

**IN THE MATTER**

of the Te Tiriti o Waitangi Act  
1975

**AND**

**CONCERNING**

a claim (Wai 2341) by Rudolph Taylor, Lizzie Mataroria-Legg, Heremoananuiakiwa Kingi and others, on behalf of themselves and a number of hapū regarding the application of the Crown's Settlement policy over the whanau and hapū of Ngāpuhi

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**CLOSING SUBMISSIONS OF COUNSEL FOR WAI 2341**

**DATED** this 30<sup>th</sup> day of March 2015

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## Introduction

1. These Closing Submissions are filed for and on behalf of the Wai 2341 Claimants, who maintain their support for Te Kotahitanga o nga Hap Ng puhi in opposition to the Crown's conferral of a mandate to negotiate the claims of Ng puhi onto Te Roopu o T horonuku .
2. The claim was filed on 22 August 2011, when Te Runanga a Iwi o Ng puhi commenced roadshows seeking to obtain a mandate for its subcommittee, T horonuku . At that time the Claimants signaled that the ability of their hap to exercise rangatiratanga was at the heart of the issues.
3. That position remains the same and the way in which the efforts of hap to exercise rangatiratanga has been suppressed by Crown process, denying them in the ability to choose a destiny for themselves has resonated as a clear theme through the quagmire of process and paper that has inundated this inquiry.
4. We ask this Tribunal to look to the recent findings of the Tribunal in its report on He Whakaputanga me te Tiriti which we submit continues to provides an appropriate baseline for this Urgent Inquiry:

The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain.<sup>1</sup>
5. The finding reflects the way in which Ng puhi approached those claims and illustrates that the rangatiratanga continues to be exercised at the hap level within Ng puhi as it was then when signing those constitutional covenants.
6. It is through the lens of the success that was borne on the back of hap cohesion that the Claimants reject absolutely any notion that Ng puhi cannot work together as hap for the purposes of engaging with the Crown to progress settlement.
7. The Crown have created and manipulated processes which it has asserted are democratic, however, those very processes have been used to first have hap included without their consent, and to then deny them the ability to withdraw on the basis that their consent was not necessary in the establishment of the mandate from the outset.

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<sup>1</sup> Wai 1040 Stage 1 Report on *He Whakaputanga and Te Tiriti* page 529

8. Against this backdrop, the Crown then comes before this Tribunal and asserts that the processes employed have affected a consent by the hapū which authorizes Tūhono to usurp their mana and their ability to choose a future path for themselves.
9. The Crown asserts that the overwhelming majority of Ngāpuhi hapū included want the settlement process and model that has been fashioned by the Crown and Tūhono. What has become clear, however, is that it is the Crown that is the key driver for the settlement. This process has been the fulfilment of Crown aspiration as it seeks to expedite the settlement of all Ngāpuhi claims as swiftly as possible.
10. It is to achieve this end that the Crown have manufactured the appearance of Ngāpuhi consent to a process that has effectively disempowered the fundamental building blocks of Ngāpuhi, the hapū.
11. In short, Ngāpuhi are being told that the basis on which they organized themselves to sign Te Tiriti o Waitangi and He Whakaputanga te Rangatiratanga o Niu Tirenī is no longer relevant; and that the basis on which their tupuna sought to maintain authority is now redundant for the purposes of engaging with the Crown to settle the breaches that have occurred since.

### **Overview**

12. A timeline is appended to these submissions as an Appendix A to assist the Tribunal in its consideration of matters and this overview.
13. On 22 August 2011, when the Te Rōnanga a Iwi o Ngāpuhi commenced its roadshows to obtain a mandate for its subcommittee, Tūhono, the Wai 2341 Claimants lodged statement of claim and applied to the Waitangi Tribunal for the Inquiry to be conducted with urgency. The following allegations were made:
  - a. the Crown funded and endorsed a process that would see authority shift from hapū into an organisation created to achieve the Crown's objective to have all historical claims settled by 2014;
  - b. this process had undermined Ngāpuhi leadership and breached the Crown's settlement policies; and

- c. the Crown's process would cause significant and irreversible prejudice because it may lead to the mandating of a group which does not represent all hap .
14. The application followed on the heels of a series of roadshows that had been conducted by Te R nanga a lwi o Ng puhi. The evidence before this Tribunal shows that the mandate being sought was generally opposed by the majority of the hap .
15. The evidence shows that responses given by the Chairman of Te R nanga a lwi O Ng puhi were that those that didn't agree with the approach were ignorant of settlement processes while those minority in support were the enlightened.
16. The Honourable Sir James Bolger had also been called in to see if he could facilitate a pathway forward. At this point, it is important to note that hap support for Te R nanga a lwi o Ng puhi was so low that it could not find 7 representatives to fill its hap seats and Te Kotahitanga were offered the 4 that remained vacant.
17. The Claimants do not seek to unfairly impugn the efforts of Sir James Bolger, however, what became evident during the hearing, was that he was not well informed and walked away from the process with a view of parties that was completely unjustified on the facts. It is telling that his evidence conflicts with that of the Crown.
18. It is submitted that the Crown sought to direct the focus of facilitators that were employed to encourage a rapid settlement within the rubric of a single settlement model which closed options off from meaningful consideration.
19. Furthermore, as the Tribunal has seen, that the facilitation process could not succeed, as Te R nanga a lwi o Ng puhi never really gave it any meaningful space to exist. Notwithstanding an agreement to go through a process to facilitate agreement, key decisions around mandating had already been made and it was clear that minds had been made up.
20. While this was an expression by T horonuku of a lack of integrity within the process, the Crown cannot deny the fact that it continued in its support of the entity which was by this time being used as a platform to

denigrate and abuse Claimants and hapū whose interests it saw in conflict with its own.

21. It is submitted that the way in which the Crown maintained its support for T horonuku ku as it continually reneged on agreements that were entered into as a basis for facilitation essentially nullified the effectiveness of those processes.
22. In the eyes of the Claimants, the initiation of these mandating hui in rejection of the outcomes of the facilitation hui was a clear signal that Te Rōnanga ā Iwi o Ngāpuhi had essentially closed its mind (if it had ever been open) to meaningful engagement. This claim was filed on the day that the first mandating hui took place and discussions between Te Kotahitanga and T horonuku were put on hold.
23. Notwithstanding the Crown's ongoing support of the actions of T horonuku, which can only be characterised as bad faith, Te Kotahitanga continued to engage with the Crown in an effort to halt the ill-informed progress that was occurring when the mandate process was subsequently put on hold.
24. Significant discussions occurred between Te Kotahitanga and T horonuku within the time that the claim was adjourned. We refer to the chronology attached to these submissions, and we highlight a number of key processes that took place amongst the discussions:
  - a. The meeting and reporting of Te Roopu Whaiti; and
  - b. Discussions facilitated by Tukuroirangi Morgan and his subsequent report He Ara Hou;
25. It is unfortunate that peace within Ngāpuhi did not eventuate as a result of these processes. The evidence on this inquiry is that the way in which the Crown rewarded the intransigence of T horonuku, was with a mandate.<sup>2</sup>
26. What should have become clear to this Tribunal is that Te Kotahitanga have entered into agreements and participated in good faith but the agreements would be undermined or broken by T horonuku. Despite this, the Crown would continue to endorse T horonuku.
27. A key example of this is the way in which the Te Roopu Whaiti report

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<sup>2</sup> Wai 2490, #A113

was treated. Mrs Harawira asserts that T horonuku never agreed for it to go out to Ng puhi.<sup>3</sup> She can rely on nothing to support her assertion and it flies in the face of the kaupapa that was agreed between T horonuku and Te Kotahitanga, appended to the report and executed by the chairs.<sup>4</sup>

28. It is in this respect that we provide a caution when considering the evidence of the Crown and T horonuku in this Inquiry, as attempts to portray Te Kotahitanga as uncompromising and argumentative are clear.
29. We mention this as a caution at the outset of the hearing as the compressed hearing time available, and the number of briefs provided, means that a forensic exercise of cross-examination of all of those who put forward these matters cannot be undertaken without the provision of extra hearing time.
30. Importantly, these processes of facilitation took place because of the significant opposition to the mandate that was exhibited within the voting process.<sup>9</sup>
31. The evidence before this Tribunal illustrates that this significant opposition has not diminished, rather, what has changed has been the way in which the Crown now dismisses it. This opposition is reflected in the statistics relating to the submissions opposed to the Deed of Mandate, and the fact that just over half of the seats available for hap representation remain vacant.
32. On 14 February 2014, the Crown recognised the T horonuku Deed of Mandate. Following that recognition, the Wai 2341 Claimants revived their application and sought an urgent hearing from the Tribunal.
33. There are now many claims by differing hap and claimant parties that oppose the Crown's recognition of the Deed of Mandate and request the Tribunal's intervention. This level of opposition continues to be significant and the Tribunal have rightly determined that it must be addressed.
34. The Crown attend to vigorously defend its position. Importantly, notwithstanding the preliminary finding, no concessions have been made by the Crown since then. As with the findings of the Waitangi

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<sup>3</sup> Wai 2490, #A102

<sup>4</sup> Wai 2490, *Te Roopu Whaiti Report* as attached in Brief of Evidence of Pita Tipene #A13

Tribunal in its Te Paparahi o Te Raki Inquiry that the signing of Te Tiriti o Waitangi was not a cession of sovereignty, the Crown has failed to act on key matters referred to in the determination of the application for urgency merely maintained its entrenched stance.

35. The Claimants say that in recognising the T horonuku Deed of Mandate the Crown has breached Te Tiriti o Waitangi.

### **Setting the Standard**

36. The formula to consider this claim is ruled by Section 6 of the Treaty of Waitangi Act 1975. Simply put, the Tribunal must determine whether the acts or omissions of the Claimants are inconsistent with the principles of Te Tiriti, and whether those acts or omissions caused prejudice to the Claimants.
37. While it might seem trite to make this point, the section contains key matters that must be touched upon.
38. As has been the case with early Tribunal inquiries into mandate claims, the Crown will try to assert that these claims are not those which should be directed to the Crown but rather they are issues with T horonuku.
39. These claims are about the Crown. While T horonuku is a focus, it exists to fulfil the Crown objectives and has been created out of the requirements of Crown settlement policy.
40. Regardless of the efforts of those who assert a representational status over their hap , it is only with the assistance of the Crown that this status has been achieved.
41. In this regard, this claim continues to be about the way the Crown has supported, endorsed, funded and assisted T horonuku to the exclusion of other groups. The way in which the Crown has picked a favourite and backed it to the exclusion, and detriment of all others.
42. Additionally, in matters of mandate and Crown policy, the Ngati Awa Cross Claims Tribunal stated that *focus is not on whether we like or approve the Crown's policy. It is on the Treaty, and whether or not the Crown has fallen foul of it.*<sup>5</sup>

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<sup>5</sup> Ngati Awa Cross Claims Settlement Report page 79

43. The evidence will show that the Crown has twisted and distorted the truth, even breaching its own policies, in its efforts to suppress the will of the Claimants in its efforts to achieve its own settlement objectives.
44. The Tribunal will need to consider these actions against the overarching duty of the Crown to protect the exercise of rangatiratanga by hapū in the conduct of their own affairs.
45. This overarching responsibility then gives rise to the following further Crown duties:
  - a. to act reasonably and with absolute good faith towards one another;
  - b. to protect the rights and claims of the Claimants.
46. When considering these duties, Counsel submits it is helpful to draw on the principles identified in the *Te Arawa Mandate Report*<sup>6</sup>:
  - a. the principle of reciprocity when discussing the Crown's duty to engage and consult with hapū to reach durable settlements;
  - b. the principle of partnership when discussing the Crown's duty and role during the negotiation and settlement process;
  - c. the principle to act fairly and impartially when discussing its duties to Māori when entering into comprehensive settlement of historical Te Tiriti claims; and
  - d. the principle of active protection which expresses the Crown's obligation to take active steps to ensure that Māori interests are protected.
47. These standards relating to active protection are well rehearsed. The context of these standards, however, is something that requires careful consideration in light of the recent finding that the signing of Te Tiriti o Waitangi cannot be seen as a cession of sovereignty.
48. If Te Tiriti o Waitangi in itself is not a mechanism for the transfer of sovereignty or a consent to such a transfer, then any settlement based upon its principles cannot require a cession of rangatiratanga by hapū without their consent.
49. The Tribunal will see that this is exactly what the Crown is requiring of

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<sup>6</sup> Te Arawa Mandate Report Te Wahanga Tuarua page 71 - 79

hapū, capturing them within a net of representation and divorcing them from the ability to determine their own destinies.

50. In this regard, the Crown must be seen to have fallen foul of Te Tiriti given its efforts to extinguish hapū rangatiratanga in the face of such significant opposition.

### **The Importance of maintaining Hapū Rangatiratanga**

51. These submissions refer to the findings of the Tribunal in first stage of its findings in the Te Paparahi o Te Raki District Inquiry as a basis to show the importance of the exercise of hapū rangatiratanga in the prosecution of claims before that Tribunal. In addition, these submissions refer to the way in which hapū stood alongside each other to successfully prosecute those claims. The importance of this context is that it shows that the Crown's oblique references to the need to push aside a hapū approach cannot necessarily be maintained.

52. It is submitted that the Crown's efforts to achieve a settlement outcome by seeking to transform the Ngūpuhi political structures is a breach of the Crown's obligation to actively protect that hapū of Ngūpuhi fullest extent practicable in possession and control of their: ongoing distinctive existence as a people albeit adapting as time passes and the combined society they develop;<sup>7</sup>

53. It is this transformation of Te Whare Tapu o Ngūpuhi that the Claimants oppose.

54. In his opening statement, Professor Patu Hohepa described Te Whare Tapu o Ngūpuhi as that a house of many rooms:

in each room there is a hapū and under each mountain there are hapū. The mountains are owned by hapū. There is no such thing as an area owned by Ngūpuhi.<sup>8</sup>

55. As Rudolph Taylor noted when questioned by the Crown on his role as co-chair of Te Kotahitanga o nga hapū Ngūpuhi

The reason why we came together as Kotahitanga because of our history in relationships with hapū and we called that meeting together because if you look at our whanaungas that are down the line in their settlements that still there are people frustrated with the way that the Crown has put them into different paddocks. And so we felt that the . well it wasn't the word Kotahitanga it was hapū that came together and decided that we need to stand our stance

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<sup>7</sup> *Taiaroa v Minister of Justice* (unreported HC Wgn CP 99/94, decision McGechan J, 29 August 1994) at p69

<sup>8</sup> Wai 2490 #4.1.2 p19

on our claim, our recognition in terms of te Tiriti.<sup>9</sup>

56. Mr Taylor saw this as a must to create a robust platform for settlement progress, which included the prosecution of claims before the Tribunal. If Ng puhi weren't ready at the hapū level, they would not be ready at any other level.
57. When questioned by Dr Anderson on the artificial creation of an iwi construct, Mr Erima Henare noted that
- hapū signed te Tiriti and the Declaration of their . of Independence in their own right. In their own right. Now had there been a notion of a cogent Ng puhi group at that time, that may very well have been different. But I find myself, and I probably stand out at odds from some of the other historians here, I've suggested that it's been a hegemony.<sup>10</sup>
58. Mr Henare went onto speak of how attempts to create hegemonic paramount chief for Ng puhi have failed.<sup>11</sup>
59. These views conceptualise the creation of this new hegemony, or the imposition of an inappropriate Ariki, as a transformation of the way in which Ng puhi work together which is acting to weaken the political integrity. This is not how a negotiation ought to commence, especially one in which parties are supposed to be acting in good faith.
60. By imposing standards of measure that are not indigenous to Ng puhi, the political status has been categorised as in disunity and in need of transformation if it wants to progress. It is submitted that this is no different to the typical context of colonisation where Maori were depicted in a continual state of war and therefore in need of the Crown to move in and civilise them.
61. Responses from Crown witnesses under questioning all asserted their belief that the mandate provided for hapū rangatiratanga, however, they were clear that the expression of rangatiratanga had to be expressed through Tūhono, beneath the blanket of a single tribal mandate.<sup>12</sup>
62. The need to maintain hapū autonomy within the rubric of a settlement negotiation that will be as complex as Ng puhi context has been made clear, however, the refusal of Ng puhi hapū to unite under one chief

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<sup>9</sup> Wai 2490 #4.1.2 p 45

<sup>10</sup> Wai 2490 #4.1.2 p 127

<sup>11</sup> Wai 2490 #4.1.2 p 127

<sup>12</sup> Wai 2490 #4.1.2 p 705

should not have been depicted as such disunity that the whole political system needed to be manipulated by the Crown to achieve a settlement outcome.

63. In this regard it is submitted that the Crown processes are causing damage to Ng puhi and the internecine conflict created out of the process is creating more of a grievance than it can ever hope to settle.

**Predetermination.**

64. It is submitted that the generation of the single settlement model was driven more by Crown desire than by T horonuku . While it is apparent that T horonuku were willing to allow for a transformation of Ng puhi to get through the door to settlement negotiations, it is clear that the shape of this engagement was being driven largely by a Crown objective.
65. It is submitted that the Crown's preoccupation with perceptions of predetermination were held because that is exactly what it had done. If the process had integrity, the perception would not have arisen and the Crown would not have had to manage it.
66. These perceptions arose out of unequal funding, different levels of support, and the way in which the Crown had different outcomes for the different groups. What is noticeable is that the key questions that the Crown keeps raising relate to seeking to have Te Kotahitanga join T horonuku . The Crown seemed more intent on seeing this occur than on addressing the real issues that were sustaining the separation.

Crown Manipulation of the Settlement Environment

67. A key submission that has been made throughout this Inquiry is that the Crown's need to manipulate the structures of Ng puhi is based on its desire to maximise its own advantage and achieve a stated policy of a single Ng puhi settlement. In this regard, it is submitted that the Crown are seeking to capitalise off a perception created of conflict to promote its own settlement outcomes.
68. During questioning at the second hearing held in Wellington Ms Hickey was questioned on matters and factors that the Crown was taking into consideration from around 2008-2009. At that time, Crown officials had

informal discussions with Te Runanga a Iwi o Ng puhi and had been engaging on the edges on the Te Paparahi o Te Raki Inquiry District.<sup>13</sup>

69. Ms Hickey discussed four options for settlement and the advantages and disadvantages that had been set out.<sup>14</sup> Importantly, Ms Hickey confirmed that the advantages and disadvantages that were set out were with reference to the Crown:

Q. So by and large this table is looking at the disadvantages and advantages on the side of the Crown, not taking into account really those hap ?

A. Yes.

Q. And then it further goes on to say that option A is recommended because it is the approach most likely to achieve the goal of negotiating Treaty settlements with all Tai Tokerau by 2014?

A. Yes.

70. The factors considered by the Crown were: time, efficiency and cost, and Ms Hickey accepted that hap rangatiratanga was not listed among these factors.<sup>15</sup>

71. It is within this context that the internal memoranda of the Office of Treaty Settlements reveal efforts to grasp opportunities to influence discussion and the future settlement environment,<sup>16</sup> selecting an approach that would be most likely to achieve the goal of negotiating Treaty Settlements with all Tai Tokerau by 2014.<sup>17</sup>

72. Ms Hickey also accepted that by 2010 the Crown s expending effort and resource to ensure that the Ng puhi negotiations do not split into several settlements, bringing forward the pre-negotiation phase to capitalise on the progression that T horonuku have made on their mandate strategy Ms Hickey affirms this under questioning:<sup>18</sup>

Q. So not only are we seeing the Crown being involved to influence the future settlement environment, to present opportunities to influence the decision, but theyre also backing and engaging with T horonuku to ensure that they capitalise on that progress?

A. So what this is asking for is resource to enable that to happen.

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<sup>13</sup> Wai 2490 #4.1.3 p 136.

<sup>14</sup> Wai 2490 #A151 p108

<sup>15</sup> Wai 2490 #4.1.3 p138.

<sup>16</sup> Wai 2490 #A151p 85.

<sup>17</sup> Wai 2490 #A151p 115

<sup>18</sup> Wai 2490 #4.1.3 p 140

73. Ms Hickey goes on to note that:

So we have OTS in 2010 saying it would be good to have more resource so we could go out and meet people and influence, you know, the decision.

74. Then in May of 2012, in an aide-memoire prepared for the Minister by the Office of Treaty Settlements,<sup>19</sup> the Crown discuss the need to put more work and support behind the efforts of T horonuku to influence the settlement environment and increase their chances of receiving a favourable response in the public submission process.<sup>20</sup>

#### Limiting the Brief of the Facilitator

##### *Mr Morgan*

75. This was the context of Crown effort just prior to the Morgan facilitation which provides some insight into the focus of the briefing that he would have been provided to fulfil the roles that the Crown had for him.

76. On 1 August, prior to the release of the Morgan report, the Office of Treaty Settlement has already determined that it would report to the Minister of Maori Affairs recommending the recognition of the mandate.<sup>21</sup>

77. The responses of Mr Morgan to questioning are telling. Mr Morgan discussed a number of models that might have been utilised to progress toward a robust settlement, however, after the discussion he did note:

What I did want to say though Mr Pou is this, that the previous comment that I made was not in the report. I had a single job to do. The Minister asked me to see whether we could consolidate into a single process. So, that's my own private views about going beyond that and into, you know, considering other models like Kahungunu, so kia ora.<sup>22</sup>

78. As he noted he:

work[ed] within the terms of reference.<sup>23</sup>

79. The responses of Mr Morgan to questions from the Tribunal however, perhaps show most clearly the perceptions of pre-determination:<sup>24</sup>

KIHI NGATAI:

Kia ora, kia ora e Tuku. Na me hoki taua kit e Karauna, I o whakaaro mo te

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<sup>19</sup> Wai 2490 #A151p 142

<sup>20</sup> Wai 2490 #4.1.3 p 141

<sup>21</sup> Wai 2490 #A151 p 1046

<sup>22</sup> Wai 2490 #4.1.2 p553

<sup>23</sup> Wai 2490 #4.1.2 p554

<sup>24</sup> Wai 2490 #4.1.2 p581

Karauna ka hiahia ki a T horonuku kit e whakahaere i tenei, te Kaupapa?  
[Now for the Crown's role, in your view for the Crown, in your view, the Crown .  
does the Crown want T horonuku to steer the waka?

TUKOROIRANGI MORGAN:

Koina to ratou tino hiahia, te hiahia a te Karauna kia riro ma T horonuku tenei  
Kaupapa e arahi ki tona whakatutukitanga. [Yes that is the Crown's wish. The  
wish of the Crown is for T horonuku to steer this settlement process unto its  
settlement.]

KIHI NGATAI:

Koira te take i whiuwhiuhia ake ai nga moni ki a ratou? [Is that the reason why  
money was thrown at them?]

TUKOROIRANGI MORGAN:

Kare e kore, kare e kore. I runga ano i te whakapono ka riro ma ratou tenei  
kaupapa e kawe, e whakatinana. [No doubt, no doubt. In the belief that  
T horonuku would steer this process and would . to settlement]

80. What is perhaps of most importance is the fact that Mr Morgan's views were those of an independent, engaged by the Crown.

*Sir James Bolger*

81. Mr Bolger was asked if he was operating within a framework for a single settlement Model. He responded that he

was listening to the arguments advanced by both sides. Those in favour of a single settlement framework and those who were arguing and presenting arguments why it should be either delayed or occasionally it should be a multifaceted settlement or frankly some of them didn't seem to know what might happen but a delay would fairly give them more time to think about it.<sup>25</sup>

82. It is submitted that Mr Bolger's response indicated a predisposition toward the outcome sought by the Crown based upon a desire to speed up the progress toward settlement that was reinforced by further sentiment.

83. In Mr Bolger's view that *every year that economic progress is delayed it means another generation of young people will leave the north and go somewhere else because the opportunities don't exist here*<sup>26</sup> Mr Bolger was clear in his view that the process of mandate discussions needed to be brought to an end.

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<sup>25</sup> Wai 2490 #4.1.2 p593

<sup>26</sup> Wai 2490 #4.1.2 p 594

84. Mr Bolger had formed that view that the attempts to canvas options were creating an endless delay.<sup>27</sup> At the time however, Mr Bolger had been in favour of a small delay to *allow a small group to have a go at finding an agreement*. At that time, Mr Bolger was in favour of a *delay with a purpose*.<sup>28</sup>

85. It is unfortunate that Mr Bolger's perceptions of the parties and the reasons for the lack of progress were somewhat misguided in that he understood that:

the discussions, the four-a-side party meetings effectively didn't happen. If they met once briefly this is irrelevant. They didn't meet in a manner, in a form that would have produced recommendations for a settlement or a way forward. It was really for a way forward.

86. Those discussions of course did occur, they were just delayed temporarily because of the conduct of T horonuku . Mr Bolger did note that he would be extraordinarily disappointed if he found out that it was the delay in establishing refusal to slow down a man<sup>29</sup>

87. The Crown's own evidence is that:

On 12 August I understand that a decision was made by T horonuku to continue the mandate process without further delay, despite Mr Bolger's request on behalf of Kotahitanga for the beginning of the mandate process to be postponed. On commencement of the mandate process the facilitation process paused.<sup>30</sup>

88. In this regard, Kotahitanga shared in the extraordinary disappointment expressed by Mr Bolger. Not only did T horonuku delay the process, they subsequently refused to take the options out for Ng puhi to consider and the opportunity referred to by Mr Bolger was forgone.

89. Rather than confront the issues that Mr Bolger had seen as being obvious, T horonuku progressed down a path which could only entrench positions.

90. Mr Ngatai asked Mr Bolger about the failure of the groups to come together and he responded that:

factions can only be moved as fast as they will move. I had no authority to dictate, I could encourage, I could suggest, I could offer alternative ways but at

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<sup>27</sup> Wai 2490 #4.1.2 p 595

<sup>28</sup> Wai 2490 #4.1.2 p 600 . Common Bundle Document 17

<sup>29</sup> Wai 2490 #4.1.2 p 603

<sup>30</sup> Wai 2490 #A2 Evidence of Andrew McConnell para [30]

the end of the day it required them to move, not me as the facilitator.<sup>31</sup>

91. When this sentiment is seen within the context of the Crown evidence about T horonuku's refusal to accede to Mr Bolger's request, the Tribunal can see clearly why this facilitation process failed.

#### Limiting the Scope of Engagement

92. It is submitted that the way in which the Crown limited the scope of facilitation was matched by the way in which it limited the scope of engagement amongst the groups.

93. The evidence of Willow-Jean Prime provides some indication of this. Under questioning she noted in response to Crown questioning that:

Their [the Crown] preference indicated in all of the documentation is a single settlement for Ng puhi with a single mandated entity and any discussion about hapu autonomy would be within those restricted parameters.<sup>32</sup>

94. As time progressed, Mrs Prime notes that they:

were getting more and more squeezed into having very limited discussions about limited changes that we could make on limited issues.<sup>33</sup>

95. In this regard the Crown can still be seen manipulating the settlement environment by straight jacketing discussion to focus only on its predetermined outcome, a single settlement model.

96. This sentiment draws support from the evidence of Mr Taylor who noted that:

In terms of the putea, it was well noted that the Crown put his bets on one horse. But the only time that we got to talk when the Minister called for us was they paid our flights or they paid our van, vans to actually come down there. That means in Auckland when we had those discussions.<sup>34</sup>

#### Denying hapu the Ability to Withdraw

97. When questioned on the requirements for withdrawal Ms Hickey confirmed that the Crown position was that any withdrawal ought to be as robust as the mandating process itself.<sup>35</sup>

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<sup>31</sup> Wai 2490 #4.1.2 p 624

<sup>32</sup> Wai 2490 #4.1.2 p 145

<sup>33</sup> Wai 2490 #4.1.2 p 156

<sup>34</sup> Wai 2490 #4.1.2 p94

<sup>35</sup> Wai 2490 #4.1.2p 1022

98. For this to occur, however, would necessarily require a similar level of resourcing and funding, and this was put to Ms Hickey. Her equivocal response was that:

we've looked at the funding issue and we need to clarify our policy around that.<sup>36</sup>

99. Ms Hickey tried to assert that the funding and cost around the T horonuku mandate process was caused by the processes of facilitation, however, she did acknowledge that Te Kotahitanga were also going through the same processes, yet did not receive the same level of funding.<sup>37</sup>

100. Ms Hickey also said:

- a. There are no provisions for withdrawal
- b. On the question of withdrawal, Mr Fyfe noted that

101. The reason that there is no withdrawal clause was made clear when Ms Hickey was questioned by Dr Anderson. Ms Hickey confirmed the Crown view that allowing for hap withdrawal was unacceptable because of the destabilising effect it would have on the Deed of Mandate.<sup>38</sup>

102. Mr Fyfe tried to justify the failure to provide for hap withdrawal by referring to the fact that the mandate was not obtained on a hap by hap basis.<sup>39</sup> Mr Fyfe noted that:

I know there are some hap who simply don't want to be part of a Ng Puhi settlement, I quite get that, but my sense, quite strong sense is that by and large Ng Puhi want a single Ng Puhi settlement because of the benefits of that would engender.<sup>40</sup>

103. This statement is a clear indication of the way in which the Crown is knowingly included hap in an absence of their consent. This is not providing for hap rangatiratanga, it is the actual suppression of its exercise to achieve a desired Crown outcome.

104. This illustrates that this preclusion of the ability of hap to exercise choice is not a T horonuku choice, it results from Crown policy as it seeks to engineer its negotiation partner.

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<sup>36</sup> Wai 2490 #4.1.2 p1023

<sup>37</sup> Wai 2490 #4.1.2 p1025-1026

<sup>38</sup> Wai 2490 #4.1.2 p 1080

<sup>39</sup> Wai 2490 # p 261

<sup>40</sup> Wai 2490 #A151 p 262

### Depiction of Te Kotahitanga as a threat

105. A key indicator that the Crown are working toward a predetermined outcome is visible in the way that it treats that parties engaging differently. Throughout the hearing, the Crown refers to engaging with T horonuku on the one hand and Te Kotahitanga and others on the other.
106. This desire to work in the background to facilitate the progress of T horonuku needs to be contrasted with the way in which Te Kotahitanga were depicted. It is submitted that the Crown's favour for T horonuku is clear in the policy documents. When T horonuku are not meeting their expectations, the Crown is willing to work with them to lift them.
107. When Te Kotahitanga succeed in showing leadership and unity of purpose, such is in the progression of the hearings, however, they are conceptualised as a threat.
108. Ms Hickey acknowledged the concerns that were being expressed that the way in which T horonuku saw the organisation of collective hap before the Tribunal and the funding that they were achieving through the Crown Forestry Rental Trust as a threat to their efforts to achieve a mandate.<sup>41</sup>
109. In particular the question put to Ms Hickey was that:

There is a concern, there is a concern that a large natural grouping could be created, could be developing beside a super large natural grouping which would have at its goal, not the intention that the Crown are seeking, a single Nga Puhi settlement process.

MAUREEN HICKEY:

Potentially yes. Well the Crown and I might say Nga Puhi was our understanding.

JASON POU:

The concerns put by T horonuku , not Nga Puhi.

MAUREEN HICKEY:

Yes .

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<sup>41</sup>Wai 2490 # 4.1.2 p1030, also OIA8 p30

110. The depiction of Te Kotahitanga as a threat to the one settlement goal permeates this Inquiry and the Crown have essentially categorised a hap based mandate as unreasonable and not what Ng puhi want.

Dealing with T horonuku Misrepresentations

111. There is a lot of evidence of misrepresentation on this record about misrepresentations that were occurring within the environment in which the mandate was being developed. It is submitted that these misrepresentations were not minor and impugn the heart of the integrity of the entity that has evolved as much as they impugn the environment that was created for it to develop in.

112. So significant were those misrepresentations that it drove Mr Morgan to voice serious concerns about the way in which T horonuku misrepresented his work in the press and sent a letter to the Minister dated 16 October 2012. This letter, which was withheld by the Crown was in response to:

In response to their [T horonuku ] press release I was absolutely clear in my own mind that that released undermined the integrity of the report that I had just completed. There are a number of falsehoods and there are . and that press release was peppered with misrepresentations of the facts.<sup>42</sup>

113. It is within this context that the Tribunal needs to keep in mind the way in which the Crown refused to look past the reports that it was receiving about the support that T horonuku were garnering at hui.

114. Dr Robyn Anderson questioned Mrs Prime about whether or not the Crown was entitled to take the word of T horonuku . Mrs Prime responded that in her view, given that issues and concerns had been raised about the reports, the Crown:

Actually have an obligation to explore that further which they didn't. So, they wanted to simply rely on the report that they were getting from T horonuku , even though there were challenges from a number of groups as to the accuracy of that report<sup>43</sup>

115. Mrs Prime's position, it is submitted, is to be reinforced by the fact that the Crown was aware of a number of misrepresentations that were being made within the process for and by T horonuku . The Crown didn't just ignore these misrepresentations, it hid them and the fact that

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<sup>42</sup> Wai 2490 #4.1.2 p531

<sup>43</sup> Wai 2490 #4.1.2 p218

they were being made from Te Kotahitanga, from Ng puhi, and at least initially, from the Tribunal in this process.

116. The propensity of the Chairman of T horonuku toward misrepresentation was canvassed with Ms Hickey during questioning, particularly the assertion that he was making that Ng puhi were not concerned with hap representation or the role of the runanga<sup>44</sup>.

117. When asked if Ms Hickey was concerned about what is a clear misrepresentation, she tried legitimise it by placing it into a context of a request for the Crown to advertise or take the next steps in the mandate because T horonuku wanted further work to be done.<sup>45</sup> Ms Hickey was asked:

Q: Does it concern you that hapu are having to test and inform you about the information that you are getting from the entity that you are seeking to negotiate a settlement with? For those people who are raising the concerns.

A: It doesn't surprise me that there is multiple views being expressed in this kind of process. That happens all the time.

118. Ms Hickey asserted that the Crown continually tested the assertions, however, what this highlights is that the Crown knew that attempts to mislead it were emanating from within T horonuku and notwithstanding, continued in its support.

119. As interesting as the misrepresentation itself, is the way that the Crown acted when confronted by it, and the very fact that it then did not disclose the representations to the Claimants until the last minute when it was forced by this process.

120. When questioning Ms Hickey in the second hearing, Dr Anderson referred to the constant misrepresentations that Mr Tau was giving people about the Ministers impression of the mandate and capacity to withdraw.. The Crown knew about these misrepresentations and it is telling that it did nothing to correct them.

121. These misrepresentations are also significant in terms of allegations that have been raised about the failure of T horonuku to populate the hap kaikorero seats.

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<sup>44</sup> Wai 2490 #A26, Exhibit MCH 224, p52

<sup>45</sup> Wai 2490 #4.1.2 p 1036

Q. So you have seven hapū seats?

A. Yes and we understood that .

Q. And you only ever had three hapū representatives?

A. Yes and we understood that Te horonuku wasn't filling the others for a reason.

Q. And you didn't know who was behind them? You had no information?

A. No we understood those seats were being kept for the possibility of discussing with people to bring them in.

122. When Mr Kihi Ngatai questioned Mrs Prime about why Te horonuku could not fill the seven hapū seats that were available, to which she responded:

there just wasn't the support for the model. The people didn't want to join and participate and populate Te horonuku . So there were three of those seven positions that were filled and in my evidence I actually challenged those elections. In particular, Sam Napiata's election because we didn't even know when that hui took place and who was there, and certainly I was at the hui for the other two. In terms of the other four positions no hapū was willing to go on so there was just no, no support for it. They then offered it to Kotahitanga, which we never asked for, and that, - they changed the structure.<sup>46</sup>

123. Mrs Prime noted further that: In this regard, the Mrs Primes responses to questioning is telling:

Matua, we also asked for . they said that there were about 30 hapū that were supporting them, so if there were 30 hapū supporting them why couldn't they have filled those seven seats?

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And we asked them for the list of the 30 hapū and they've never provided us with those hapū that supported at that time.<sup>47</sup>

124. There is no evidence on this record that shows a list of hapū kaikorero that had been nominated who were willingly allowing for those seats to be left vacant for Te Kotahitanga to take up. Indeed, this would have been contrary to the views held by the Te horonuku chair that the opposition to the mandate was made up of a disaffected minority. In that context it is difficult to maintain a view that the majority of the hapū seats were being kept vacant for that reason.

125. Even if this was the reason for the seats to be kept vacant, the fact is, the basis for the assertion and any supporting information was not shared.

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<sup>46</sup> Wai 2490 #4.1.2 p220

<sup>47</sup> Wai 2490 #4.1.2 p 221

126. It is in this context that it is submitted that the Crown's fudging of answers is not only illustrative of the gloss that the Crown has attempted to put onto a structure that clearly had no buy in from the hapū. The responses also show, contrary to what Ms Hickey's assertions,<sup>48</sup> the Crown were either doing little to scrutinise the representations that were being made or it was knowingly perpetuating fallacies.

#### Impugning Reputations

127. When Mr Tau gave evidence, he took some time asserting that T horonuku had listened to the concerns of hapū and that they had changed their structures as a result.<sup>49</sup>

128. This is of course contrary to the way in which he acted through the process, denigrating Claimants, hapū, Te Kotahitanga and even Crown facilitators when they were seen to be in the way of T horonuku.

129. Mr Tau accepted under questioning that he reacted in frustration and that those actions inhibited the ability of the groups to come together. Those reactions, however, should not be understated and this Tribunal must keep in mind the statements of Tukuroirangi Morgan who informs that:

Sonny Tau is unrelenting in his efforts to cause both reputational damage through a process where the majority of the key members of both T horonuku and Kotahitanga have worked unselfishly with a keen desire to securing the mandate from the Crown. Meetings were held with T horonuku's working party led by Lorraine Toki and some of the credible suggestions were incorporated into my final report.<sup>50</sup>

130. Mr Morgan goes on to state that:

Conversely the Kotahitanga working party has always been conscientious and diligent in progressing their position in relation to the main elements of the report including the refined Waitangi Tribunal hearing or Special Hearings Commission, Independent Mandated Authority, PSGE and regional hapū representation

131. This information from the Crown's own advisor was essentially that the reasonable efforts of those in opposition to the mandate were being met unreasonably, yet the unreasonable behaviour was rewarded with further support.

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<sup>48</sup> Wai 2490 #4.1.2 p 1075

<sup>49</sup> Wai 2490 #4.1.2 p 1143

<sup>50</sup> Wai 2490 #A151p 237

132. Ms Hickey tried to defend the Crown position by referring to other facilitators who saw the situation a different way.<sup>51</sup> That other facilitator was of course Sir James Bolger, and as we have mentioned, he was woefully misinformed.
133. This context is significant in the fact that it is this type of bullying behaviour that the Crown has supported through the mandate process and now before this Tribunal seeks to justify.
134. It is through the Crown's ongoing support of this type of behaviour that the internecine conflict within Ng puhi has perpetuated.

#### Police Checks

135. It is within the face of such behaviour that police checks were sought as a prerequisite to those who would seek to stand in leadership roles for Ng puhi.
136. The issue of police checks was traversed with Mr Morgan:
- a leader who sits in a responsible position should not have committed crimes against children, against people . serious assault charges. So Mr Pou I was very precise in determining the levels of minimum behaviour in relation to the police vetting process. And those, that is no different to what we follow within Waikato Tainui and there are other iwi authorities who have adopted the same practise.<sup>52</sup>
137. The issue was also traversed by Mr Tau who asserted that he had never resisted a police check.<sup>53</sup>
138. Counsel confirms that the police checks have been sought on behalf of Claimants, however, contrary to the evidence of Mr Tau, these have been resisted, or at least not provided.

#### Post Recognition Conduct.

139. It is submitted that the engagement of the Crown post recognition furthers the perception that outcomes were predetermined from the outset.
140. Firstly, it is submitted that the mandate conferral must be seen as premature given the amount of work that the Crown and T horonuku still have to complete. In this regard, though it hasn't been stated explicitly, it

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<sup>51</sup> Wai 2490 #4.2.3 p 161.

<sup>52</sup> Wai 2490 #4.1.2 p 559

<sup>53</sup> Wai 2490 #4.1.2 p 1168

is submitted that the Crown have essentially accepted that the mandate is deficient.

141. The responses given by Mr Fyfe reinforce the position expressed by Ms Hickey. His email dated 24 June 2014 clearly outlines the Crown's awareness of the clear and significant opposition to the mandate that exists.<sup>54</sup>
142. The need for conditions exemplifies this fact. Those conditions however, it is submitted, are arbitrary and so vague that they are meaningless.
143. Ms Hickey, however, confirmed that the fulfilment of the conditions is discretionary and based upon judgement rather than being pinned to objective measurables. The arbitrary nature of the assessments was revealed under questioning from the Tribunal when Ms Hickey could not even speculate about what ministers would be assessing in the determination of whether the conditions were being fulfilled.<sup>55</sup>
144. It is therefore submitted that the conditions have no substance and the only reason from their inclusion is to assist the Crown defending a mandate conferral that should not have occurred given the clear level of significant opposition to that the Crown knew to exist.<sup>56</sup>
145. One of the mechanisms that the Crown asserts is being used to maintain the mandate is through regular health checks. In documents released just prior to the December 2015 hearing, the Crown revealed that it had conducted a health check on the T horonuku mandate.<sup>57</sup>
146. This health check, dated 16 May 2014 revealed that:
- OTS is concerned that the election that the [hapu kaikorero] election process has not (at this stage) demonstrated wide support for the T horonuku mandate.
147. Notwithstanding those concerns:
- OTS alongside the Crown is preparing to defend the T horonuku mandate.
148. In light of the concerns, the health check notes that OTS would be seeking additional resources to support the development of a defence

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<sup>54</sup> Wai 2490 #A151p 750

<sup>55</sup> Wai 2490 #4.1.3 p276

<sup>56</sup> Wai 2490 #4.1.3 p240 see Supplementary bundle p749

<sup>57</sup> OIA 26 p46

while at the same time working with T horonuku to develop other strategies to support the mandate.<sup>58</sup>

149. The concerns raised by the Crown in the health check are alarming. The mandate had been conferred a mere three months earlier and immediately following, insufficient hapu support continues to be highlighted by the Crown as a key risk and issue requiring as mitigation:

Engagement with T horonuku to express concern over mandate and to develop strategy with them on how to consolidate a mandate.<sup>59</sup>

150. The evidence of the Crown shows that T horonuku are actually failing to maintain their mandate, however, rather than stepping away from them as a viable vestibule in which the future mana of Ng puhi should vest, the Crown instead seeks further resource and funding to assist.

151. It is against this backdrop that Mr Fyfe reinforced the fact that the mandate was conditional.<sup>60</sup> The propensity of the Crown to rely on the conditional nature of the mandate in an effort to deflect attention from the significant issues and risks that prevail, it is submitted, highlights the mandates lack of integrity. This is particularly the case given that the Crown's documents note that there is *no specific mandate condition relating to numbers of hapū involved in Tūhoronuku*.<sup>61</sup>

152. This highlights the reasons why the conditions do not give any faith to the Claimants that come before this Tribunal. The Crown might come before this Tribunal saying that the conditions of the mandate mean that the matters that the Claimants raise will to be addressed, however, at the same time, the Crown's internal documents confirm that the conditions of the mandate do not require the matters the Claimants raise to be addressed.

153. The lack of veracity in the Crown approach was highlighted when Mr Fyfe was unable to confirm under questioning from her Honour the level at which the Crown required representivity to be maintained before determining that the mandate could not be seen to be supported and needed to be abandoned. Mr Fyfe merely referred to a level of Crown discomfort.<sup>62</sup>

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<sup>58</sup> OIA 26 p46

<sup>59</sup> OIA 26 p48

<sup>60</sup> Wai 2490 #4.1.2 p 704

<sup>61</sup> OIA 26 p11

<sup>62</sup> Wai 2490 #4.1.2 p 782

154. Like Ms Hickey, Mr Fyfe conferred that the maintenance of the Ng puhi mandate was entirely based on a feeling, a vibe, and a Crown one at that.

155. The evidence before this Tribunal is that the Crown are saying that they are clearly uncomfortable with the lack of hap support. It then, however, chooses to ignore those discomfort levels so that it could seek extra resource to engineer a perception to show support from hap where none exists.

156. Then in June when another health check is carried out, while hap kaikorero elections are occurring, the same issues are raised again by the Crown itself.<sup>63</sup>

157. Following the hap kaikorero elections, a draft assessment of the T horonuku elections carried out by the Crown dated 10 September 2014 confirmed that:

Hapu kaikorero representation of 47 of 110 (less than half of those hapu within the Mandate) suggests that further work needs to be done to bring more hapu within the mandate.<sup>64</sup>

158. The position put to Ms Hickey was that the number of hap kaikorero was an overstatement given that a number of them were participating under duress. Ms Hickey was referred to the evidence of Whakatau Kopa<sup>65</sup> who stated that his participation was to ensure that nobody else came in to represent them. Ms Hickey, for her part, accepted that this was not an exercise of hap rangatiratanga.<sup>66</sup>

159. Ms Hickey accepted that more work needed to be done on this issue and asserted that it was a concern that the Crown want to understand more about.<sup>67</sup> Mr Tau himself noted that on the issue of hap representation that:

There is a lot of work. There is a lot work. We havenq even started.

160. With respect, this was something that the Crown should have found out more about prior to conferring yet the Crown are before this Tribunal asserting that they havenq even started.

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<sup>63</sup> OIA 26 p39

<sup>64</sup> OIA 26 p10

<sup>65</sup> T Wai 2490 #A67

<sup>66</sup> Wai 2490 #4.1.2 p 1033.

<sup>67</sup> Wai 2490 #4.1.2 p 1034

161. When questioned by Dr Anderson, Mr Fyfe confirmed that the Crown had yet to do an assessment on the representativeness of people who are on T horonuku , and was unable to confirm when this would happen<sup>68</sup> and it is within that environment that a mandate was conferred.
162. It is telling that no evidence has been tendered by the Crown to suggest that the circumstances have changed. Indeed, both Ms Hickey and Mr Fyfe confirmed that no new hap kaikorero have been appointed so the status of no support has remained constant in the face of the extra resource thrown at it by the Crown.
163. These matters of representivity, it would seem ought to have been conducted prior to any mandate to represent being confirmed and failing to have done so, it is submitted that the Crown has clearly failed to ensure that the interests of the Claimants and hap that come before this Tribunal are protected.<sup>69</sup>
164. Rather than protect the interests of the Claimants, the evidence before this Tribunal is that the Crown decided to just, ~~be the Crownq~~ ~~damn the torpedoesq~~ and disregard the opposition.
165. Mr Fyfe confirms further that:
- Whether the Tribunal grants urgency or not the problem remains the same. The Crown is not about to abandon the mandate nor to change its policy of a single Ng Puhi settlement and we still have to find a way through the log jam<sup>70</sup>
166. Whether or not the hap are deemed to be torpedoes or a log-jam the Crown has determined that the way forward, the way to ~~be the Crownq~~ is to blast a way through the impasse that it sees as hindering its policy objective of a single Ng puhi settlement.
167. In this regard, Mr Fyfe accepted, that his role exists within a framework of Crown policy that he had to protect and that policy was for a single Ng puhi settlement.<sup>71</sup>
168. It is in this context that Ms Hickey para 108ō tries to assert that the Crown process has been fair and robust.

#### Lack of Ability to participate

<sup>68</sup> Wai 2490 #4.1.2 p794

<sup>69</sup> Te Arawa Mandate Report Te Wahanga Tuarua page 71 - 79

<sup>70</sup> Wai 2490 #A151p 749

<sup>71</sup> Wai 2490 #4.1.3 p 242

169. Notwithstanding the issues raised above, the Crown continue to assert that the T horonuku model allows and provides for the exercise of hap rangatiratanga.

170. It is submitted that those processes remain so unclear that there is no way that the Crown can show that the interests of hap have been protected.

171. Mr Tau was questioned on issues that had been raised about the hap kaikorero election processes. In response, Mr Tau stated:

I'm not sure what processes that Ngati Pakau undertook. I cannot be involved in local hapu politics, whether they had meetings or whatever they had.<sup>72</sup>

172. When asked if this would be a concern, Mr Tau responded that:

That would be a concern for Ngati Pakau, yes.

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Just as much as it would be a concern for any other hapu I guessō<sup>73</sup>

173. The evidence of the Crown and T horonuku is that hap issues are to be dealt with true hap kaikorero, however, where those kaikorero are not representative,

174. In short, there were no protections in the process and quite clearly, the concerns that hap might have, did not concern either T horonuku or the Crown.

175. The lack of concern with the representation of hap on the structure became more apparent when the evidence of Mr John Francis was put to Mr Tau for comment. Mr Tau accepted that:

Yes, this is proof of evidence of someone that's not on T horonuku and I can't comment on what he's saying there, but I do know that the best approach is a united approach, yes.

JASON POU

He's the mandated hapu kaikorero representing Ngati Kopaki.

RANIERA TAU

Yes, he's in the area, in the cluster. He's not on TIMA, I can't speak for him.

JASON POU

But he is on T horonuku . He's in a larger body sort of thing and the brief of

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<sup>72</sup> Wai 2490 #4.1.2 p 1150

<sup>73</sup> Wai 2490 #4.1.2 p 1151

evidence was filed by your lawyer in support.

RANIERA TAU

I agree and that's not, that's not the thoughts that I harbour

176. What this shows is that T horonuku accept that their mandated hap kaikorero are ill informed and when they fall out of line, their viewpoints can be easily disregarded.
177. It is within this context that assertions that the will of the many hap can be respected must be seen to fall short.
178. The Crown informs hap that they need to engage with and through T horonuku if they want their interests protected.
179. This is of course difficult for hap who see that settlement assets are already being compromised within agreements that are being effected to fulfil the mandate conditions.
180. A key example of this is highlighted in the agreement that has been made with Te Roroa that Ng puhi will not seek any redress in the Maunganui Bluff.
181. Ms Hickey suggests that these concerns need to be raised with T horonuku , however, how can this occur when the decisions are consistently made without recourse to the hap to whom the decisions most impact on.
182. Ms Hickey might refer to the existence of hap kaikorero, however, as these submissions have explored, those hap kaikorero cannot be seen to be representative and their views are easily ignored.
183. What is clear is that rather than seeking to accommodate the needs of the hap , every effort is being expended in this process to negate their needs within the benefit of a new corporate super iwi.

#### **Did the Amended Mandate Address the Claims?**

184. The Crown point to the shifting terms encapsulated within the mandate and assert that it has to the extent that is reasonable addressed the claims that have been lodged before this Tribunal.
185. With the submissions set out above in mind, this is of course rejected by the Claimants. Ms Hickey herself has confirmed under questioning from

the Tribunal that issues that the Crown have been very much aware of, have not gone away.<sup>74</sup>

186. It is submitted above, that an assessment of the amendments to the Mandate needs to look at the process and the environment in which amendments were or were not made.

*Offering Ngāpuhi Choice*

187. The Whaiti process was about the development of models that would allow for Ng puhi to have a choice.
188. While there were amendments to the deed, what is apparent is that lack of faith that T horonuku, supported by the Crown, had in the general Ng puhi populous to make an informed decision beyond a mere yes or no.
189. It is submitted that facilitating Ng puhi in the exercise of rangatiratanga is as much about the way in which the changes were made as it is about the actual changes themselves.
190. In this way, the hapū and whanau of Ng puhi were never permitted to exercise any real choice over the shape of the structure that the Crown wanted to negotiate with as they were only given a yes or no.
191. It is within this context that Mrs Prime responded to questions from Counsel for T horonuku stating that:

the changes which they made came from a flawed . in our view, flawed process. So . they weren't the changes that we were seeking, those were the changes that they were prepared to make. So we still saw the process to determining what those changes would be as a flawed process for all the reasons we give in my evidence and others.<sup>75</sup>

192. What this shows is that the process for amendment in itself was a denial of the exercise of hapū rangatiratanga by disallowing them in the exercise of choice over the options that could have been employed. This inability or the way in which the process suppressed the ability of Ng puhi to exercise choice was referred to by Mr Morgan and:

one of the weaknesses of the process. ō The issue for [Mr Morgan] is that the report should not have stayed there. The report should've been consulted

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<sup>74</sup> Wai 2490 #4.1.3 p230

<sup>75</sup> Wai 2490 #4.1.2 p 197

throughout Ng puhi.<sup>76</sup>

193. This failure, it is submitted, kept Ng puhi from being involved and maintained the focus and positions of what Mr Morgan referred to as the two boxers in the ring.
194. The my way or the highway approach, it is submitted was merely a way of ensuring against the espousal of a view that while Ng puhi might want to settle, it might not have been on the basis that the Crown were engendering.
195. Rather than consulting on the various options, the Crown chose to endorse an approach that falsely advocated that there were no other options.
196. In the end, neither the Te Whaiti report, nor the Morgan report were taken out to Ng puhi for comment and a key opportunity was lost.

#### Runanga Connectivity

197. Lack of faith in the Runanga was a key separator.
198. The perceptions of past failure on the part of Te Runanga a were put to Mr Morgan who responded:

Yes, yes, the reason why I didn't agree with the structure, the reason why I proposed an independent mandated authority and a new post-settlement governance entity.<sup>77</sup>

199. Mr Morgan agreed that the issue wasn't one about personalities, rather, it was based on ensuring the creation of a structure that would be accountable to the people into the future.<sup>78</sup>
200. While Counsel for T horonuku sought to stress the legal separation, this continues to be seen as artificial by many such as Mr Taylor who noted that he:

could not see the difference in the changes [to the relationship between the Runanga and T horonuku ] because they made them both together. Could I say this, who funded T horonuku it was the Runanga who kicked them off, so there is a money investment in T horonuku .

201. One dedicated seat was kept for the Runanga

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<sup>76</sup> Wai 2490 #4.1.2 p557

<sup>77</sup> Wai 2490 #4.1.2 p549

<sup>78</sup> Wai 2490 #4.1.2 p549

202. It is one thing to assert a legal separation between the Runanga and T horonuku but the ongoing role of the Runanga in the discussions around settlement and the fact that the Crown were still reimbursing the Runanga into 2014 shows that this separation was never real.
203. Notwithstanding any legal independence, neither the Crown nor T horonuku can assert that the settlement process itself is independent of the Runanga involvement.
204. There is much evidence before this Tribunal that shows that the Runanga's participation in the settlement process was polarising Ng puhi and this was known by the Crown.
205. This issue was so significant that it was one of three issues that the Runanga itself agreed to discuss within the Te Whaiti engagement process.<sup>79</sup>
206. The Runanga then reneged on this agreement and refused to discuss the ongoing role of the Runanga in the settlement process. According to Ms Harawira, this was a matter for the Runanga and its subcommittee T horonuku to discuss, not Ng puhi.<sup>80</sup>
207. Then in his 15 September 2014 Chairman's Report for Te Runanga a Iwi o Ng puhi, the Chair of T horonuku puts forward the Runanga as an option for Ng puhi to consider as a post-settlement governance entity.<sup>81</sup>
208. It is submitted that the notwithstanding all of the assertions around the legal separation of T horonuku and the Runanga, the connections are nevertheless maintained.

#### Introduction of Voting for the Hap Kaikorero

209. The Crown has asserted that the system of voting was in response to a request for an amendment to the hap representation selection process requested by Te Kotahitanga.<sup>82</sup>

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<sup>79</sup> See Te Whaiti Report, attached in Brief of Evidence of Pita Tipene #A13 . Terms of Engagement.

<sup>80</sup> Wai 2490, #A102

<sup>81</sup> Wai 2490 #A79, Exhibit F, p9.

<sup>82</sup> See Crown questioning Wai 2490 # 4.1.2 p57

210. The process put to Mr Taylor by Crown Counsel was that there would be a discussion to reach agreement and if agreement could not be reached then there would be a vote.<sup>83</sup>
211. Crown presents what it calls two key steps, those being:<sup>84</sup>
- a. The call for public nominations; and
  - b. An election process
212. Mr Taylor criticised the proposal on the basis that the election disregarded whether or not the hapū itself wanted to be represented and that rules were under their regime<sup>85</sup>
213. The Crown asserted that there was no reason why the nomination process could not be conducted by a hui.<sup>86</sup> The fact is, the nomination process was not conducted by hui and this would have been a minimum for the discussion around the nomination, or indeed whether a nomination would be forthcoming.
214. In the end, the nomination process did not occur in connection to the hapū and many were surprised to find out they were represented.<sup>87</sup>
215. It is on that basis that it is submitted that this amendment to the Deed of Mandate fails to address the claims instead acting to defeat the exercise of hapū rangatiratanga by allowing representation through the back door.

#### **Reliance on the first vote**

216. It is submitted that the Crown's initial reaction to the vote, where it recognised the serious opposition to the mandate that the 1300 people in opposition represented is an indication that vote was never a suitable indication of Tūhoronuku support.
217. The question raised by the Tribunal was:
- why should we listen to the 1300 that voted against the mandate and not listen to the 5000 plus who did vote for the mandate?<sup>88</sup>
218. Mrs Prime responded by noting that many factors needed to be taken into consideration when assessing the outcomes of what she described as a

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<sup>83</sup> Wai 2490 #4.1.2 p54

<sup>84</sup> Wai 2490 #4.1.2 . see common bundle tab 11, p16

<sup>85</sup> Wai 2490 #4.1.2 p 57

<sup>86</sup> Wai 2490 #4.1.2 p58

<sup>87</sup> Wai 2490 #A43

<sup>88</sup> Wai 2490 #4.1.2 p 219

flawed process. The key in Mrs Prime's response, however, isn't in the way she notes that the opposition cannot be ignored.

219. If the voting process is to be seen as a win lose scenario, the process has to be divisive. The issue isn't about listening to one group and not the other, it's about having to deal with what the Crown recognises to be clear and significant opposition to its policy.
220. The evidence before this Tribunal is that the Crown could not rely on the vote. This is clearly set out in the Mr Morgan's He Ara Hou report.
221. When questioned, Mr Morgan confirmed that the significant opposition who voted against the mandate was *“certainly one of the reasons why he was engaged to as a facilitator.”*<sup>89</sup> When questioned by the Tribunal Mr Morgan noted that:

The issue for me is that there was uneasiness by the Crown that the level of opposition was sufficiently high to categorise it as a risk going forward because of the threat of legal action. So, I came in at that point. That's a judgment call for the Crown and at that time they made the call those were the circumstances and I said yes to the opportunity to come in to mediate and I came in under those understandings and one of which was the 24% in opposition to the mandate to T horonuku.<sup>90</sup>

222. Though this has been challenged by Ms Hickey, who noted under questioning that she was not so sure that the level of opposition was unusual. She was referred to an aide-memoire<sup>91</sup> her own evidence which specifically noted that the Ng puhi percentage fell below the range of mandate results of 84-100% previously recognised by the Crown.<sup>92</sup>
223. Ms Hickey responded saying that the Crown had flip-flopped on the issue and she referred to the Ngai Tai ki Tamaki result which was 68%. What Ms Hickey didn't mention in that case was that only 66 people voted in the Ngai Tai ki Tamaki process and no submissions were received on it. In that regard the process is hardly comparable.
224. It is then in the face of the sustained opposition to the mandate that the Crown changed its mind and flip-flopped on its perceptions of the vote. One can only imagine the Crown felt that with an appropriately

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<sup>89</sup> Wai 2490 #4.1.2 p 530

<sup>90</sup> Wai 2490 #4.1.2 p 578

<sup>91</sup> Wai 2490 #A26 MCH34 p30

<sup>92</sup> Wai 2490 #A26 MCH34 p30

significant injection of resource, the opposition that was exhibited at the time of the vote would dwindle and it would have other factors to rely upon.

225. This of course did not occur. Unlike the Ngai Tai ki Tamaki scenario, the submission process for the T horonuku campaign was an absolute disaster and the Crown was left with nothing else to rely upon other than the vote which earlier it had found insufficient.

### **Representation**

226. For the reasons outlined above, it is submitted that the Crown cannot show that the majority of hapū have consented to the progression of a settlement on the basis of the terms that it proposes. In this regard, it therefore cannot show that the majority of hapū have consented to have their claims settled

227. What cannot be ignored is that the Mandate has never had support from the majority of hapū .

228. At the time of the hearing in December, less than half of the hapū had hapū kaikorero,<sup>93</sup> some of the kaikorero were challenged and some were saying that their participation was not in support<sup>94</sup>

229. When the Tribunal reconvened in Wellington in March, notwithstanding the intensive efforts of the Crown over the break, nothing had moved. The Crown alluded to a possible increase of 1 more hapū , but in reality, both of Ms Hickey and Mr Fyfe had to acknowledge that they could not show any increase in support, so the minority has been maintained.

230. The refusal of hapū to populate the structure is telling in terms of what could be achieved. When asked in particular about the participation of Ngati Hine, Mr Morgan noted that:

Ngū puhi would not have a viable settlement if Ngati Hine or any other hapū was to stand outside the tent.<sup>95</sup>

231. The evidence in this Inquiry is that more hapū are outside of the tent than there are inside and on this basis, it cannot be said to be robust.

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<sup>93</sup> Wai 2490 #4.1.2 p219

<sup>94</sup> Wai 2490 #A67

<sup>95</sup> Wai 2490 #4.1.2 p535

## Conclusions

### *Hapū Rangatiratanga*

232. The Crown has facilitated the T horonuku desire to capture all the claims of Ng puhi regardless of the desires of the hapū and their rangatira.
233. The evidence is clear that Claimants are not individuals and they should not be dealt with as such. They represent significant hapū, and there is significant opposition. In fact, the reason the Crown engaged Tukoroirangi Morgan who produced the report, *Te Ara Hou*, was because the Crown was uncomfortable with the level of opposition.
234. These hapū have had their mana and rangatiratanga usurped, in particular, the Crown has:
- a. failed to respect and give effect to the tikanga-based decisions of the hapū to oppose the T horonuku mandate, where the hapū have significant support; and
  - b. Recognised a mandate where the process was flawed and detrimental to the mana and rangatiratanga of hapū.
235. It is part of hapū tikanga and part of exercising their tino rangatiratanga that hapū determine who represents its interests across a range of areas including Treaty settlement claims and negotiations.
236. The Crown processes have essentially disregarded the rangatiratanga of hapū who opposed T horonuku, rendering them irrelevant in an effort to achieve a settlement outcome.
237. The loss of mana and rangatiratanga is a prejudice felt by these hapū, but more tangibly the Claimants say that hapū will be represented in negotiations by an organisation and individuals they haven't mandated, and that their claims will be ultimately settled and extinguished by the Crown without their consent.

### *Pre Determination*

238. It is clear that the Crown has affected their policy in a way that has marginalised those who have sought to retain their hapū rangatiratanga and the control over their hapū futures.
239. To this extent this Tribunal has seen that the outcome of this mandate

process has been predetermined and the favourite that was funded, favoured and endorsed from the outset was always going to be the winner in any dispute.

240. Counsel would go so far as to make the submission that the evidence before this Tribunal indicates that the outcome to the settlement negotiations themselves has already been pre-determined by the Crown, noting that quantum bands have already been decided, notwithstanding they are withheld.
241. In this regard, it would seem that the Crown have already determined what Ng puhi would get in a settlement in addition to who they are going to give it to.
242. Within such processes the perception of negotiation is a farce and these are matters that will necessarily need to be traversed with the witnesses that give evidence for the Crown.
243. Within the context of these allegations the extent to which the mandating outcome has been pre-determined by the Crown is a very real issue, given the way in which those we represent were treated unfairly within irrational processes designed to manufacture a particular outcome.

#### *Withdrawal Processes*

244. Given the way in which hap rangatiratanga has been captured within the mandating process, the absence of a withdrawal process effectively seals that fate, exacerbating and highlighting the prejudice suffered now by the Claimants and making it inter-generational.
245. The Tribunal has from the Crown and T horonuku that such process has been omitted to ensure against a destabilisation of the mandate that is held. Such assertions of course need to be held up against the assurances that are made to Ng puhi that T horonuku will be required to maintain the mandate.
246. The maintenance of a mandate should occur by addressing the challenges that arise rather than suppressing them from arising in the first place. This is how such evidence should be considered when it comes before the Tribunal, as the absence of a withdrawal process and the failure of the Crown to require one is an indication of the way

in which it continues to seek to protect the outcome it has engineered.

### *Single Settlement Model*

247. Much evidence adduced from the Crown is about the benefits of a single settlement model. Alongside this evidence is the assertion by a number of T horonuku members that they are endorsing a single settlement model because that's what they Crown wants.
248. What is clear is that the single settlement model is the favoured choice for the Crown which leaves open for exploration the likelihood that a single settlement for Ng puhi has already been pre-determined. This has been discussed earlier in these submissions.
249. Such evidence of course needs to be held up against the very real fact that the Crown have never negotiated with an iwi of the size and internal complexity as Ng puhi. It is in this regard that the simplistic models that have been put forward for settlement by those such as Dr Yeabsley, should be assessed.
250. The question of course which really needs to be asked is why the Crown has not allowed for the proper investigation of options to be disseminated throughout the wider Ngāpuhi populous
251. What this hearing has shown is that the Crown does not apply their Large Natural Grouping policy consistently and therefore it is difficult to understand why the Crown was unwilling to do so for Ng puhi.
252. In making this submission we are not saying that single settlement models are necessarily bad, however the model of settlement should be one in which Ng puhi have a choice rather than one that was imposed and this is expressed in the kaupapa of the Te Roopu o Whaiti report.

### **Prejudice**

253. As a result of the above, the Crown have caused the hapū and whanau of Ng puhi to suffer the following prejudice:
- a. they will be represented in settlement negotiations with the Crown by an entity that they did not mandate and by people that they do not want to represent them;
  - b. their claims will be negotiated, settled and extinguished by a

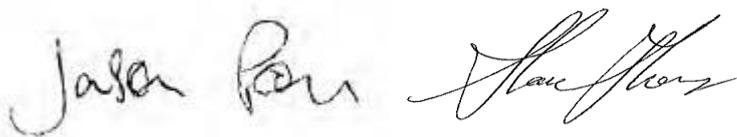
settlement reached between the Crown and T horonuku. This will lead to the abrogation of their right to have their claims inquired into and reported on;

- c. They will be deprived of the right to achieve a fair, robust and enduring settlement of their claims if the Crown continues to engage with T horonuku;
- d. they have lost confidence in the Crown, and doubt their ability to establish any positive and long-lasting relationship; and
- e. their relationships with whanaunga have deteriorated, and there is no obvious means of restoring the damaged ties that bind.

### **Remedy**

- 254. Counsel submit that while it may seem a drastic step to halt the settlement process, it would be better to stop the settlement process now and completely reconsider how matters should progress. Otherwise, the Crown would be rushing into a big mistake with ongoing prejudicial effects for Ng puhi.
- 255. Of course, there would have been no need to resolve matters if the Crown had acted in good faith from the beginning and recognised hap rangatiratanga and the right to govern our own affairs.
- 256. Ng puhi deserve a fresh start, free of the bullying, abuse and conflict that has infected this entity.
- 257. In making this submission we acknowledge the costs of delay but the Tribunal will see from the evidence of Ng puhi, the prejudice that has already been suffered, let alone the prejudice that will follow, severely outweigh the costs of delay.

Dated at Rotorua this 30<sup>th</sup> day of March 2014



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Jason Pou/Alana Thomas

### Appendix "A" Chronology of Events

Number	Event	Date
1	Sonny Tau and others begin to meet with Office of Treaty Settlements to discuss settlement options	August 2006
2	Te R nanga a Iwi o Ng puhi AGM which directed TRAION to lead Ng puhi into settlement of their claims.	1 November 2008
3	Establishment of Te K tahitanga o Nga Hap Ng puhi	December 2009
4	Te R nanga a Iwi o Ng puhi Meeting with Minister of Treaty Settlements	13 March 2009
5	Establishment of Te Roopu o T horonuku	March 2009
6	First Round of T horonuku Roadshow Hui at Otatara Marae, Waima	14 April 2009
7	First Round of T horonuku Roadshow Hui at Kaea Community Hall	15 April 2009
8	First Round of T horonuku Roadshow Hui at Kotahitanga Marae, Kaikohe	16 April 2009
9	First Round of T horonuku Roadshow Hui at Otangarei Marae, Whangarei	17 April 2009
10	Te R nanga a Iwi o Ng puhi Meeting With Prime Minister	22 April 2009
11	First Round of T horonuku Roadshow Hui at Awataha Marae, North Shore, Auckland	23 April 2009
12	First Round of T horonuku Roadshow Hui at Piringatahi Marae, West Auckland	23 April 2009
13	First Round of T horonuku Roadshow Hui at Te Ngira Marae, Papakura	24 April 2009
14	First Round of T horonuku Roadshow Hui in Invercargill	2 May 2009
15	First Round of T horonuku Roadshow Hui at Sudima Hotel, Christchurch	3 May 2009
16	First Round of T horonuku Roadshow Hui at Te Kuratini Marae, Wellington	4 May 2009
17	First Round of T horonuku Roadshow Hui at Kirikiriroa Marae, Hamilton	5 May 2009
18	First Round of T horonuku Roadshow Hui in Sydney	6 May 2009
19	Te R nanga a Iwi o Ng puhi meeting with Minister of Treaty Settlements and Prime Minister where preference for a single Ng puhi Settlement was voiced	11 September 2009
20	Crown decision to fund \$140,000.00 towards Consultation hui costs	September 2009
21	Second Round of T horonuku Roadshow Hui at Te Kohinga Marama Marae, Hamilton	22 September 2009
22	Second Round of T horonuku Roadshow Hui at Kuratini Marae, Wellington	23 September 2009
23	Second Round of T horonuku Roadshow Hui at MOE Building, Nelson	24 September 2009
24	Second Round of T horonuku Roadshow Hui at Sudima Hotel, Christchurch	25 September 2009
25	Second Round of T horonuku Roadshow Hui at Te Tomairangi Marae, Invercargill	26 September 2009
26	Second Round of T horonuku Roadshow Hui at Ng puhi Marae, Whangaroa	29 September 2009
27	Second Round of T horonuku Roadshow Hui at Karetu Marae, Karetu	30 September 2009

28	Second Round of T horonuku Roadshow Hui at Tauwhara Marae, Ohaewai	30 September 2009
29	Second Round of T horonuku Roadshow Hui at Pehiaweri Marae, Whangarei	31 September 2009
30	Second Round of T horonuku Roadshow Hui at Maraeroa, Pakanae	2 October 2009
31	Second Round of T horonuku Roadshow Hui at Awataha Marae, North Shore	5 October 2009
32	Second Round of T horonuku Roadshow Hui at Te Mahurehure Marae, Auckland	5 October 2009
33	Second Round of T horonuku Roadshow Hui at Papakura Marae, Auckland	6 October 2009
34	Second Round of T horonuku Roadshow Hui at Tatai Hono Marae, Sydney	10 October 2009
35	Crown decision to fund an additional \$120,000.00 towards Consultation hui costs	October 2009
36	Te R nanga a Iwi o Ng puhi meeting with Minister	26 January 2010
37	Kuia and Kaumatua Hui to confirm T horonuku to move forward with Mandate attempts	26 Feb 2010
38	Stage One, Week One Te Paparahi o te Raki Inquiry Hearings at Te Tie Waitangi Marae.	10 . 14 May 2010
39	Stage One, Week Two Te Paparahi o te Raki Inquiry Hearings at Te Tie Waitangi Marae.	14 . 18 June 2010
40	T horonuku Information Hui at Pehiaweri Marae, Whangarei	28 June 2010
41	T horonuku Information Hui at Whakamaharatanga Marae, Waimamaku	29 June 2010
42	T horonuku Information Hui at Pukerata Marae, Otaua	30 June 2010
43	T horonuku Information Hui at Ngawha Marae, Ngawha	1 July 2010
44	T horonuku Information Hui at Tapui Mare, Matauri Bay	2 July 2010
45	T horonuku Information Hui at Te Mahurehure Marae, Auckland	5 July 2010
46	T horonuku Information Hui at Papakura Marae	6 July 2010
47	T horonuku Information Hui at Te Kohinga Marae, Hamilton	7 July 2010
48	T horonuku Information Hui at Kuratini Marae, Wellington	12 July 2010
49	T horonuku Information Hui at MOE Building, Nelson	13 July 2010
50	T horonuku Information Hui at Sudima Lodge, Christchurch	14 July 2010
51	T horonuku Information Hui at Te Tomairangi Marae, Invercargill	15 July 2010
52	T horonuku Information Hui at Wairau Tapu Marae, Sydney	31 July 2010
53	Stage One, Week Three Te Paparahi o te Raki Inquiry Hearings at Panguru	9 . 13 August 2010
54	Stage One, Week Three Te Paparahi o te Raki Inquiry Hearings at Whitiara marae, Te Tie	11 . 16 October 2010
55	Te R nanga a Iwi o Ng puhi meets with Prime Minister	18 November 2010
56	Te Kotahitanga hui with T horonuku at Parawhenua Marae	24 November 2010
57	T horonuku Submit Mandate Strategy to Crown for Consideration	30 November 2010
58	Meeting with Minister and T horonuku	9 December 2014
59	Report to Ministers on TDOM Strategy	13 December 2010
60	Te Kotahitanga Roadshow at Te Mahurehure marae, Auckland	20 December 2010
61	Te Kotahitanga Roadshow at Whaiao marae, Auckland	21 December 2010
62	Crown Endorses the TDOM Strategy	5 January 2011

63	TDOM Strategy is Advertised for Public Feedback (31 Feedback letters all of which objected to T horonuku)	26 January . 2 March 2011
64	T horonuku meeting with Minister	3 Feb 2011
65	Election of T horonuku Hap Kaik roero at Kaikohe Motor Inn	18 February 2011
66	Kotahitanga hui with OTS at NU Flo (also T horonuku hui)	12 March 2011
67	Te Kotahitanga and T horonuku meet with the Minister	24 May 2011
68	Crown agrees to reimburse T horonuku for the amount of \$253,325.00 which is costs associated with delaying their mandate hui	May 2011
69	Te Kotahitanga and T horonuku meet with Jim Bolger in Wellington	30 June 2011
70	Hui with Jim Bolger at Whitiara Marae (300 in attendance)	21 July 2011
71	T horonuku advertise mandating hui	22 July 2011
72	Te Kotahitanga and T horonuku meet with Jim Bolger in Wellington	29 July 2011
73	Public Notification by OTS that T horonuku would be seeking a mandate to settle Ng puhi Claims	18 August 2011
74	T horonuku Mandating Hui at Avondale Community Centre, Auckland	19 August 2011
75	T horonuku Mandating Hui at Hoani Waititi Marae, Auckland	19 August 2011
76	T horonuku Mandating Hui at Mangere Memorial Hill, Auckland	20 August 2011
77	T horonuku Mandating Hui at Otara Leisure Centre	20 August 2011
78	T horonuku Mandating Hui at Waiwhetu Marae, Lower Hutt	22 August 2011
79	Wai 2341 Ng puhi Urgency Application Filed	22 August 2011
80	T horonuku Mandating Hui at the MOE Building, Nelson	23 August 2011
81	T horonuku Mandating Hui at Te Tomairangi Marae, Invercargill	24 August 2011
82	T horonuku Mandating Hui at Whakamaharatanga Marae, Hokianga	31 August 2011
83	T horonuku Mandating Hui at Mahuhukiterangi Marae, Mangakahia	1 September 2011
84	T horonuku Mandating Hui at Piki te Aroha Marae, Okaihau	1 September 2011
85	T horonuku Mandating Hui at Parihaka Marae	2 September 2011
86	T horonuku Mandating Hui at Te Huruhi Marae, Awarua	2 September 2011
87	T horonuku Mandating Hui at Otangarei Marae, Whangarei	3 September 2011
88	T horonuku Mandating Hui at Kotahitanga Marae	3 September 2011
89	T horonuku Mandating Hui at Te Puna o te Matauranga Marae, Whangarei	5 September 2011
90	T horonuku Mandating Hui at Pehiaweri Marae, Whangarei	6 September 2011
91	T horonuku Mandating Hui at Hamersley Community Centre, Australia	16 September 2011
92	T horonuku Mandating Hui at Te Wairau Tapu Chruuch, Sydney	17 September 2011
93	Voting for T horonuku Closes <ul style="list-style-type: none"> <li>• 60,000 Ng puhi (18 years and over) eligible to vote</li> <li>• 29, 289 registered voters sent voting packs</li> <li>• 6, 794 Ng puhi voted (23% of total population)</li> <li>• 5,210 voted in support (76.4% of voters)</li> </ul> 1,584 voted in opposition (24% of voters)	21 September 2011
94	Establishment of Working Party Committee (Te Roopu Whaiti)	30 September 2011

95	Te Roopu Whaiti Process	September 2011 . March 2012
96	Wai 2341 Application Adjourned to Allow discussions to continue	27 October 2011
97	Te Roopu Whaiti Report presented to Minister	2 March 2012
98	T horonuku Deed of Mandate presented to the Minister	31 March 2012
99	Minister meeting with T horonuku	31 May 2012
100	Minster meeting with Kotahitanga	6 June 2012
101	Facilitation process with Tukuroirangi Morgan	July 2012 . September 2012
102	T horonuku meeting with Minister	16 August 2012
103	Minister meets with Kotahitanga	27 August 2012
104	Release of Tukuroirangi Morgan report, <del>the</del> Ara Hou: A Proposed Strategy and Pathway to Settlement+	17 September 2012
105	TKONHN hui with Tukuroirangi Morgan to discuss report	26 September 2012
106	Proposed meeting that did not go ahead re Tuku report	3 October 2012
107	Letter form Minister addressing amendments to TDOM and response to tuku report	8 October 2012
108	T horonuku meets with Minister and then T horonuku, minister and Kotahitanga	24 October 2012
109	Letter from minster advising of amendments required to DOM before endorsing for advertisement	29 October 2012
110	Letter form Minister addressing required amendments to	28 November 2012
111	Letter of Kotahitanga opposing suggested amendment	7 December 2012
112	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week One	18 . 22 March 2013
113	Crown pays a total of \$2,184,93 to T horonuku as a contribution for mandating costs incurred over the past 3 years and \$470,934 contribution for operating costs for TIMA for an interim period	April 2013
114	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Two	13 . 17 May 2013
115	Minister decides to advertise the DOM	26 June 2013
116	Release of Addendum to the T horonuku Deed of Mandate and call for Public Submissions	6 July 2013
117	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Three	8 . 12 July 2013
118	6 Week Public Submission process on TDOM and Addendum	6 July . 18 August 2013
119	Submissions for TDOM close <ul style="list-style-type: none"> <li>• Total of 4,015 (3,505 within submission period, 510 were received late.</li> <li>• Of those received on time:</li> <li>• 2,221 submitters were in opposition (63%)</li> <li>• 1,259 submitters were in support (36%)</li> </ul> 25 submitters were neutral (less than 1%)	18 August 2013
120	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Four	2 . 6 September 2013
121	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Five	14 . 18 October 2013
122	Minster meets with T horonuku	16 December 2013
123	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Six	16 . 20 December 2013
124	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Seven	10-14 February 2013
125	Report from OTS to Ministers on whether or not to recognise	20 December 2013
	the TDOM	

126	Letter recognising the T horonuku Mandate from the Minister of Treaty Settlements	14 & 17 February 2014
127	Commencement of TIMA Elections Process	28 February 2014
128	Establishment of Te Roopu o T horonuku Independent Mandate Authority (TROTIMA) Trust	6 March 2014
129	Submissions on TDOM released by OTS	30 March 2014
130	Stage Two: Te Paparahi o te Raki Inquiry Hearing Week Eight	7 . 11 April 2014
131	Close of TIMA Nominations	17 April 2014
132	Release of Media Statement announcing appointment of Crown Negotiator	21 April 2014
133	T horonuku Meeting with the Minister	24 April 2014
134	Elections for TIMA <ul style="list-style-type: none"> <li>• 64 hap Kaik roo nominations received for 48 hap</li> <li>• 3 hap have since retracted nominations (45 hap represented in the structure)</li> <li>• 7 hap required elections</li> <li>• 6 nominations for kuia and kaumatua position</li> <li>• 8 nominations for the</li> <li>• 4 urban positions</li> </ul>	28 Feb . 25 July2014
135	T horonuku Kuia Kaumatua Election at Kohewhata Marae, Kaikohe	26 May 2014
136	T horonuku South Island urban Election at Te Matauranga Maori Whare, Christchurch	26 May 2014
137	T horonuku Wellington urban Election at Horouta Marae, Porirua	27 May 2014
138	T horonuku South Auckland urban Election at Papakura Marae	28 May 2014
139	T horonuku Central West Auckland urban Election at Tatai Hono Marae	29 May 2014
140	T horonuku Hap Kaik roo Election: Te Kapotai at Waikare Marae, Waikare	3 June 2014
141	T horonuku Press briefing at Parliament	4 June 2014
142	T horonuku Hap Kaik roo Election: Ngati Toro at Piki te Aroha Marae, Okaihau	5 June 2014
143	T horonuku Hap Kaik roo Election: Ngati Hao at Piki te Aroha Marae, Okaihau	5 June 2014
144	T horonuku Hap Kaik roo Election: Te popoto at Piki te Aroha Marae, Okaihau	5 June 2014
145	T horonuku Hap Kaik roo Election: Ngati Hau at Whakapara Marae, Akerama	6 June 2014
146	T horonuku Hap Kaik roo Election: Ngati Pakahi at Mangaiti Marae	7 June 2014
147	Cabinet Committee on Treaty Negotiations agrees to 6.1 million upper cabinet funding	25 June 2014
148	Minister approved the upper claimant funding of 6.1 million	22 July 2014
149	T horonuku Hap Kaik roo Hokianga Region Elections at the Copthorne, Hokianga	23 July 2014
150	T horonuku Hap Kaik roo Whangaroa Region Elections at Kaea Rugby Club	23 July 2014
151	T horonuku Hap Kaik roo Whangarei Mangakahia Elections at Settlers Motor Inn	23 July 2014
152	T horonuku Hap Kaik roo Pewhairangi Region Elections at Scenic Hotel	24 July 2014

153	T horonuku Hap Kaik roero Te Waimate-Taiamai Region Elections at Wildspur Lodge	25 July 2014
154	22 Representatives on TIMA Formally announced	30 July 2014
155	Draft Terms of Negotiation . working Draft	31 July 2014
156	Minister Meets with 47 Hap kaik roero	23 August 2014
157	Minister Meets with 22 TIMA Representatives	
158	Deadline for Ng puhi Negotiator Expressions of Interest	26 September 2014