

APPENDIX 1

HAURAKI COLLECTIVE, MARUTŪĀHU COLLECTIVE, AND INDIVIDUAL HAURAKI IWI SETTLEMENTS

Party	Settlement document	Reference	Issues as outlined in Ngātiwai Amended Statement of Claim (ASOC)
Collective Deeds of Settlement			
Hauraki Collective	Deed of Settlement signed on 2 August 2018.	Paragraph 12.3	Grant to the Hauraki Collective 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.
		Paragraph 12.10	Protocols between each iwi of Hauraki and the Ministry for Primary Industries which will require the Ministry to have particular regard to the “Pare Hauraki World View” when exercising functions under the Fisheries Act 1996, the Forests Act 1949 and the Biosecurity Act 1993.
		Paragraph 13.1 (No. 9)	Include the official name change of Aotea from Great Barrier Island (Aotea) to Aotea / Great Barrier.
Marutūāhu Collective	Deed of Settlement initialled on 27 July 2018.	Paragraph 1.3.5	Statutory acknowledgement or other similar redress in relation to the coastal area from Te Arai Point east to Aotea (Great Barrier Island) and southwards to include the Waitemata Harbour, the Tamaki Strait and the Firth of Thames, including the motu within that area.
		Paragraph 3.1.2	Potential collective cultural redress through Motuora Island Recreational Reserve (79.7230 ha).
		Paragraph 3.1.3	Potential collective cultural redress through Mahurangi Scenic Reserve (8.1212 ha).
		Paragraph 3.1.9	Potential collective cultural redress through Kawau Island Scenic Reserve (3.0351 ha).
		Paragraph 3.8.1(f)	Nga Tai Whakarewa Kauri Marutuahu Iwi (Ngāti Maru, Ngāti Paoa, Ngāti Tamatera, Ngaati Whanaunga, and Te Patukirikiri) Coastal Statutory Acknowledgement (as shown on deed plan

RECEIVED

Waitangi Tribunal

8 May 2019

Ministry of Justice

Party	Settlement document	Reference	Issues as outlined in Ngātiwai Amended Statement of Claim (ASOC)
			OTS-403-01)
		Paragraph 12 at page 4	Statement of Association to an area that includes Mahurangi, Orewa, Pakiri and Te Tii
Individual Iwi of Hauraki Deeds of Settlement			
Ngāti Maru	Deed of Settlement initialled on 8 September 2017.	Paragraph 5.1.1 or 2.7.2	Vesting of the majority of the Cape Barrier Conservation Area and the adjacent Cape Barrier Marginal Strip (approx. 24 hectares) as one site subject to scenic reserve status.
		Paragraph 5.1.1	The fee simple estate in the Ruahine property, being part of Aotea Conservation Park.
		Paragraph 5.29.1(c)	Statement of association (yet to be inserted) for the Whangapoua conservation area (part Aotea Conservation Park)(as shown on deed plan OTS-403-340)
		Paragraph 6.34 /Schedule, Attachments, Part 4	Shared rights of first refusal over specified conservation land in the south and central areas of Aotea (16 sites).
		Paragraph 6.35.2	The right of first refusal is to apply for a term of 177 years from the settlement date.
		<i>Schedule, Documents, Part 4</i>	Protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe.
		<i>Deed Plan OTS-403-340</i>	Deed of Recognition in relation to the Whangapoua Conservation Area (part Aotea Conservation Park) as shown on the deed plan OTS-403-340 (the statutory area)

Party	Settlement document	Reference	Issues as outlined in Ngātiwai Amended Statement of Claim (ASOC)
Ngāti Whanaunga	Deed of Settlement initialled on 25 August 2017.	Paragraph 5.1.1	The fee simple estate in Te Tumu o Waimai (previously described as 2 Riverside Road, Orewa of 0.063 hectares and 'Te Waimai a Te Tumu')
		Paragraph 5.40	Statements of Association
		Paragraph 6.18/6.19	Exclusive right of first refusal over the Tryphena Hall Local Purpose (Site for Community Buildings) Reserve of 0.1750 Hectares for 177 years (0.2 ha, land only).
		Schedule, Property Redress, Part 3, Subpart A	Deferred Selection property: 0.0885 hectares, being a deferred selection property located at 27 Otanerua Road, Hatfields Beach.
		Para 6.3, Schedule, Property Redress, Part 3, Subpart A	Deferred Selection property: 0.0961 hectares, being a deferred selection property located at 29 Otanerua Road, Hatfields Beach.
		Schedule, Documents, Part 4	Protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe.
Ngāti Paoa	Deed of Settlement initialled on 18 August 2017.	Para 5.27, 5.28, 5.29, Doc Sch: Part 4	Protocols redress on the mainland north to Te Arai Point.
		Paragraph 5.45.1 and Doc Sch at pg 17	Statement of Association concerning the Hauraki Gulf/Tikapa Moana in particular relation to Mahurangi and Motuora Island.

Party	Settlement document	Reference	Issues as outlined in Ngātiwai Amended Statement of Claim (ASOC)
Ngāti Tamaterā	Deed of Settlement initialled on 8 September 2017.	Paragraph 3.3	The Crown acknowledges that when it purchased an extensive area at Mahurangi and Omaha in 1841, including 200,000 acres between Te Arai and Maungauika, it failed to ensure adequate reserves would be protected in the ownership of Ngāti Tamatera, and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
		Paragraph 5.1.1	Vesting of Tryphena North Conservation Area and Hilltop Recreation Reserve (approx. 16.3 hectares, two sites) subject to a recreation reserve.
		Paragraph 5.36.1	Statutory Acknowledgement: Whangapoua Conservation Area (Part Aotea Conservation Park) (as shown on deed plan OTS-403-70)
		Paragraph 5.38	Deed of Recognition
		Paragraph 6.29	Shared rights of first refusal over specified Conservation land in the south and central areas of Aotea (18 sites).
		Document Schedule, Part 6	Protocols with certain Crown agencies in relation to areas that overlap with the Ngātiwai Rohe.
Te Patukirikiri	Deed of Settlement initialled on 8 September 2017.	Paragraph 6.12	Shared rights of first refusal over specified conservation land in the south and central areas of Aotea (18 sites).
Hako	Agreement in Principle signed on 22 July 2011.	Paragraph 16	Statement of association relating to a pā site on Aotea.

Contested redress' items set out in the Ngātiwai Amended Statement of Claims dated 20 December 2018

Pare Hauraki Collective Cultural Redress

- Official name change of Aotea (Great Barrier Island) (as defined in Wai 2666, #1.1.1(a) at 19(b)(i))
- Hauraki Collective Fisheries Right of First Refusal (as defined in Wai 2666, #1.1.1(a) at 19(b)(ii))
- Statement of Pare Hauraki World View (as defined in Wai 2666, #1.1.1(a) at 19 (b)(iii))
- Protocols requiring the Minister to have regard to the Pare Hauraki World View (as defined in Wai 2666, #1.1.1(a) at 19 (b)(iv))

Marutūahu Collective Cultural Redress

- Moutohora, Marutuahu and Te Kawau Tu Maro properties (as defined in Wai 2666, #1.1.1(a) at 19 (c)(i))
- Statement of Association (as defined in Wai 2666, #1.1.1(a) at 19 (c)(ii))
- Coastal Statutory Acknowledgement (as defined in Wai 2666, #1.1.1(a) at 19 (c)(iii))

Ngāti Paoa Cultural Redress

- Acknowledgements (as defined in Wai 2666, #1.1.1(a) at 19 (d)(i))
- Statement of Association (as defined in Wai 2666, #1.1.1(a) at 19 (d) (ii))
- Protocols (as defined in Wai 2666, #1.1.1(a) at 19 (d)(iii))

Ngāti Whanaunga Cultural Redress

- Acknowledgements (as defined in Wai 2666, #1.1.1(a) at 19 (e)(i))
- Te Tumu o Waimai property (as defined in Wai 2666, #1.1.1(a) at 19 (e)(ii))
- Deferred selection properties (as defined in Wai 2666, #1.1.1(a) at 19 (e)(iii))
- Protocols (as defined in Wai 2666, #1.1.1(a) at 19 (e)(iv))
- Coastal Statement of Association (as defined in Wai 2666, #1.1.1(a) at 19 (e)(v))

Ngāti Whanaunga Commercial Redress

- Exclusive RFR over Tryphena Hall property (as defined in Wai 2666, #1.1.1(a) at 19 (e)(i))

Ngāti Maru Cultural Redress

- Acknowledgements (as defined in Wai 2666, #1.1.1(a) at 19 (f)(i))
- Ruahine property (as defined in Wai 2666, #1.1.1(a) at 19 (f)(ii))
- Statement, Acknowledgement and Recognition in relation to Whanagpoua Conservation Area (as defined in Wai 2666, #1.1.1(a) at 19 (f)(iii))
- Protocols (as defined in Wai 2666, #1.1.1(a) at 19 (f)(iv))

Ngāti Maru Commercial Redress

- Shared RFR's over 16 properties on Aotea (as defined in Wai 2666, #1.1.1(a) at 19(f)(i))

Ngāti Tamatera Cultural Redress

- Acknowledgements (as defined in Wai 2666, #1.1.1(a) at 19 (g)(a))
- Exclusive redress (as defined in Wai 2666, #1.1.1(a) at 19 (g)(b))
- Statement, Acknowledgement and Recognition in relation to Whangapoua Conservation Area (as defined in Wai 2666, #1.1.1(a) at 19 (g)(c))
- Protocols (as defined in Wai 2666, #1.1.1(a) at 19 (g)(d))

Ngāti Tamatera Commercial Redress

- Shared RFR's over 16 properties on Aotea (as defined in Wai 2666, #1.1.1(a) at 19(f)(i))

Te Patukirikiri Commercial Redress

- Shared RFR's over 16 properties on Aotea (as defined in Wai 2666, #1.1.1(a) at 19(f)(i))

APPENDIX 2

CROWN'S OBLIGATIONS UNDER TE TIRITI O WAITANGI WITH RESPECT TO OVERLAPPING CLAIMS/INTERESTS

Waitangi Tribunal Reports

Report	Quote
Consultation (including engagement, facilitation and communication)	
Tāmaki Makaurau Settlement Process Report (WAI 1362, June 2007)	<p>Who to engage with? <i>Before agreeing to enter into discussions about terms of negotiation with any tangata whenua group, the Crown should first hold hui in the region to discuss: the connections between the people; the possibilities for groupings of people; and the path forward for those with whom the Crown will not be negotiating for the time being. (109)</i></p>
	<p>What kind of engagement?</p> <ul style="list-style-type: none"> • <i>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. (109)</i> • <i>Communication should not be by letters alone; letters should be used only to supplement face-to-face communication. (109)</i> • <i>The Office of Treaty Settlements' focus should be on building relationships. This involves getting to know the groups and the individuals within them sufficiently to be able to identify where their various strengths lie, and get a feel for how the groups function. (109)</i> • <i>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. (109)</i>
	<p>What is the customary underpinning?</p> <ul style="list-style-type: none"> • <i>The Office of Treaty Settlements needs to make a commitment to understanding the customary underpinning of the tangata whenua groups' positions. (109)</i> • <i>In order to do this, officials will need to engage with Māori sources of knowledge, both written and oral. Sometimes it may be necessary to seek external advice on customary interests. This will usually be Māori advice; it needs to be local and specific, and not general. (109)</i> <i>With respect to customary matters, officials need to engage with and understand concepts of layers of interests, rather than 'predominance' and ranking. (109)</i>
	<p>What information should be available?</p> <ul style="list-style-type: none"> • <i>The Crown needs to be honest about the true nature of Treaty settlement negotiations. To what extent do the conventions</i>

	<p>of commercial confidentiality really have a part to play? (109)</p> <ul style="list-style-type: none"> The Office of Treaty Settlements needs to work out and state what kinds of information must be withheld. Such information should be kept to a minimum; officials should proceed on an ethic of openness.(109) <p>The Office of Treaty Settlements needs to avoid getting into situations where, for instance, historical reports are ‘owned’ by anybody. The principle should be that if material of that kind is to be relied upon in settlement negotiations, it is available to all. (109)</p> <p>Whose job is it to engage with the other tangata whenua groups?</p> <ul style="list-style-type: none"> Ultimately, it is the Crown’s job to manage the effects on other tangata whenua groups of their negotiations and settlement with the settling group. (110) Sometimes it will be appropriate to assist the settling group to manage its relations with its neighbours and relations. In this case, the Crown should take a backseat role, but not entirely hands-off. It must remain in touch with the management of those relations, because ultimately it is responsible. It must ensure that: <ul style="list-style-type: none"> it understands what is going on; its own relationship with those groups is not jeopardised; and the price of obtaining a settlement is not too high in terms of damaged intra- and inter-tribal relations. (110) It is important for the Crown to manage the perception that it is leaving the engagement to the settling group because it does not want to engage with the other groups itself. (110) Generally it will work better to focus the engagements between the settling group and other tangata whenua groups on: <ul style="list-style-type: none"> developing understandings about areas of influence; working out ways of dealing with areas where there are multiple interests. (110) It is unlikely to work well if the only topic of engagement is ascertaining the other groups’ views on the settling group, its view of its claims, and what it is likely to be offered by the Crown. (110)
<p>Te Arawa Settlement Process Report (WAI 1353, June 2007)</p>	<p>...the claimants were asking to meet with OTS, at least during some stages in the consultation process : they wanted hui to take place kanohi ki te kanohi (face-to-face). OTS should have met with the claimants, even if this meant stepping outside of its formula. We cannot understand why OTS did not initiate its consultation round by seeking to meet with the affected groups, take the time to explain the process, and establish a relationship between the officials and the overlapping claimants, before commencing its letter writing campaign. OTS should have left no stone unturned to address their concerns to the fullest extent that it reasonably could to ensure a balance in this important respect. That is because OTS is the keeper of the Treaty negotiation and settlement process, squarely positioned at the interface of Crown and Maori relations, no matter how much it tries to deny that. Consulting with a group of people by letter from Wellington was unlikely to be fruitful. The letter approach appears to have wrong-footed the Crown’s overlapping claims process right from the outset. OTS should have risen above its own discomfort to meet with the other partner to the Treaty beyond the KEC more regularly, because it was responsible for discharging the Crown’s Treaty and fiduciary duties to all of them. (74-75)</p>
<p>Ngāti Tūwharetoa ki Kawerau Settlement</p>	<ul style="list-style-type: none"> [The Crown needs] to take a step past recognition to action. They need to work with the groups concerned to explore other options. These options include:

Cross-Claim Report (WAI 996, May 2003)	<ul style="list-style-type: none"> ○ <i>the Crown sponsoring facilitated hui involving settling claimants and cross-claimants, and paying for a facilitator; and</i> ○ <i>the Crown assisting in arranging and paying for a mediation of the matters in dispute; and, as a last resort, where it is evident that attempts to reconcile the competing views have failed:</i> ○ <i>the Crown itself simply coming to a decision about the matters in dispute, having assembled as much information as practically possible about the competing interests and the circumstances (political and historical) from which they arise. (54)</i> <p><i>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. (at 58)</i></p> <p><i>Where the period of dealings between the Crown and a cross-claimant is perforce short because the Crown and the settling claimant are ready to conclude their dealings imminently, we think that the Crown must take all the more care to ensure that the interaction is of a high quality. In addition to the facilitating and mediating avenues that the Crown should actively explore (see s 4.4), it should also consider funding a researcher to assist the cross claimant to assemble its information for presentation to the Crown. (59)</i></p> <p><i>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. (at 67)</i></p>
Preserve Amicable Tribal Relations	
Te Arawa Settlement Process Report (WAI 1353, June 2007)	<ul style="list-style-type: none"> • <i>Instead of working with the claimants, OTS has inflicted an alien 'conflict' model upon them. Such an approach had inherent transactional costs for Maori, as it was based on the rationale of achieving efficiency. The 'conflict' model emphasises winning, outmaneuvering an opponent, or achieving something at the expense of something or someone else. The problem is that it produces 'losers' as well as 'winners', and the 'losers' will be marginalised and alienated as a result. (66-67)</i>
Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report (WAI 996, May 2003)	<ul style="list-style-type: none"> • <i>We think that officials put too little emphasis on understanding the modern-day tribal landscape within which they were operating, and the potential effect on that landscape of the proposed mechanisms for redress. In particular, officials failed to understand that issues surrounding cultural redress go well beyond ensuring that redress of the same kind is available to others. This is a key difference, in our view, between cultural redress and commercial redress. (59)</i> <i>Here, the focus of the Crown's information gathering was too narrow. Officials concentrated on ascertaining whether Ngati Rangitihi had a tribal presence in and around Matata, the core area of their present-day occupation, prior to 1865. The reason for this focus was to identify the take (as in, source of right) of Ngati Rangitihi to the land in this area: do their interests derive</i>

	only from the Crown's military grants of land, or was there a pre-existing occupation? This was a legitimate inquiry. But to put answers in context, it was equally important for the Crown to understand the tribal landscape today. (59)
	When it comes to cultural redress, and the relationship of communities to culturally significant and sometimes tapu areas close to their turangawaewae, we think that the Crown's approach to awarding interests in contested areas must be even more scrupulous. It must respond to the particular circumstances that apply in each situation. As we have said, this is not a context where a 'one size fits all' approach will work well. (60)
	It follows from the foregoing that we expect of OTS officials a sophisticated understanding of the many dimensions of the Maori world within which they are operating when they negotiate settlements. We think such a high standard is appropriate. It is not enough for the Crown to act in good faith, if that means half-informed good intentions. In order to act fairly, and protect the interests of all the groups with which they deal in the context of a settlement, the OTS officials must be highly skilled. They must have a sophisticated understanding of how Maori communities operate in general, and how the ones in question operate in particular. If they do not have these understandings, how will they appreciate how much there is to know, or develop an instinct for when they do not know enough? It is a hard job, and a demanding one, because the honour of the Crown is on the line, and the durability of these settlements, and the quality of the relationships that spring from them, will depend in large measure on how well these officials perform. It is, as they say, a big ask. But it is one underpinned by Treaty principle and the imperative of fairness. We should not hesitate to insist on high standards when lower ones can have such serious, and long-lasting, consequences. (61)
Ngāti Awa Settlement Cross-claims Report (WAI 958, July 2002)	... the Crown should be pro-active in doing all that it can to ensure that the cost of arriving at settlements is not a deterioration of inter-tribal relations. The Crown must also be careful not to exacerbate the situations where there are fragile relationships within tribes. (at 87)
	...[the Crown] must not become blinkered to the collateral damage that getting a deal can cause. A deal at all costs might well not be the kind of deal that will effect the long-term reconciliation of Crown and Maori that the settlements seek to achieve. (at 88)
	... 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.(at 88)
	The Tribunal [in the Ngati Ruanui urgency hearing] encouraged Crown officials to find, and where necessary pay for, techniques to help those concerned work through the impasse. (at 88)
	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.(at 88)

Other (including “honest broker” role, implementation of the Tribunal’s recommendations)	
<p>Tāmaki Makaurau Settlement Process Report (WAI 1362, June 2007)</p>	<ul style="list-style-type: none"> • <i>It appears to us that the approach of the Office of Treaty Settlements officers has not changed materially from those earlier cases to the present one. [The Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report (2001), The Ngāti Awa Settlement Cross-Claims Report (2002), and The Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report (2003)] (at 9-10)</i> • Officials’ Response to the Tribunal’s Views • <i>In the course of this inquiry, we learned that the Office of Treaty Settlements had reservations about the practicality of the Tribunal’s advice set out in reports following the inquiries of 2001, 2002, and 2003.</i> • <i>In 2003, officials reported to the Minister in Charge of Treaty of Waitangi Negotiations on the Crown’s approach to cross-claims.¹² [see Rachel Houlbrooke, the manager policy/negotiations in the Office of Treaty Settlements, was the office’s witness at the hearing. Her briefing paper dated 14 August 2003 to the Minister in Charge of Treaty of Waitangi Negotiations, is entitled ‘The Crown’s Approach to Cross-Claims including a Response to the Waitangi Tribunal’s Cross Claims Report’. Paragraph 10 asks the Minister to note that the report will be used as a best practice guide within the Office of Treaty Settlements : doc A38(a), DB1.] The document was in part a response to The Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report 2003, which the Tribunal released earlier that year.</i> • <i>Officials told the Minister that:</i> <ul style="list-style-type: none"> ○ <i>the Tribunal has set the bar too high in terms of perceptions of the Crown’s obligations to cross-claimants and the steps that the Crown should take to meet those obligations. Its observations appear to be symptomatic of a limited understanding of the work and time that is required for negotiations, the difficulties of engaging with cross-claimants, and the pragmatic balancing exercise that is required between the interests of the settling groups and those of cross-claimants.</i> ○ <i>The Crown’s primary objective is to negotiate fair and durable settlements in a timely manner. While cross-claim processes should be robust, it should not delay settlements unduly.</i> • <i>Although we could see why officials take the approach they do in response to the many pressures on them, we think that the priority they accord cross-claim issues in reaching settlements is too low. To treat other groups in such a cavalier fashion puts at risk the very objectives of the settlement process – durability of settlements, and the removal of a sense of grievance.</i> • <i>The Office of Treaty Settlements officials’ advice to the Minister in 2003 was that they would adjust the process in response to Tribunal recommendations, but only to a very limited extent. They would: (1) engage in preliminary inhouse research to identify overlapping claimant groups that have, or may have, interests in an area, and gauge the extent of those ; (2) encourage and assist the settling group to initiate dialogue with overlapping claimants and establish a process for reaching agreement on their mutual interests; and (3) once terms of negotiation are signed, make contact with overlapping claimants, setting out the Office of Treaty Settlements’ approach to overlapping claims and seeking information as to the nature and extent of such claims.¹³</i> • <i>At hearing, the Crown’s witness emphasised the Office of Treaty Settlements’ commitment to its process, but we thought there was a lack of appreciation that a process is not an end in itself: it is something that happens to people. At root, processes are about relationships. In the Treaty context, as we have said, negotiating settlements is about running a set of</i>

	<p><i>interactions that bear on rangatiratanga. That is why the Office of Treaty Settlements officials must understand the groups' whanaungatanga, and protect it.</i></p> <ul style="list-style-type: none"> <i>The Office of Treaty Settlements' policy manual for negotiating Treaty settlements is set out in the Red Book. As we have said, the book does address overlapping claims, but to a minimal extent. Its focus is on the relationship between the settling group and the Crown. That focus is an important and proper one, but so is the focus on the tangata whenua groups with whom the Crown is not for the time being settling. (108)</i> <i>We recommend:</i> <ul style="list-style-type: none"> <i>(7) that Crown policy and practice with respect to managing relationships with groups other than the settling group is explained more fully in the Red Book; and</i> <i>(8) that the Red Book is amended so as to make policy and practice as regards tangata whenua groups other than the settling group both compliant with Treaty principles, and fair. (108)</i> <p><i>What is the role of the notion of predominance of interests?</i> <i>The Crown's settlement policy needs to make plain how and why predominance of interests is a paradigm that has a place with respect to commercial redress, but has no place in determining cultural redress. (110-111)</i></p> <p><i>What are the principles underpinning the Crown's engagements?</i></p> <ul style="list-style-type: none"> <i>The Office of Treaty Settlements needs to sort out, and the policy needs to reflect, the extent to which the Crown is seeking to understand whether the claims of both the settling group and other tangata whenua groups are well-founded. (110)</i> <i>The policy needs to answer these questions:</i> <ul style="list-style-type: none"> <i>What does the Office of Treaty Settlements need to know about the claims of all the claimant groups affected by the proposed settlement?</i> <i>Does the Office of Treaty Settlements evaluate and compare them?</i> <i>If not, why not? If so, how?</i> <i>What should be said about other tangata whenua groups in relating past interactions of the Crown and the settling group?</i> <i>How do the answers to these questions bear on the negotiation and settlement with the settling group? (110)</i>
<p>Te Arawa Settlement Process Report (WAI 1353, June 2007)</p>	<p>The policy process developed by OTS is thus pivotal to an enduring and lasting result for all New Zealanders. An enduring result is a list of sustainable settlements. But whether a sustainable settlement is achieved depends on doing business in a Treaty-focused way, rather than in an expedient way. That is why there is potential for conflict for OTS. OTS is policy and process driven. But, and despite the policy imperative, it has an operational role during negotiations to ensure that it 'safeguards' the interests of others who stand outside the negotiations. If it is to act on behalf of the Crown and discharge the Crown's fiduciary and Treaty duties to Maori, then it must discharge them equitably to all Maori. (63)</p> <p><i>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</i></p>

	<p>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 (at 64).</p> <p>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. (at 64)</p> <p>OTS has a duty to carefully assess whether the Crown's national overlapping claims process is appropriate to the particular tribal context of a negotiation. This is especially important because tikanga will vary between iwi and hapu, and site identification and rights associated with such taonga may have layers of complexity not readily penetrable by those who are not experts in Maori culture and language. OTS must recognise that the interests of the claimants go beyond property. The interests go to issues of mana, rangatiratanga, kaitiakitanga, and wairua. (74)</p>
<p>Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report (WAI 996, May 2003)</p>	<p>We read in the policy an implicit requirement that claimants in settlement negotiations with the Crown should hui with cross-claimants and potential cross-claimants, and should flush out the issues and resolve them, in so far as possible, according to Maori cultural norms. (51). Thus, Ka Tika a Muri, Ka Tika a Mua puts the onus on the settling claimant group for resolving cross-claims to cultural redress (52)</p> <p>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. (67)</p>
<p>Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report (Wai 788 and Wai 800, 2001)</p>	<p>So far, Ngāti Tama and Ngāti Maniapoto have been unable to reach an agreement on what to do with the Kawau Pā historic reserve. The Tribunal acknowledges that this leaves the Crown in a difficult position and that, for the time being, the reserve should remain in Crown ownership. However, we also believe that the Crown has a responsibility to take an active role in trying to resolve this matter. We therefore recommend that the Crown (through OTS, Te Puni Kokiri, or another appropriate Government body) facilitate hui involving Ngāti Tama and Ngāti Maniapoto at which the future management and ownership of the Te Kawau Pā area would be discussed. If the parties are unable to reach an agreement at such hui, the Tribunal recommends that the current status of the site remain unchanged for the time being. We consider that it would then be appropriate for the question to be reconsidered when Ngāti Maniapoto are negotiating their settlement with the Crown. In the context of such negotiations, it would be appropriate to look again at mechanisms for recognising the interests of both Ngāti Maniapoto and Ngāti Tama in the site, and for ensuring that both groups can be involved in owning and managing it.(23)</p>

APPENDIX 3

Chronology of correspondence/events – Ngātiwai

Date	Correspondence	Brief Description	Evidence Reference
26 January 2011	Letter from OTS to Ngātiwai	Negotiations were underway with Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā and Ngāti Whanaunga	#A45(a) at page 183
16 September 2011	Wānanga between Crown and Marutūāhu	Wānanga occurs between Marutūāhu and OTS	Memorandum #A45(a) at page 160
5 October 2012	Meeting between OTS and Marutūāhu	Wānanga occurs between Marutūāhu and OTS	#A45 at paragraph 127
19 October 2012	Memo from OTS to Marutūāhu	Crown considers a coastal statutory acknowledgement that would cover an area from Te Arai Point east to Aotea and southwards to Waitemata and including all motu within this area	#A45(a) at page 127 (confidential)
17 May 2013	Record of Agreement	Record of agreement between Marutūāhu and the Crown	
6 June 2013	Letter from Ngātiwai (Wayne Peters) to Minister	Ngātiwai request to be able to engage in overlapping claims discussions with the claimants and the Crown given the extent of the overlapping interests within the Ngātiwai Aoi	#A33(a) at page 51
1 July 2013	Letter from Minister to Ngātiwai	In regards to Ngātiwai having discussions with Marutūāhu about their recent ROA, the Minister states “I am very supportive of such engagement taking place”	#A33(a) at page 54
4 October 2013	Meeting held between Chief Crown Negotiator, M Dreaver and Ngātiwai	TCC requested update on the Crown’s settlement negotiations with Marutūāhu. M Dreaver said the coastal statutory acknowledgement was a symbolic instrument that “has nothing to do with the mana moana or commercial fishing”	Notes of Meeting #A33(a) at page 51. #A45 at paragraph 136
4 October 2013	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Noted the Crown and Hauraki were entering into the final stage of negotiations Set out the Marutūāhu collective overlapping claims process and timeframes 	#A33(a) at page 59

Date	Correspondence	Brief Description	Evidence Reference
9 October 2013	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> Request comment on proposed Marutūāhu RoA 	#A33(a) at page 64
18 October 2013	Letter from OTS to Ngātiwai	Seeking their views on the proposed redress offers to Marutūāhu iwi	#A15(a) Appendix "A" #A45(a) at page 209
31 October 2013	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Nature and extent of Marutūāhu's interests in the draft ROA is not clear The extent of the Statutory acknowledgements and reference to the consent authorities is not clear Expressing their concerns about the draft ROA with Marutūāhu iwi 	#A33(a) at page 69
31 October 2013	Email between OTS and Ngātiwai	Explained that a coastal statutory acknowledgment was non-exclusive redress and Crown could offer the same redress to more than one claimant group	#A33(a) at page 67
31 October 2013	Meeting – Crown, Paul Masurey and Ngātiwai	Jim Smillie, Haydn Edmonds, Paul Masurey and Michael Dreaver meet in workworth to discuss record of agreement. First and last hui with Marutūāhu.	#A8 at paragraph 34
15 November 2013	Crown presents offers to Marutūāhu iwi	For RFR redress on Aotea - all conservation properties in the southern part of the island (excluding any properties that may be required for iwi-specific redress (either to Marutūāhu or Ngāti Rehua) Not provided to Ngātiwai.	#A45(a) at pages 294 and 295
28 November 2013	Crown presented iwi specific proposals	<ul style="list-style-type: none"> to Ngāti Maru, Ngāti Tamateera and Ngāti Whanaunga for redress on Aotea Rangitawhiri Scenic Reserve and Tryphena South Conservation Area We invite you to meet kanohe ki te kanohe to discuss their redress proposal now it has been formalised The Crown considers it appropriate to provide vesting redress to Ngāti Maru in recognition of your association with Aotea Not provided to Ngātiwai	#A45(a) at pages 296 and 298(confidential)

Date	Correspondence	Brief Description	Evidence Reference
19 March 2014	Phone call from Ngātiwai to OTS	Request update on proposed redress for Marutūāhu at Aotea	#A45 at paragraph 184
25 March 2014	Email from OTS to Ngātiwai	Ngāti Rehua interest in Aotea represents the Ngātiwai interest in the motu	#A15(a) Appendix "A"
1 April 2014	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Supports the position of Ngāti Rehua Together with Ngāti Rehua, has mana whenua over Aotea Challenges the claims made by Marutūāhu on Aotea, the mainland and the coastal environs The Board's attempt to discuss matters with Marutūāhu has been unsuccessful. 	#A33(a) at page 71
15 May 2014	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Stated that the Crown is already engaging with Ngāti Rehua in relation to redress offered to Marutūāhu Iwi on Aotea The only redress the Crown has offered to the Marutūāhu Iwi on the mainland north of Takatu Point is a coastal statutory acknowledgement The redress is non-exclusive. 	#A33(a) at page 73
18 July 2014	Minister sent preliminary decision to Ngāti Rehua	<ul style="list-style-type: none"> This was not to Ngātiwai 	#A15(a) Appendix "A" #A45(a) at page 448
22 July 2014	Teleconference between M Dreaver and Ngātiwai	<ul style="list-style-type: none"> Ngātiwai advised that they support Ngāti Rehua-Ngāti Wai ki Aotea Ngātiwai advised that they assert iwi interests across Aotea (distinct from the Ngāti Rehua interests) Ngātiwai advised that they are likely to oppose any vesting redress to the Marutūāhu Iwi on Aotea Ngātiwai wished to meet with Marutūāhu Iwi to discuss the redress proposed for them 	Memo: #A45(a) at page 477
25 July 2014	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> States that the Crown is in the process of offering redress options to member iwi associated with the Marutūāhu confederation Not challenging the interests of Ngāti Rehua or involvement in discussions concerning overlapping interests. Minister's letter, dated 15 May, appears to have missed the point that wider Ngātiwai interests exist and should be accommodated suitably. Letter from Minister contradicts information we have received recently about redress options being offered indicating that only statutory acknowledgements are at issue whereas we have been informed that RFR's, land transfers and statutory acknowledgements are on the table. Rejects any offer of redress Crown is facilitating with the iwi identified in relation to Aotea and 	#A33(a) at page 74 #A8 at paragraph [25] #A8(a) at page 51

Date	Correspondence	Brief Description	Evidence Reference
		<p>elsewhere without our knowledge or input.</p> <ul style="list-style-type: none"> We have not been provided with any information substantiating any such claims [Mokohinau Island] or provided the opportunity to comment on such claims. I refer to your letter of 18 October 2013 indicating your preference for iwi with overlapping interest to engage directly on proposed redress options and to resolve any issues themselves. In this regard, we have been unsuccessful in securing an opportunity to meet with the Marutuahu Collective and are unaware of any other spokespeople to contact regarding the specific and remaining iwi mentioned above. The lack of notification from OTS of any other spokespersons on behalf of those individual iwi mentioned above is of grave concern to us 	
4 August 2014	Minister sent final decision to Ngāti Rehua and Marutūāhu iwi	<ul style="list-style-type: none"> Not sent to Ngātiwai 	#A15(a) Appendix "A" #A45(a) at page 450
14 October 2014	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> As per their previous email, Crown is engaging with Ngāti Rehua in relation to their overlapping claims with Ngāti Maru, Ngāti Tamatera and Te Patukirikiri. The Crown understands Ngāti Rehua represents the interests of Ngātiwai on Aotea. The Crown had not received any information which would make it appropriate for the Crown to deal with Ngātiwai as well as Ngāti Rehua Crown "declining to engage with Ngātiwai on Aotea" (as stated in #A1(1) Affidavit of S Campbell, Appendix "A") 	#A33(a) at page 80 #A8 at paragraph 26 #A8(a) at page 53
On or about the 15 December 2014	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Contained: <ul style="list-style-type: none"> An OTS report entitled "Hauraki negotiations: Preliminary decision on external overlapping claims" dated 14 November 2013 (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 20). An OTS report entitled "Hauraki negotiations: Preliminary decision on the Marutuahu iwi redress on Aotea and Ngati Rehua-Ngāti Wai ki Aotea overlapping claims" dated 24 June 2014 etc (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 21). An OTS report entitled "Hauraki negotiations: Final decision on Marutūāhu and Ngāti Rehua-Ngāti wai ki Aotea overlapping claims" dated 31 July 2014 (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 22). 	#A33 at paragraph 44
12 April 2016	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> re: Offer of redress for Ngāti Maru and Ngāti Tamatera on Aotea" objecting to the redress offered by the Crown to Marutūāhu on Aotea. 	#A33(a) at page 169

Date	Correspondence	Brief Description	Evidence Reference
April to July 2016		<ul style="list-style-type: none"> Engagement between Ngātiwai and OTS regarding the Ngāti Rehua settlement 	#A33(a) at pages 173 to 193.
22 July 2016	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Seeking information re: <ul style="list-style-type: none"> what redress has been decided upon by the Minister for Marutūāhu Iwi on Aotea what happened to Ngātiwai's engagement concerning overlapping claim with Marutūāhu iwi on Aotea 	#A33(a) at page 196
5 August 2016	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> Attached draft documents re Crown assets on Aotea OTS would forward some correspondence outlining the engagement with Ngātiwai about overlapping claims for Marutūāhu from 2013 and 2014 OTS would forward a summary of the redress for Marutūāhu iwi on Aotea 	#A33(a) at page 196
12 August 2016	Meeting between Ngātiwai and OTS	<ul style="list-style-type: none"> to discuss overlapping claims with Ngāti Rehua Ngātiwai again asked OTS why Ngātiwai had been excluded from overlapping claims discussions with Marutūāhu regarding Aotea. In response OTS said final decisions had already been made about Marutūāhu redress on Aotea and agreed to provide Crown information relating to the consultation that had led to decision 	Notes of meeting: #A33(a) at page 201
22 August 2016	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Setting out proposed redress offers to Marutūāhu iwi on Aotea and requesting feedback Noting that Ngātiwai had been consulted on the Marutūāhu Collective redress in 2013 Marutūāhu iwi are also in negotiations with the Crown for iwi-specific TOW settlement redress and some Marutūāhu iwi have been offered iwi-specific redress on Aotea 	#A33(a) at page 204
31 August 2016	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Stating that the situation is compounded... Ngātiwai have been advised within the last week of properties on Aotea that are proposed as part of the Marutūāhu settlement package and asked to comment as part of the overlapping claims process. Concerned that Ngātiwai were left out of the discussion for so long Ngātiwai's capacity to respond to all issues is being hampered by the segmented way they are being handled by the Crown... exacerbating matters is the fact that each of these settlement processes and teams responsible for managing them appear to be operating on their own, unrelated timetables 	#A33(a) at page 218
20 September 2016	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Thanking Ngātiwai's engagement on these matters Preliminary response to redress for Marutūāhu iwi on Aotea 	#A33(a) at page 220
20 September 2016	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Ngātiwai sent OTS its preliminary written response to individual Marutūāhu iwi redress proposed on Aotea including: 	#A33(a) at page 222

Date	Correspondence	Brief Description	Evidence Reference
		<ul style="list-style-type: none"> ○ Ngātiwai's preliminary response on all redress proposals ○ Ngātiwai's view that it has been prejudiced by the overlapping claims process; and ○ Ngātiwai's objection to the earlier Marutūāhu Collective redress in the Mahurangi area. ○ The Crown has not yet disclosed full information upon which the Board can provide a definitive response ○ After repeated requests made to OTS the Board still does not have a Crown land audit and associated detailed map". "If however, the Crown is willing to take the initiative and help facilitate the organisation of meetings with specific Marutuahu iwi concerned, we would have no difficulty attending to those meetings after October 2016. ○ The Board wishes is to be clearly understood by all parties that it does not oppose the development of cultural redress, for example statutory acknowledgements, in relation to specific land parcels on Aotea, or to the coastal environment, where an iwi group of either Ngatiwai (including Ngati Rehua) or Marutuahu can describe an accurate documented cultural and historical association with the place 	
10 October 2016	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> • Preliminary decision of Minister to offer redress to Marutuahu on the basis that the Crown considered that Ngati Maru, Ngati Tamatera and Te Patukirikiri have associations on Aotea that justify providing an RFR over properties within that area. Ngati Whanaunga has associations at Tryphena that justify providing an RFR over the local purpose reserves. • My preference is always for iwi to reach agreement on overlapping claims between themselves. I am pleased you are willing to meet with Marutuahu iwi. I have advised the Marutuahu iwi their willings to meet with you would be an important factor if you cannot resolve your differences and I need to consider a final decision. 	#A33(a) at page 260
18 October 2016	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> • OIA request for information from Marutuahu relating to redress offered to those iwi on Aotea. 	#A33(a) at page 264
19 October 2016	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> • Confirming the only groups who are currently in negotiations with the Crown who have redress offers in the Ngātiwai area of interest are those individual Marutūāhu iwi we are consulting with you on redress on Aotea • States that Marutūāhu Collective have been offered coastal statutory acknowledgement that extends into the Ngātiwai AOI as well as vesting properties. • States that the Crown engaged in an overlapping claims process with Ngātiwai on the Marutūāhu Collective redress in 2013 and 2014 	#A33(a) at page 266
On or about 28 October 2016	Meeting between Ngātiwai and OTS	<ul style="list-style-type: none"> • To discuss the Minister's preliminary decision • Ngātiwai maintained strong opposition to any Marutūāhu iwi receiving redress on Aotea beyond statutory acknowledgements 	#A48 at paragraph 125

TTP-102021-1-1378-V5

KXT-102021-1-996

Date	Correspondence	Brief Description	Evidence Reference
3 November 2016	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Regarding Marutūāhu redress on Aotea Objecting the proposed transfer of three properties to the Marutūāhu Collective Letter that S Campbell states “was the first substantive notice of objection to this redress despite earlier engagement in 2013” (See para 105 of #A48 BOE of S Campbell) 	#A33(a) at page 290
9 November 2016	Email from Ngātiwai to all the Marutūāhu negotiators	<ul style="list-style-type: none"> Following an extremely busy time for our Board dealing with a number of urgent matters, this brief email is to follow up with Marutūāhu iwi in relation to overlapping claims engagement hui. Would it please be possible to get an initial indication of those of you who are willing to meet to discuss overlapping claims. Once we are aware of the level of interest and your preference to meet together or separately I will be in a position to facilitate our Boards’ participation. 	#A33(a) at page 295
11 November 2016	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Minister sent Ngātiwai his final decision on individual Marutūāhu redress. 	#A33(a) at page 299
22 November 2016	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Seeking Ngātiwai’s written feedback on the Hako settlement of association by 6 December 2016 Statement of Association referred to an unnamed pā site on Aotea. 	#A33(a) at page 306
23 November 2016	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> explaining the nature and scope of a statement of association 	#A33(a) at page 313
9 December 2016	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> explaining its preliminary response and request for additional information in relation to Hako 	#A33(a) at page 315
9 December 2016	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> In response to Ngātiwai letter dated 9 December 2016 confirming that they had advised the Hako negotiators of Ngātiwai’s preliminary response 	#A33(a) at page 317
22 December 2016	Hauraki Deed of Settlement was initialled		
13 January 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Re Hauraki Iwi settlements requesting feedback on the proposed protocols redress by 19 January 2017 (6 days later) 	#A33(a) at page 319
18 January 2017	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> Overlapping claims regarding the proposed area over which the Hauraki Collective Fisheries Quota RFR applies and attaching letter below 	#A15(a) Appendix “A”
18 January 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> requesting feedback on the proposed fisheries RFR redress area by 2 February Crown did not request Ngātiwai’s views on Quota RFR redress mechanism itself but the area over which the Quota RFR redress is to be applied 	#A33(a) at page 331
19 January	Email from Ngātiwai	<ul style="list-style-type: none"> requesting updated from OTS on the Hako Statement of Association 	#A33(a) at page

Date	Correspondence	Brief Description	Evidence Reference
2017	to OTS		334
22 January 2017	Email from Mr Linstead to Ngātiwai	<ul style="list-style-type: none"> Advising that due to work commitments or other previously scheduled hui, Hako negotiators were unable to meet Advised he would rescheduled This never happened 	#A33(a) at page 336
31 January 2017	Meeting between Ngātiwai and OTS officials	<ul style="list-style-type: none"> Discussing and clarifying Marutūāhu Collective, Hauraki Collective and individual Hauraki Iwi redress Discussed protocol area offered to individual iwi of Hauraki In particular Fisheries RFR and protocol areas offered to individual Hauraki iwi Both Ngātiwai and OTS notes provided 	#A33(a) at pages 339 and 342
31 January 2017	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Notifying the Crown of their concerns with the Hauraki Collective Fisheries RFR 	#1.1.3 at paragraph 27.
27 February 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Notifying Ngātiwai that OTS now proposed to amend the collective area to individual Hauraki iwi areas and sought written feedback by 14 March 2017 	#A33(a) at page 360
28 February 2017	Emails between Ngātiwai and OTS	<ul style="list-style-type: none"> Areas covered by Taonga Tuturu and Primary Industries protocols and area covered by Fisheries RFR Deed over quota 	#A15(a) Appendix "A"
15 March 2017	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Providing a preliminary response relating to the Hako statement of association, Hauraki collective fisheries Quota RFR area, Hauraki Iwi Individual Protocol Areas, Ngaati Whanaunga overlapping claims It should be noted that the Board have not been able to organise hui with any of the overlapping groups concerned and nor have any of them made any real attempts to contact us for the purpose of discussing their overlapping claims. ON the basis that no hui have taken place to discuss these matters consistent with tikanga Maori and no research or historical advice has been provided to the Board to support the proposed redress this is a preliminary response only. 	#A33(a) at page 372 #1.1.3 at paragraph 27
21 March 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Requesting confirmation that there were no further overlapping claims for Ngati Maru or any other iwi 	#A33(a) at page 391
22 March 2017	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> Responding that OTS were not aware of any further overlapping claims with Ngati Maru or other iwi, other than the existing overlapping claim processes with which Ngātiwai was involved 	#A33(a) at page 391
6 April 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> With his preliminary decision concerning the Fisheries Quota RFR Minister's preliminary decision was to revise the Fisheries RFR area to reflect the coastline 	#A33(a) at page 404

Date	Correspondence	Brief Description	Evidence Reference
		<ul style="list-style-type: none"> entitlements agreed under the MFA Map was attached illustrating the coastline over which the coastline entitlement would be applied 	
10 April 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> T McPherson replied to OTS email dated 9 April 2017 Suggesting the map be removed from the Hauraki settlement documents and that OTS rely on agreed coastline entitlements as the basis of any quota allocation calculations 	#A33(a) at page 408
12 April 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Requesting an update on all the Marutūāhu Iwi Settlements 	#A33(a) at page 411
21 April 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Stating that OTS does not think it is unreasonable to include a Fisheries RFR area map in the Pare Hauraki Collective Redress Deed Stating those Fisheries RFR areas are non-exclusive 	#A33(a) at page 413
27 April 2017	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Ngātiwai supports the approach that agreements made by Iwi under the MFA is the most reasonable approach to take in determining future shares Ngātiwai strongly opposes the approach to include a non-exclusive coastline map in the Hauraki Collective Settlement Legislation as it undermines Ngātiwai's existing fishing agreements with Ngāpuhi, Ngāti Whatua and with Marutūāhu/Hauraki Iwi 	#A33(a) at page 415
3 May 2017	Meeting between OTS, Ngāpuhi and Te Rūnanga o Ngāti Whātua and Ngātiwai	<ul style="list-style-type: none"> Re Pare Hauraki Fisheries RFR Area Ngātiwai advised of their concern where the RFR area included Aotea 	#A33(a) at page 418
11 May 2017	Letter from R Barker to Ngātiwai	<ul style="list-style-type: none"> Noting Ngātiwai's strong opposition to the map Noting that Ngātiwai broadly supported an approach to the Fisheries RFR that reflects the methodology set out in the MFA 	#A33(a) at page 421
16 May 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Concerning the preliminary response from Ngātiwai dated 15 March 2017 in relation to Ngaati Whanaunga proposed redress Noted that the proposed Ngaati Whanaunga redress falls outside the Ngātiwai Aol and that overlapping groups will be offered further time to consider and comment on the Minister's preliminary decision before a final decision is made 	#A33(a) at page 422
16 May 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Requesting updated on all the Marutūāhu iwi settlements 	#A33(a) at page 423
18 May 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Requesting further updated on all the Marutūāhu iwi settlements 	#A33(a) at page 423

Date	Correspondence	Brief Description	Evidence Reference
23 May 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Requesting further updated on all the Marutūāhu iwi settlements 	#A33(a) at page 423
30 May 2017	Letter from Ngātiwai to OTS	<ul style="list-style-type: none"> Responding to Ngaati Whanaunga redress in particular that redress falls outside of Ngātiwai Aol States that OTS's letter does not recognise that while iwi have formal rohe, they also have ancestral associations with numerous places adjoining and outside of their rohe, and maintain connections with them 	#A33(a) at page 427
13 June 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> regarding the Ngāi Tai ki Tamaki Deed of Settlement Attaching map from a Primary Industries protocol area with Ngāi Tai ki Tamaki Requested feedback by 27 June 2017 	#A8(a) at page 46 #A33(a) at page 442
16 June 2017	Letter from Ngātiwai to all Hauraki Iwi	<ul style="list-style-type: none"> Despite the fact that the Minister has made final decisions on some of these redress matters already, the purpose of this letter is to make a final request for direct (fact to face engagement with ou) Ngāti Paoa negotiator (Hauauru Rawiri initially agreed to meet on 23 June 2017 but later stated he is unable to meet Ngāti Porou ki Hauraki negotiator John Tamihere responded on 16 June 2017 confirming there were no overlaps and that fish is a separate legislative process to treaty negotiations 	#A33(a) at page 432
12 July 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Re overlapping claims regarding proposed protocol areas for Hauraki iwi Stating that the final decision was to maintain the preliminary decision but to replace the previous coastline map with another map showing fixed points 	#A33(a) at page 452
13 July 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Hauraki Collective Fisheries RFR Deed Over Quota Area Final Decision States that in his view Ngātiwai's interests were protected and unaffected by the provision of this redress to the Hauraki Collective Attaches map 	#A15(a) Appendix "A" #A48(a) at page 433
14 July 2017	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Requesting his urgent intervention with all of the Hauraki Marutūāhu settlements before the situation becomes irreversible Inviting the Minister to meet on 19 July and 21 July 2017 As you will be aware our Board recently sent out urgent requests for direct engagement with all of the Marutuahu/Hauraki iwi negotiators (for whom we have received contact details) in an effort to meet, discuss and resolve these matters with the neogitaotrs concerns. While we are currently still working on organising these meetings I can say at this point that we have not received an overwhelmingly positive response from those 	#A33(a) at page 455

Date	Correspondence	Brief Description	Evidence Reference
		concerned. This, together with our past efforts to engage with Marutuahu and Hauraki iwi to resolve our differences has left us with little hope.	
19 July 2017	Email from Ngātiwai to OTS	<ul style="list-style-type: none"> Stating that the Fisheries Quota RFR redress is intended to be absolutely and totally consistent with the MFA allocation method and policies. Requesting confirmation that the map accompanying the letter from the Minister dated 13 July 2013 will not be included in the documents associated with the Hauraki Collective settlement legislation. Ngātiwai do not wish to record or fix specific boundary points. Rather Ngātiwai opt to have the percentages already agreed to be used to calculate each iwi's entitlement 	#A33(a) at page 459
20 July 2017	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Asking Crown to remove all rights and redress offered to Hauraki iwi on Aotea and in Mahurangi prior to any signing of a Hauraki iwi Treaty settlement and that a tikanga-based resolution between Te Iwi o Ngatiwai and Hauraki Iwi takes place without Crown interference 	#A33(a) at page 463
21 July 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Minister considered the redress proposed for Ngaati Whanaunga at Orewa is appropriate Encourages Ngātiwai to meet with Ngaati Whanauanga to discuss Ngātiwai's concerns further 	#A33(a) at page 465
28 July 2017	Email from OTS to Ngātiwai	<ul style="list-style-type: none"> Responding to email from 19 July 2017 concerning fisheries RFR Confirms consistency with the provisions of the MFA. However, despite explicit provision for agreed percentages to be used as opposed to fixed boundary points OTS confirmed that the map will be included in the Hauraki Collective Redress Deed 	#A33(a) at page 466
10 August 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Responding to letter from Ngātiwai dated 20 July 2017 Still considered redress on Aotea to Ngāti Maru, Ngāti Tamatera, Ngaati Whanaunga and Te Patukirikiri reasonable and appropriate As a result of previous engagement between Ngātiwai and Crown, the Crown considered the concerns of Ngātiwai to be addressed Encouraging Ngātiwai to engage with Ngāti Maru, Ngāti Paoa, Ngaati Whanaunga, Ngāti Tamatera, Te Patukirikiri and Ngāi Tai ki Tamaki to discuss the proposed redress before the Minister makes his final decision Declines request to withdraw redress offers to Hauraki where Minister has already made a final decision 	#A33(a) at page 470
18 August 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Re Ngaati Whanaunga overlapping claims Minister has been advised that Ngātiwai and Ngaati Whanaunga have been unable to meet to discuss overlapping claims Crown's position is there are no overlapping claims left to consider between Ngātiwai and Ngaati Whanaunga final decision to maintain the Crown's offer to Ngaati Whanaunga 	#A33(a) at page 472

Date	Correspondence	Brief Description	Evidence Reference
22 August 2017	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> states that Ngātiwai remains very concerned with the approach the Crown is taking in dealing with overlapping claims in relation to the various settlements with iwi of Hauraki States that the Ministers response ignores the concerns of Ngātiwai and indicates a desire to proceed with settlements without regard to Tikanga... urgently requests that the Minister pro-actively facilitate engagement between representatives of Ngātiwai, Hauraki iwi and Crown 	#A33(a) at page 473
25 August 2017	Ngāti Whanaunga Deed of Settlement initialled		
8 September 2017	Ngati Maru Deed of Settlement initialled		
8 September 2017	Te Patukirikiri Deed of Settlement initialled		
19 September 2017	Email from T Buchanan to Ngātiwai	<ul style="list-style-type: none"> Advising that the Minister has decided that the Pare Hauraki Collective Redress deed will not be signed before the general election 	#A8 Exhibit 2
20 September 2017	Ngāti Tamaterā Deed of Settlement initialled		
6 October 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> Updating Ngātiwai on the overlapping claims process for the proposed protocol areas for Hauraki iwi. States that OTS will be in contact with Ngātiwai before seeking any further decisions from the Minister on the protocol areas 	#A33(a) at page 475
10 October 2017	Letter from Ngātiwai to Prime Minister	<ul style="list-style-type: none"> Stating concern regarding overlapping claims including that iwi are not being treated in the same manner, there is no visibility provided to overlapping claimants of the Crown's timeframes for settlement, the Crown is offering settlement redress in a manner that takes no account of tikanga or mana whenua, the Crown is taking a hands off approach to overlapping claims Seeking urgent intervention to pro-actively facilitate engagement between Ngātiwai, Hauraki iwi and the Crown 	#A33(a) at page 477
17 October 2017	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Thanking Ngātiwai for letter of 22 August and 10 October 2017 Crown considered the engagement with Ngātiwai in relation to overlapping claims issues has been robust and thorough. Crown has provided procedural updates to Ngātiwai at various stages. Crown has also consulted thoroughly with Ngātiwai directly as well as with Hapū 	#A33(a) at page 479

TTP-102021-1-1378-V5

Date	Correspondence	Brief Description	Evidence Reference
8 November 2017	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> re overlapping claims with Hako States that Hako negotiators will be in touch with Ngātiwai that week to arrange discussion States that there will be further opportunity for engagement with Hako and OTS before OTS seek a final decision 	#A33(a) at page 481
16 November 2017	Email from Mr Linstead to Ngātiwai	<ul style="list-style-type: none"> Re phone call conversation earlier that day re proposed Tamaki Makaurau statement of association to Ngati Hako States that if Ngātiwai are still available to meet with Ngati Hako [we] would be happy to meet 	#A33(a) at page 483
21 March 2018	Meeting between Ngāti Rehua- Ngātiwai ki Aotea, Ngātiwai, Ngāti Manuhiri and OTS	<ul style="list-style-type: none"> Re preliminary discussion on harbours negotiations 	Meeting notes: #A33(a) at page 485
23-28 March 2018	Email correspondence between Ngātiwai and Ngati Paoa	<ul style="list-style-type: none"> re conversation on the overlapping interests of all the redress including Marutūāhu Collective and Hauraki Collective re engagement with iwi in the overlapping crown process re Ngaati Paoa Specific Interests 	#A33(a) at page 492
30 April 2018	Letter from OTS to Ngātiwai	<ul style="list-style-type: none"> re proposed protocol areas for Hauraki iwi updated on the overlapping claims process for the proposed protocols States that protocols are a standard, non-exclusive form of relationship redress. Anticipates further decisions may be sought within the next month if objections remain unresolved between iwi. 	#A33(a) at page 512
14 June 2018	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Providing update on progress made towards resolving overlapping claims and seeking Minister's support for a tikanga base process to resolve remaining overlapping claims Advising the Minister that the Marutūāhu Collective had ignored their requests for a hui Requesting that the Minister take no further steps to finalise any of these settlements until an earnest attempt has been made but the groups concerned to come to the table to address overlapping claims 	#A33(a) at page 537 #A48(a) at page 449
20 June 2018	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Stating the Minister's preliminary decision on the provision of the Hako statement of association redress. The statement of association will not confer on Hako any contemporary rights 	#A33(a) at page 539 #3.1.30(a),

TTP-102021-1-1378-V5

KXT-102021-1-996

Date	Correspondence	Brief Description	Evidence Reference
			Appendix A
6 July 2018	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> Writing in response to letter dated 20 June 2018 regarding Ngāti Hako overlap Stating that it is Ngātiwai's view that where an agreed tikanga proceed has been established the Crown should give that process a fair change 	#3.1.20(b), Appendix B #A33(a) at page 549
26 July 2018	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> Informing Ngātiwai of the Minister's decision to sign the Pare Hauraki Collective Redress Deed Noting their continued opposition to the Fisheries RFR Deed over Quota redress map Noted that the formal Minister made a final decision on this area on 13 July 2017 and that he was not willing to revisit it 	#A33(a) at page 55 #A48(a) at page 440
27 July 2018	Marutūāhu Collective Redress Deed initialled <ul style="list-style-type: none"> No coastal statutory acknowledgement deed plan was included. It was agreed this would be included in the deed before it's signed (#A48 at paragraph 109) 		
1 August 2018	Letter from Ngātiwai to Prime Minister	<ul style="list-style-type: none"> Requesting Prime Minister's help to resolve matters – to stop this senseless conflict from escalating any further Outlining the Pare Hauraki Collective Redress Deed situation at the time. 	#A33(a) at page 552
2 August 2018	Pare Hauraki Collective Redress Deed signed		
18 August 2018	Ngāti Paoa Deed of Settlement initialled		
5 September 2018	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> re Tikanga-based discussions with Hako States that it is the Crown's preference that overlapping claims are addressed directly between overlapping groups and that the Minister acknowledges the value of tikanga-based processes to achieve this States that he considered (in June 2018) that there had been adequate time to address overlapping claims (18 Months) States that the Minister's preliminary decision does not prevent the continuation of "your" tikanga based discussions with Hako 	#A33(a) at page 557
5 September 2018	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> States that Crown considers engagement with Ngātiwai in relation to overlapping claims issues has been robust and thorough States that his decision does not prevent current Tikanga based process underway with some iwi of Hauraki from continuing 	#A33(a) at page 558

TTP-102021-1-1378-V5

KXT-102021-1-996

Date	Correspondence	Brief Description	Evidence Reference
22 November 2018	Letter from Ngātiwai to Minister	<ul style="list-style-type: none"> • requesting that Hauraki settlements are paused • informing Minister that on 9 November Waitangi Tribunal granted 6 applications seeking an urgent inquiry in relation to individual and collective deeds of settlement for the iwi of Hauraki 	#A33(a) at page 632
21 December 2018	Letter from Minister to Ngātiwai	<ul style="list-style-type: none"> • Re Request for confirmation that the Hauraki settlements are paused • Crown does not intend to introduce Hauraki settlement legislation while the Tribunal's inquiry is ongoing 	#A33(a) at page 644

SUMMARY OF CROWN CONDUCT FROM 2011 TO FILING OF URGENCY APPLICATION

2011 - Crown engagement with iwi of Hauraki

1. The Crown began engaging with the iwi of Hauraki in 2011 regarding potential redress to be offered in relation to the Hauraki Settlements.¹ This engagement included wānanga with Marutūāhu during 2011 to enable the Crown to understand the nature of the customary interests of Marutūāhu in Mahurangi and Aotea which are areas within the rohe of Ngātiwai.²

2012 – Crown consider offering redress within Ngātiwai rohe to Marutūāhu

2. During 2012, the Crown inform Marutūāhu that based on the information received from Marutūāhu:³
 - (a) the Crown may consider it appropriate to vest a modest number of representative sites in the Mahurangi area to recognise the historical presence and association of Marutūāhu iwi in this region
 - (b) the Crown to consider a coastal statutory acknowledgement that would cover an area from Te Arai Point east to Aotea and southwards to the Waitemata and including all motu within this area.
3. Despite the engagement with Marutūāhu during 2011 and 2012, the Crown did not engage with Ngātiwai at all during 2011 and 2012⁴.

2013 – Ngātiwai informed AFTER Agreement in Principle

4. On 17 May 2013, the Crown signed the record of agreement with Marutūāhu (**Record of Agreement**).⁵ The Record of Agreement included the following redress which falls within the rohe of Ngātiwai:
 - (a) Cultural redress properties at Mahurangi and within the Hauraki Gulf;

¹ #A45 at MD 39 at p 190.

² #A45 BOE of M Dreaver, para 125, MD 33 and #A45 BOE of M Dreaver, para 125, MD 34 #A45 BOE of M Dreaver, para 125, MD 35; #A45 BOE of M Dreaver, para 127, MD-37 confidential

³ #A45 BOE of M Dreaver, MD-37 confidential, para 127

⁴ There is no Crown evidence of any communications with Ngātiwai during 2012 regarding the Hauraki Settlements.

⁵ #A33(a) at page 6.

- (b) Coastal statutory acknowledgement;
 - (c) A statement that “the parties will explore RFR redress for the Marutūāhu lwi in respect of Great Barrier Island (Aotea Island) subject to the resolution of overlapping claims, in particular with Ngāti Rehua; and
 - (d) Exploration of fisheries redress.
5. It was not until reading the Record of Agreement that Ngātiwai was made aware of the Crown’s offer to provide redress to Marutūāhu that fell within the rohe of Ngātiwai⁶
 6. On 6 June 2013, within 1 month of the date of the Record of Agreement, Ngātiwai wrote to the Crown requesting that Ngātiwai be able to engage in overlapping claims discussions with the claimants and the Crown given the extent of the overlapping interests within the Ngātiwai area of interest. Ngātiwai informed the Crown that the documentation does not “clarify the nature and extent of the interest [of Marutūāhu]”⁷.
 7. The Crown was therefore put on notice **from June 2013** that Ngātiwai requested further information as to the nature of the customary interests of Marutūāhu.
 8. While the Crown requested feedback and encouraged engagement⁸, the one and only meeting held between Ngātiwai representatives, Mr Dreaver and the negotiator for Marutūāhu took place at a café on 31 October 2013.⁹ The meeting was introductory and Ngātiwai’s concerns were made known to the Crown and Marutūāhu.¹⁰
 9. On 31 October 2013, Ngātiwai again informed the Crown that “the nature and extent of Marutūāhu’s interests in the draft Record of Agreement is not clear”.¹¹
 10. The Crown response to Ngātiwai was that a coastal statutory acknowledgement was non-exclusive redress.¹² No information was provided to Ngātiwai as to the basis of the customary interests of Marutūāhu.

⁶ #33 at para 25.

⁷ #A33(a) at page 5.

⁸ #33(a) at p 59 – Letter from Minister to Ngātiwai.

⁹ See #A8, Affidavit of H Edmonds, para 34 and MD 49 – letter from W Peters to OTS at [].

¹⁰ See FN 31 above.

¹¹ #A33(a) at p69.

¹² #A33(a) at p67.

11. In November 2013, the Crown commissioned a report by a historian (David Armstrong) on the interests of Marutūāhu at Aotea¹³ Despite the clear notification from Ngātiwai that the basis of Marutūāhu's interests were unclear, the Crown did NOT provide this report to Ngātiwai until 2016, after Ngātiwai had submitted an Official Information Act request.¹⁴
12. Despite Ngātiwai's correspondence in 2013, the evidence of the Crown was that it assumed that Ngātiwai had no issue with the redress offered to Marutūāhu.¹⁵

2013 - Crown offers to Marutūāhu regarding Aotea not shared with Ngātiwai

13. In November 2013, the Crown presented offers to Marutūāhu iwi regarding RFR redress on Aotea.¹⁶ Those offers were not shared with Ngātiwai. The Crown evidence is that the Crown assumed that Ngātiwai had no issue with the Marutūāhu redress [ref].

2014 – Ngātiwai has to request information from Crown

14. In March 2014, Ngātiwai contacted the Crown to request information as to the redress being offered to Marutūāhu regarding Aotea.¹⁷ In response, the Crown informs Ngātiwai that the Crown considers that “Ngāti Rehua represents the Ngātiwai interests on Aotea¹⁸. The Crown made this assumption without first asking Ngātiwai if this assumption was correct and despite the correspondence received from Ngātiwai in 2013.
15. In April 2014, Ngātiwai informs the Crown that together with Ngāti Rehua, Ngātiwai has mana whenua over Aotea.¹⁹ Ngātiwai also informs the Crown that its attempts to meet with Marutūāhu were unsuccessful²⁰.
16. Again, in May 2014 in response to Ngātiwai's concerns, the Crown reasserts that it is engaging with Ngāti Rehua and then refers to the coastal statutory

¹³ #A45 BOE of M Dreaver, **MD-55** and para 167.

¹⁴ #33 at para 69 and #33(a) at p271.

¹⁵ #A45 BOE of M Dreaver paras [144] and [146].

¹⁶ #A1(1) Affidavit of S Campbell, Appendix “A”; #A45 BOE of M Dreaver, annexed as MD-56 and MD-57 and #A45 BOE of M Dreaver, annexed as MD-58, MD-59(confidential) and MD-60(Confidential)

¹⁷ #A45 BOE of M Dreaver, para 184 and #A1(1) Affidavit of S Campbell, Appendix “A”

¹⁸ #A1(1) Affidavit of S Campbell, Appendix A.

¹⁹ #A33, Affidavit of T McPherson Exhibit A, Doc 14, Page 71 and #A2 Affidavit of H Edmonds, para 23 and Exhibit A Doc 8

²⁰ #A33, Affidavit of T McPherson Exhibit A, Doc 14, Page 71 and #A2 Affidavit of H Edmonds, para 23 and Exhibit A Doc 8

acknowledgement on the mainland and says the redress is “non-exclusive”.²¹ During cross examination, Mr Dreaver (the Chief Crown Negotiator) acknowledges that he did not consider that he needed to speak with Ngātiwai if he was also speaking with the hapu of Ngātiwai.²²

Crown decisions made regarding Aotea not communicated to Ngātiwai

17. In July 2014, the Crown makes a preliminary decision regarding redress to be offered to Marutūāhu on Aotea but does not provide this decision to Ngātiwai. Ngātiwai is not informed of the preliminary decision.²³
18. Ngātiwai has to follow up with the Crown as it does not receive any response to its letter dated 25 July 2014.²⁴
19. On 14 October 2014, the Crown in response continued to assert (despite Ngātiwai’s previously communicated concerns) that the Crown understands that Ngāti Rehua represents the interests of Ngātiwai on Aotea and that the Crown had not received any information which would make it appropriate to deal with Ngātiwai as well.²⁵
20. On 17 October 2014, to enable Ngātiwai to understand why it had not been involved in the overlapping claims process in relation to Aotea, Ngātiwai made a request under the Official Information Act (**OIA**).²⁶
21. The 17 October 2014 OIA request resulted in Ngātiwai receiving the following redacted reports in December 2014:
 - (a) OTS report entitled “Hauraki negotiations: Preliminary decision on external overlapping claims” dated 14 November 2013 (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 20);
 - (b) OTS report entitled “Hauraki negotiations: Preliminary decision on the Marutūāhu iwi redress on Aotea and Ngāti Rehua-Ngāti Wai ki Aotea overlapping claims” dated 24 June 2014 etc (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 21); and

²¹ #A33, Affidavit of T McPherson Exhibit A, Doc 15, Page 73 and #A2 Affidavit of H Edmonds, para 24 and Exhibit A Doc 9

²² Cross examination of Mr Dreaver by counsel for Ngātiwai.

²³ #A1(1) Affidavit of S Campbell, Appendix “A” and #A45 BOE of M Dreaver, annexed as MD-75

²⁴ #A33(a) at p 76

²⁵ #33(a) at page 90 and #A2 para 26 and Exhibit A, Doc 11.

²⁶ #A33, Affidavit of T McPherson Exhibit A, Doc 19, Page 81

- (c) OTS report entitled “Hauraki negotiations: Final decision on Marutūāhu and Ngāti Rehua-Ngāti wai ki Aotea overlapping claims” dated 31 July 2014 (#A7(b) Affidavit of T McPherson, Exhibit A, Doc 22).

2015 – No communications from Crown to Ngātiwai

22. During 2015, Ngātiwai did not receive any communications from the Crown regarding the Hauraki Settlements.

2016 - Further objections and requests to the Crown for information regarding Aotea

23. In early 2016, Ngātiwai informed the Crown that it objected to the redress being offered to Ngāti Maru and Ngāti Tamaterā on Aotea.²⁷
24. From April 2016 throughout 2016, the Crown began engaging with Ngātiwai in an “overlapping claims process” in relation to the settlement for Ngāti Rehua²⁸. This is despite Ngātiwai being the iwi and Ngāti Rehua being the hapū. The Crown dealt with Ngātiwai as though it had an “overlapping” claim with its own hapu.
25. During the context of the Ngāti Rehua engagement in July 2016, Ngātiwai continued to request that the Crown clarify:²⁹
- (a) What redress has been determined upon by the Minister for Marutūāhu on Aotea; and
 - (b) What happened with Ngātiwai’s engagement in relation to Marutūāhu redress on Aotea?
26. In response, on 22 August 2016, the Crown finally informed Ngātiwai of redress being offered to Marutūāhu on Aotea.³⁰ The redress included the vesting of properties as commercial and cultural redress and RFRs over a large list of properties.
27. Ngātiwai expressed its concerns in response as follows:³¹

We are very disappointed that you have left it until now to provide us with an opportunity to respond to overlapping claims in respect of Aotea .. This has

²⁷ #33(a) at 169

²⁸ #A33(a) from pp 173 to 196.

²⁹ #A33(a) at pp198 and 199.

³⁰ #33(a) at p 204 to 208.

³¹ #A33(a) at p 209.

been a matter of some concern to us for a considerable period of time. We have documented evidence to show that we asked to be involved in these discussions long ago but were dismissed at that time. We would like you to ensure to advise the Minister of this in your next briefing as it has not been for lack of willingness on our part to engage in these discussions.

28. On 31 August 2016, Ngātiwai also informed the Minister of the harm caused by the Crown's approach as follows:

Concerns

.. the Board has increasing had to deal with the negative impacts of these decision on Ngātiwai as a whole. ...

... The situation is compounded by the fact that it is only within the last week or so that the Board has been advised of properties on Aotea ... that are proposed as part of the Marutuahu settlement package and asked to comment – very much at the 11th hour – as part of the overlapping claims process. We frankly cannot understand how the Board could have been left out of this discussion for so long...

29. In September 2016, Ngātiwai provided a comprehensive response to the proposed redress being offered to Marutuahu on Aotea and again expressed concern with the Crown's approach.³²

30. In October 2016, Ngātiwai made further OIA requests to the Crown requesting:³³

Information that Marutuahu Iwi have supplied to the Minister in consideration of their claims relating to redress offered to those iwi on and around Aotea. To date this information has not been received .."

31. On 19 October 2016, the Crown finally provided the following information regarding the nature of Marutuahu interests on Aotea:³⁴

- (a) Research report for Wai 406, "The Islands lying between slipper island in the south-east, Great Barrier Island in the north and Tiritiri-Matangi in the north-west", by Paul Monin dated December 1996³⁵;

³² #A33(a) at pp 222 to 251.

³³ #A33(a) at 264.

³⁴ #A33 at para 39 and exhibit B and exhibit C to #A33 and at pp 271 to 288.

- (b) Research report for Wai 1362, “Tikapa Moana and Auckland’s Tribal Cross Currents: The enduring customary interests of Ngāti Paoa, Ngāti Maru, Ngāti Whanaunga, Ngāti Tamaterā and Ngāi Tai in Auckland” (by Associate Professor Michael Belgrave et al dated April 2006;
 - (c) An independent assessment by David Armstrong commissioned to research into the customary interests on Aotea/Great Barrier Island; and
 - (d) An internal draft OTS memo the subject of which was titled: “Customary interest on Aotea (Great Barrier Island)” dated 22 January 2014.
32. After receiving the information from the OIA requests, Ngātiwai met with, and then wrote to the Crown in November 2016, once again expressing concerns about the proposed redress being provided to Marutuahu.³⁶
33. Despite Ngātiwai’s pleas, the Minister confirmed by letter dated 11 November 2016 his preliminary decision regarding redress being offered to Ngāti Tamaterā, Ngāti Whanaunga and Patukirikiri on Aotea.³⁷

2016 – Hako Statement of Association

34. In November 2016, the Crown then requested Ngātiwai feedback on the proposed Hako Statement of Association in relation to a pa site on Aotea³⁸.
35. Ngātiwai responded in December 2016 stating:³⁹

Any documented Ngāti Hako association with these places is unknown to Ngātiwai who have had no dealings with them either in the past or over recent generations. The documentation received to date primarily describes a Ngāti Hako ancestral association with Tamaki Makaurau. It does not refer to Mahurangi or Aotea.

Ngāti Hako did not appear as part of the Hauraki Māori Trust Board claim to Aotea in the 1990s. In fact the Court rules in its Decision regarding the Papa Tupu lands at Aotea, 23 February 1998, p.2, that in relation to Aotea, Ngāti

³⁶ #A33(a) at pp 290-294.

³⁷ #A33(a) at pp50-51,

³⁸ #A33(a) at pp 306 to 312.

³⁹ #AA33(a) at pp315 to 316.

Hako, “have not established any separate interest within the context of this inquiry”.

36. The Pare Hauraki collective Deed of Settlement was initialled on 22 December 2016. The Crown did not communicate this to Ngātiwai prior to the initialling. That deed referred to protocols redress within individual iwi of Hauraki.

2017 – Protocols redress and fisheries RFR

37. In early 2017, the Crown began requesting feedback from Ngātiwai on proposed protocol area maps which included Mahurangi and Aotea for:⁴⁰
- (a) Taonga Tuturu protocols; and
 - (b) Primary Industries protocols.
38. At the same time, the Crown also requested Ngātiwai feedback on proposed fisheries RFR redress which also included reference to a map that included Mahurangi and Aotea.⁴¹
39. By February 2017, the Crown had considered that protocols redress should be provided to specific iwi rather than collectively and sort further feedback from Ngātiwai⁴².
40. On 15 March 2017, Ngātiwai provided a preliminary response to the Crown on a number of issues, as follows:⁴³
- (a) **Hako Statement of Association** – informing the Crown that the statement of association is not substantiated by any tikanga Maori process (ie, discussion and agreement by way of hui kanohi ki te kanohi) or evidence contrary to that already provided by the Board. As a result the Board must object to the statement of association at this time;
 - (b) **Protocols (Taonga Tuturu and MPI)** – Ngātiwai made comments “on the basis of the very limited information provided by OTS and the total lack of information provided by the Hauraki iwi concerned. It should be noted that not one of these groups have made any attempt to contact the Board to

⁴⁰ #A33(a) at pp 319 to 323.

⁴¹ #A33(a) at pp331 to 333.

⁴² #A33(a) at p 360 to 363.

⁴³ #A33(a) at pp372 to 390.

arrange engagement hui to discuss their redress". The Baord made it clear that the protocols "must not diminish the mana whenua and mana moana and kaitiakitanga exercised, at and since 1840, and down to the present day;

- (c) **Fisheries RFR redress** - Ngātiwai expressed concerns that the redress should be consistent with the allocation methodologies used for the purposes of the Maori Fisheries Act 2004 and requested that no map be used;
 - (d) **Ngaati Whanaunga** - Ngātiwai informed the Crown that it was not aware of any customary relationship of Ngāti Whanaunga to the relevant area. Ngātiwai then explained its ancestral associations with the area within which Ngāti Whanaunga would be receiving redress. "The Board see the Ngāti Whanaunga claim to land at Otanerua as opportunistic, completely unsubstantiated, and inappropriate according to tikanga Maori."
41. Throughout 2017, Ngātiwai continued to express concern to the Crown that any fisheries RFR redress should not reference any map and should be consistent with the Māori Fisheries Act. By including a map with a marked boundary, there is an inference that Hauraki may have interests where none exist and for this reason, Ngātiwai continued to assert that a map and boundary points are unnecessary. If the boundary points are removed, Ngātiwai has no issue with the fisheries RFR redress.
42. The Crown and Ngātiwai continued to correspond regarding protocols and fisheries RFR redress during 2017.
43. In May 2017, Ngātiwai requested an update from the Crown regarding the Marutuahu settlements⁴⁴. No response was forthcoming.
44. In June 2017, Ngātiwai sent a letter to **all** Hauraki iwi, in a final bid to engage directly.⁴⁵

... the purpose of this letter is to make a final request for direct (face to face) engagement with you concerning both your individual settlement and your collective settlement redress overlapping with the Ngātiwai rohe or Area of Interest.

⁴⁴ #A33 Affidavit of Tania McPherson at para 106 and #33(a) at p 423.

⁴⁵ #A33 Affidavit of Tania McPherson at para 109 and 110

As there are many layers of redress and many parties involved in these negotiations it is our preference to meet with each group separately to discuss individual settlements and together with each collective or its representative to discuss the Marutuahu and Hauraki Collective redress...

45. Only Ngāti Paoa and Ngāti Porou ki Hauraki responded to those requests.
46. In a last attempt to request the Minister to intervene, Ngātiwai wrote to the Minister on 14 July 2017 informing him about the difficulties in trying to seek engagement with Hauraki:⁴⁶

To a large extent however I consider that the Crown has ignored our feedback and pressed on to advance these settlements to the prejudice and detriment of Ngātiwai in the southern end of our rohe.

As you will be aware our Board recently sent out urgent requests for direct engagement with all of the Marutuahu/Hauraki iwi negotiators (for whom we have received contact details) in an effort to meet, discuss and resolve these matter[s] with the negotiators concerned. While we are currently still working on organising these meetings I can say at this point that we have not received an overwhelmingly positive response from those concerned. This, together with our past efforts to engage with Marutuahu and Hauraki Iwi to resolve our differences has left us with little hope.

47. In response, the Minister informed Ngātiwai that he considered the redress on Aotea is “reasonable and appropriate”. The Minister also stated that:⁴⁷

.. the Crown does not claim to have the right to determine mana whenua or mana moana and an offer of redress should not be seen as a signal the Crown is doing so. A redress offer is simply a recognition the Crown accepts a claimant group has a level of interest sufficient to warrant that redress.

48. Despite the Crown stating that the redress recognises that the Crown accepts a particular level of interest held by Hauraki, the Crown throughout the engagement process never articulated to Ngātiwai how the Marutuahu interest was sufficient to warrant the vesting of whenua within the Ngatiwai rohe to Hauraki.
49. Ngātiwai filed its application for an urgent hearing in August 2017.

⁴⁶ #A33(a) at 455 to 456.

⁴⁷ #A33(a) at p470-471.