groups that the Crown has recognised for the purpose of settlement negotiations. They are groups that have engaged with the Crown previously to determine their individual settlements, and are groups that presumably would have been engaged in an overlapping claims process that could impact on those existing or upcoming settlements. The Crown states that this engagement occurred or is on-going, but there is simply not enough evidence before this Tribunal to make that determination. We also consider those are substantive issues for resolution at a substantive hearing.

74. With respect to Ngāti Porou ki Hauraki, we note they are not a neighbouring hapū or iwi, but a mandated group that will ultimately benefit from the Hauraki settlement. This is a group that has engaged with the Crown from the outset, and who now complain that the process was flawed and will result in significant prejudice to them. The Tribunal has received contrary submissions of fact and we are in a position where allegations of serious, irreversible prejudice have been made and not sufficiently addressed through evidence from the Crown. The Crown has failed to provide evidence to support their assertions that the process has been fair throughout. Evidence of hapū funding allocations may have been sufficient to address allegations of inequitable funding but that was not filed.

75. A further significant matter in considering applications for urgent hearing is the availability of alternative remedies. All of the applicants argue they have tried to engage with the Crown at least since the Tribunal process began in early 2017. Te Whakakitenga o Waikato requested an adjournment of their application to allow for discussions with the Crown to progress. The Crown says it has sought to engage with a number of the applicants particularly with respect to a proposed tikanga process to address overlapping claim issues. There are legitimate questions raised as to whether this tikanga process was given sufficient time, or was sufficiently robust, so as to be meaningful. Of particular concern is the claim that only a two-week timeframe was afforded to this process before the signing of the Hauraki Redress Deed. Also of concern is the Crown's submission that it cannot be bound by this process. In any event, it appears that no resolutions were reached through this process. We also consider that participation in the Select Committee process, as the settlement bill passes through the House, is not a suitable alternative remedy in this case. We may be persuaded of that at a hearing, or by written evidence, but a mere assertion is not enough.

76. With respect to Ngāi Te Rangi and Ngāti Ranginui, we have received submissions relating to the TMF and the establishment of a governance body which is a significant item of redress in that rohe. We have no Crown evidence of engagement with Tauranga Moana iwi, which leaves us in a position of uncertainty.

77. We also consider that the position of the Ngāti Manuhiri application is distinct. On the face of it, we are being asked to determine whether the provision of non-exclusive redress to Marutūāhu meets the threshold of significant and irreversible prejudice. However, this application must be placed in context. The Crown has already acknowledged the alienation of Ngāti Manuhiri land in the Mahurangi purchase was a Treaty breach. This raises the question of whether the offer of redress to Marutūāhu exacerbates that original breach. These are serious allegations which we think meet the threshold for significant and irreversible prejudice. Whether the Crown process was sufficiently robust to warrant the allocation of that redress is a matter for substantive hearing.

78. We reiterate that it is not for this Panel to determine at this stage whether the Crown's acts, omissions, policies, practices and outcomes are Treaty compliant, but simply whether the applicants have met the threshold for their claims to be heard urgently. We consider that threshold has been met.

Decision

79. For these reasons, these applications for urgency are granted. This urgent inquiry will focus on the Crown's actions, omissions, polices and practices with respect to the overlapping claims, and overlapping claimants, concerning the Hauraki negotiations and deeds of settlement (including the TMF) as set out in these applications.

Next steps

80. A memorandum-directions will be issued shortly convening a judicial conference or judicial teleconference with parties to determine the next steps in this urgent inquiry. This conference will also be an opportunity for parties to engage and further refine the issues for inquiry.

81. We also intend to give an opportunity for submissions to be filed by parties seeking to participate as interested parties to this inquiry. Filing dates will be confirmed in the abovementioned memorandum-directions.

The Registrar is to send a copy of this direction to counsel for the applicants, Crown counsel and those on the notification lists for:

- Wai 2616, the Hauraki Collective Deed of Settlement (Ngāi Te Rangi) claim;
- Wai 2653, the Hauraki Collective Deed of Settlement (Te Whakakitenga) claim;
- Wai 2666, the Hauraki Collective Deed of Settlement (Ngāti Wai) claim;
- Wai 2678, the Hauraki Mandate (Ngāti Manuhiri) claim;
- Wai 2735, the Ngāti Porou ki Hauraki claim; and
- Wai 2754, the Hauraki Collective Deed of Settlement (Ngāti Ranginui) claim.

DATED this 9th day of November 2018

Judge M P Armstrong
Presiding Officer
WAITANGI TRIBUNAL

Professor Rawinia Higgins
Tribunal Member
WAITANGI TRIBUNAL

David Cochrane
Tribunal Member
WAITANGI TRIBUNAL