

IN THE WAITANGI TRIBUNAL  
WAI 354

WAI 1535

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of a claim by Arapeta Wikito Pomare Hamilton on behalf of the descendants of Pomare II and members of Ngati Manu, Te Uri Karaka, Te Uri o Raewera and Ngapuhi ki Taumarere tribes (Wai 354)

AND

IN THE MATTER

of a claim by Joyce Baker and Deon Baker on behalf of the descendants of Pomare II and members of the Ngiiti Manu, Te Uri Karaka, Te Uri o Raewera and Ngapuhi ki Taumarere tribes (Wai 1535)

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**AFFIDAVIT ACCOMPANYING AN APPLICATION BY NGATI MANU  
FOR AN URGENT HEARING INTO THE CROWN'S RECOGNITION  
OF THE TUHORONUKU DEED OF MANDATE**

DATED THE <sup>21<sup>st</sup></sup> ~~20<sup>th</sup>~~ MAY 2014

<b>RECEIVED</b> Waitangi Tribunal
<b>22 May 2014</b>
Ministry of Justice WELLINGTON

*Handwritten signature*  
J.P.

Aurere Law  
Barristers & Solicitors  
P.O. Box 1693  
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**ROTORUA**  
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Counsel Acting: Annette Sykes

*Handwritten signature* J.P. *AD*

*Ko Ngatokimatawhaorua Ko Mataatua Ko Kurahaupo nga Waka*

*Ko Tapuiwharawhara te Maunga*

*Ko Taumarere te Awa*

*Ko Pikopikoiwhiti te Moana*

*Ko Ngati Manu te Iwi*

*Ko Te Uri Karaka Ko Te Uri o Raewera nga Hapu*

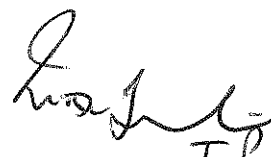
*Ko Otuihu ko Puketohunoa nga Pa*

*Ko Te Karetu te Marae*

*Ko Pomare te Tupuna*

I, Arapeta Hamilton, of Opuia, swear:

1. My name is Arapeta Wikito Pomare Hamilton. I reside at Opuia in the Bay of Islands in Northland. I am a descendant of Pomare. I am an elder of Ngati Manu and Te Uri Karaka.
2. I am authorised to make this affidavit for and on behalf of the descendants of Pomare II and members of Ngati Manu, Te Uri Karaka, Te Uri o Raewera and Ngapuhi ki Taumarere tribes. I am a Kaumatua and spokesperson for Ngati Manu for matters relating to our extant claims before the Waitangi Tribunal and on all matters relating to issues of Tikanga Ma0li that arise in any social; cultural; economic or political context that relates to our iwi and hapu and the preservation of their rights of self government and Mana Motuhake guaranteed in Te Tiriti o Waitangi to our iwi of Ngati Manu.
3. I have filed a number of briefs of evidence on behalf of Ngati Manu and on behalf of the descendants of Pomare II as part of the hearings process of the Waitangi Tribunal in our substantive claims heard in Stage one of the Paparahi o Te Raki hearings process at Waitangi and more recently as part of the Stage Two hearings process at Waitangi and at Mahurangi. I attach these as Exhibits "A" "B" and "C" to this affidavit.



4. I provide this affidavit in support of the application by Ngati Manu for an urgent inquiry into the Crown's recognition of the Tuhoronuku Deed of Mandate and as a further affidavit in support of the overarching Wai 2341 application for urgency.
5. I have reviewed the affidavit evidence of Mrs Willow Jean Prime and accompanying documents which has been filed in support of Te Kapotai a close kin and neighbouring tribe and wish to support all of the observations made in that evidence with respect to the applications now made on behalf of Ngati Manu.
6. I have focused this evidence to those additional pieces of evidence of particular relevance to Ngati Manu that are not specifically covered in other evidence that has been filed in support of the present applications to the best of my knowledge and belief.

**Who are we?**

7. Our Iwi Ngati Manu and Hapu Te Uri Karaka and Te Uri o Raewera are located in the Bay of Islands
8. Our Main Marae is Te Karetu and is situated in the Karetu Valley at one of the Headwaters of the Taumarere River
9. Our immediate neighbours are Ngati Pare at Waihaha and Te Kapotai at Waikare and at Te Rawhiti Ngati Kuta and Patukeha On the southern side is Ngati Wai at Ngaiotonga . Ngati Hine are also located along our western boundary.
10. Our total population is estimated to be approaching 10,000 although this is just an assumption because 20 years ago it was calculated to be 5000 a figure that was derived from Whanau Reunion Books of the time .
11. The various Committees that advance the well being of Ngati Manu and its hapu are:
  - i. The Karetu Marae Committee;
  - ii. The Karetu Womans Committee;

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- iii. Te Roopu Kaumatua Kuia o Ngati Manu;
  - iv. Te Uri Karaka Hapu; and
  - v. Karetu School.
12. We are also involved with Nga Hapu o Te Takutai Moana and Te Kotahitanga o te Taitokerau in terms of networking with the other Hapu in the Southern Bay Of Islands area. Until her immigration to Australia one of our hapu members Ms Marsha Davis and one of our hapu elders Mrs Joyce Baker would attend Te Kotahitanga meetings on a regular basis to ensure the Ngati Manu position was properly related to other participant hapu and iwi in that forum.

#### **Te Tiriti o Waitangi Claims**

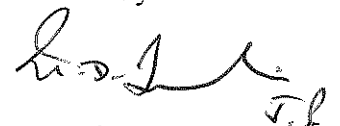
13. Ngati Manu / Te Uri Karaka Te Uri o Raewera have several claims lodged with the Waitangi Tribunal.
14. The principal iwi claim is that which has been allocated the following reference number by the Waitangi Tribunal, Wai 354 which is a claim lodged by Arapeta Hamilton on behalf of Ngati Manu Te Uri Karaka Te Uri o Raewera and the descendants of Pomare II. Wai 1535 lodged by Joyce Baker;
15. Further claims have also been lodged by Marsh Davis Wai 1664; by Peter Apiata Wai 1514; by Phillip Bristowe Wai 440; and by Paul McIntyre Wai 1484.
16. All of these claims have been clustered together both in the preparation and presentation of claims to the Waitangi Tribunal and are unanimous in their support of the current challenge by a number of hapu and iwi of Te Tai Tokerau to the proposed mandate to Tuhoronuku.
17. Our iwi members and hapu entities have carefully considered all options with respect to the progress and ultimate settlement of their claims and decided in 2007 that it was important to progress our claims in the Waitangi Tribunal to ensure the proper documentation of our hapu and iwi histories as a precondition to any settlement discussions with the crown.

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18. Further as descendants of Pomare II who was unjustly imprisoned and cruelly punished by the Crown for his efforts to preserve the self independence of Ngati Manu as a sovereign entity in the 1830's and 1840's that any process of negotiation must respect that constitutional dimension of our claims which underpins all and every allegation of breach of Te Tiriti o Waitangi that has been brought in the Paparahi o Te Raki Inquiry by Ngati Manu.
19. In 2009 Ngati Manu officially withdrew from Te Runanga a Iwi o Ngapuhi and have opposed the entire Tuhoronuku mandate process which ultimately led to the Crown's recognition of the Tuhoronuku Deed of Mandate.
20. At around the same time Ngati Manu made submissions to the United Nations Special Rapporteur on the Rights of Indigenous People Mr James Anaya at the marae at Waitangi on how the Crown's processes of mandate, self selection of mandated leaders; proscribed settlement processes and models of benefit distribution at both a generic and specific level were prejudicial to the peoples of Ngati Manu, and were in breach of Te Tiriti o Waitangi and the special covenants affirmed at the United Nations relating to the Rights of Indigenous peoples.
21. In the event that an urgent hearing is granted evidence in this respect will be brought by Ngati Manu from those tribal representatives now living overseas who were the main advocates for this opposition.

### **Crown endorsement of Tuhoronuku Deed of Mandate Strategy**

22. On the 5 January 2011, during the Xmas holiday period, knowing the full extent of our opposition to the Deed of Mandate Strategy that had been proposed by Tuhoronuku, the Crown endorsed a Deed of Mandate strategy that had been prepared by a new proposed entity Tuhoronuku. We were clear that this approach was merely an attempt by Te Runanga a Nga Puhi to put up a body that would be essentially controlled by that group that had first been established to receive fisheries settlement assets pursuant to the Treaty of Waitangi Fisheries Settlement Act.
23. During that month and again at discussions at Waitangi Commemorations that year the Crown were told in very clear and explicit terms that Ngati Manu were not in favour of the crown action and that the proposed strategy




lacked fundamental hapu and iwi support and that the proposed representative structures and processes of participation by hapu and iwi was not adequate or consistent with the Ngati Manu right of self independence.

24. Of particular concern to Ngati Manu representatives were that the significant opposition by a number of iwi and hapu would result in open internecine conflict between and amongst hapu and whanau in direct contravention of the Crown responsibility to promote good governance and peace amongst and between the tangata whenuna and the Crown.
25. This was ignored by the Crown and the mandating process was permitted to commence.

### **Mandate Hui**

26. Our representatives agam notified the Crown in writing that we did not recognise the proposed Mandate process as being fair and that we did not consent to any mandate being conferred on the proposed Tuhoronuku entity for again the proposal did not preserve our right of self-independence nor ensure proper and reasonable accountability to our iwi as required by Tikanga Maori.
27. I did not attend any of the mandate hui and will rely on the evidence of others like Mrs Willow Prime with respect to how these hui were conducted and the shortcomings with respect to the same.
28. In the event that an urgent hearing is granted we will file further evidence on the point from members of our hapu who did attend and whom corresponded with Crown officials on our behalf. It is clear to us that from reading the minutes of the 20 so called mandate hui that were held that there are significant shortcomings both in the conduct and process of participation that was promoted because it is clear that there was a very poor outreach to the communities affected by the proposal and poor attendance as a consequence.

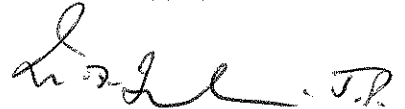


### **The Crown's recognition of the Tuhoronuku Deed of Mandate**

29. On February 14 2014 the Crown wrote to parties informing them that it had chosen to recognise the Tuhoronuku Deed of Mandate. This followed some ominous statements by the current Prime Minister at a public address at Waitangi that I referred to in evidence I was giving orally at the time as part of the Stage Two hearings process in the Mahurangi claims inquiry sub district of the Te Paparahi o Te Raki Inquiry.
30. I was dumbfounded by the timing of the announcement of this Crown recognition. It coincided with the end of a long week of testimony before the Tribunal by us with respect to our claims to Mahurangi via our whakapapa to Maki not Puhi. During that hearing week no effort was made by representatives of the Crown to update the Waitangi Tribunal who was sitting at the time of the Crown's proposed intention to recognise the Tuhoronuku mandate or to elaborate on its effect which I believe was to cut across the hearing of our claims and delegate the right of representation of our claims to a group we did not recognise; whom did not have any mandate from us; and whom had taken no steps to inform themselves of the complexity of our claims or even send representatives during that hearing week to be made aware of nature and extent of our evidence.

### **Ngati Mann withdrawal from the Tuhoronuku Deed of Mandate**

31. Since the Mahurangi hearing we have attempted to engage with the Office of Treaty Settlements and the Minister of Treaty Negotiations the Honourable Christopher Finlayson around our concerns and the breach of Te Tiriti that has been facilitated by the duality of the Crown officials in the conduct of the Paparahi o te Raki Inquiry and the proposed recognition of the mandate process by Tuhoronuku.
32. We have had the further complexity that our other claim for the descendants of Pomare II which derive not through a Nga Puhi whakapapa but through our relationships to Te Kawerau a Maki are also being claimed to have been settled or subsumed by Ngati Whatua.
33. We attach herewith letters to the Office of Treaty Settlement and their response marked "D" and "E" to illustrate the point.



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34. We also attach herewith a letter to the Minister of Treaty Settlements a declaration letter marked "G", of our collective opposition to Tuhoronuku as the Iwi Mandated Authority for Ngapuhi.
35. It is also concerning that the Minister of Treaty Settlements has also chosen not to respond to our inquiries either.
36. I attach herewith as Appendix "F" a further letter that will be forwarded to the Minister of Treaty Settlements and the Minister of Maori Affairs at the conclusion of an upcoming Iwi hui convened specifically to deal with these issues. While it is a draft I am confident it will get the support of our people and will be forwarded no later than 5pm on Monday the 19h May 2014.
37. We are now in a position that we signaled should be avoided when we commenced our claims before the Waitangi Tribunal in the Stage One Inquiries of the Te Paparahi o Te Raki claims. Our self independence or tino rangatiranga is being denied by the application and imposition of a treaty settlement approach that says our iwi now subsumed within the supposed "Crown" conferred mandate by two separate mandate groups where neither of these groups have the right to include us in their mandate.

### **Conclusion**

38. Ngati Manu say the Crown, in breach of its obligations under Te Tiriti o Waitangi, recognised the Tuhoronuku Deed of Mandate and has denied our self independence and guarantee of tino rangatiratanga as part of a process of expedience effected by Crown policy frameworks to meet notional Treaty Settlement timelines imposed by the Crown.
39. Ngati Manu asserts that the Crown has failed in its duty to act fairly and in good faith to Ngati Manu by:
  - a. Failing to act impartially in its recognition of the Tuhoronuku Deed of Mandate;
  - b. Failing to adequately address and or respond to Ngati Mann's concerns over the application of the Crown's large natural group policy;





- c. Failing to address or resolve concerns relating to the Tuhoronuku mandating process, advertising and convening of hui, the need to ensure proper participation and processes of agreement were achieved;
- d. Failing to have due regard to the opposition of Ngati Manu to the Tuhoronuku mandating process; inclusion in the Tuhoronuku Deed of Mandate itself; and withdrawal from Te Runanga a Nga Puhi; and
- e. Failing to protect the right of self independence of Ngati Manu in any settlement negotiation process.

**Na Arapeta Hamilton**

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 S.P.

**AFFIRMED**  
**SWORN**  
 At Paihia this 21<sup>st</sup> day of May 2014

Before me:

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 M.D.J. - J.P.

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Solicitor of the High Court of New Zealand

Murray D Jenkin JP - Reg: 99320  
 Paihia  
 Justice of the Peace  
 for New Zealand

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