

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 Ngati Manu, Te Uri Karaka, Te Uri o Raewera and Ngapuhi ki Taumarere tribes (Wai 1535).

**SECOND AFFIDAVIT OF ARAPETA WIKITO POMARE HAMILTON
IN SUPPORT OF AN APPLICATION FOR URGENCY
DATED 11 JUNE 2014**

RECEIVED Waitangi Tribunal
16 Jun 2014
Ministry of Justice WELLINGTON

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I, Arapeta Hamilton, Kaumatua of Opua, swear:

1. My name is Arapeta Wikito Pomare Hamilton. I reside at Opua 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 Māori 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.
4. I provide this as my second affidavit in support of the application by Ngati Manu for an urgent inquiry into the Crown's recognition of the Tuhoronuku Deed of Mandate.

Tuhoronuku Deed of Mandate Submissions

5. The Office of Treaty Settlements have provided a summary of total submissions received regarding the advertised Tuhoronuku Deed of Mandate ("the Mandate Submissions") as follows:

Submissions on Tuhoronuku Mandate

In mid 2013, the Crown advertised the Tuhoronuku Amended Deed of Mandate and called for submissions. The Crown received an unprecedented number of submissions



for a deed of mandate - 3,990 in total. The number reflects the size of the Ngāpuhi claimant community, the active engagement both Tūhoronuku and Kōtahitanga have sought from members of Ngāpuhi and the level of debate in parts of the claimant community.

On 14 February 2014, the Crown recognised the mandate of Tūhoronuku to negotiate a comprehensive settlement of the historical Treaty claims of Ngāpuhi. The submissions on the deed of mandate have been requested under the Official Information Act 1982 (OIA) and the Crown has decided to release them publically so all interested parties can access them.

You will note that certain information within the submissions has been redacted. Redaction is the process of removing material for specific reasons. Material has been redacted in accordance with our statutory obligations under the Official Information Act 1982 and the Privacy Act 1993.

A significant number of the redactions are to protect the privacy of natural persons (see section 9(2)(a) of the OIA):

- This includes names, phone numbers, email addresses, and handwriting.*
- If the handwritten material is not otherwise confidential, the words have been handwritten back in by an OTS staff member.*
- If a person presents themselves as a representative from an organisation or entity, or as an appointed hapū kaikorero, they are not considered to be a "natural" person and their names have not been redacted. However, if any contact details appeared to be personal rather than organisational in nature (for example, an email address from Gmail/Yahoo/Hotmail/Vodafone etc.), these were redacted.*
- Wai numbers were often, but not always, redacted. If it was clear that a Wai number was an identifying characteristic of a natural person then the Wai number was redacted.*

This is not the only reason material was redacted, but it is the primary reason material was redacted. Other examples include:

- If a person was a lawyer writing on behalf of a client, their name, organisation, and contact details were not redacted but those of their client were.*
- If a person was a manager (or have a position higher than manager) and they work at Office of Treaty Settlements, Te Puni Kokiri, or another Crown agency, their name and contact details were not redacted. If a person worked for these organisations and their position was below that of manager, their name and contact details were redacted.*

- *If there is a personal identifier within a file path (sometimes found at the bottom of a printed document), that personal identifier was redacted*
 - *If a comment within a submission was considered defamatory, that comment was removed to protect the privacy of the individual.*
6. I have now had the opportunity to review the submissions made to the Office of Treaty Settlements by and on behalf of Ngati Manu regarding the Tuhoronuku Deed of Mandate advertised in mid 2013.
 7. While to some extent the way the Office of Treaty Settlements have categorised the Mandate Submissions into two primary headings – Individual Submissions and Template Submissions has of itself minimised the process of analysis of the submissions by Ngati Manu I have used those categories of analysis and the information therein as the primary source for my following observations.
 8. I further note that given the redaction of information my evidence will be based on those submissions clearly indicating that they were made by or on behalf of descendants of Ngati Manu.

Ngati Manu Submissions Analysis

9. A total of 63 submissions identifying that they were made by or on behalf of descendants of Ngati Manu descent (“the Ngati Manu Submissions”) were made to the Office of Treaty Settlements regarding the Tuhoronuku Deed of Mandate.
10. Of the total Ngati Manu Submissions, 31.7% (20 submissions) were in support of the Tuhoronuku Deed of Mandate (“Ngati Manu Submissions in Support”).
11. Of the total Ngati Manu Submissions, 68.2% (43 submissions) were in opposition to the Tuhoronuku Deed of Mandate (“the Ngati Manu Submissions in Opposition”).

Individual Submissions

12. Of the Ngati Manu Submissions, 34.9% (22 submissions) were identified by the Office of Treaty Settlements as being made by individuals (“the Ngati Manu Individual Submissions”).
13. Of the Ngati Manu Individual Submissions, 9% (2 submissions) identified that they were in support of a Ngapuhi Settlement process. I attach herewith as appendix “A” a true copy of the Ngati Manu Individual Submissions in support of a Ngapuhi Settlement process.
14. Of the Ngati Manu Individual Submissions, 90.9% (20 submissions) were in opposition to the Tuhoronuku Deed of Mandate. I attach herewith as appendix “B” a true copy of the Ngati Manu Individual Submissions in opposition to the Tuhoronuku Deed of Mandate.
15. There were a number of consistent themes identified in the Ngati Manu Individual Submissions for opposing the Tuhoronuku Deed of Mandate which I have summarised as follows:
 - a. I/we support the continuation of the Waitangi Tribunal process prior to the settlement of my/our hapu/Marae/Claims to provide an opportunity for Ngapuhi to establish well-founded claims;
 - b. The ratification process does not reflect a majority of Ngapuhi;
 - c. The ratification process was not conducted with due diligence or fairness;
 - d. The several processes that have been undertaken to address issues between those opposing the mandate have not been resolved
 - e. The Tuhoronuku structure is not representative of our hapu;
 - f. There is no accountability back to the hapu in the Tuhoronuku structure;
 - g. The Tuhoronuku Deed of Mandate does not recognise hapu mana and hapu rangatiratanga as guaranteed in Te Tiriti o Waitangi;



- h. We support a hapu driven process;
- i. Without our permissions, the Tuhoronuku Deed of Mandate has included our hapu, Marae and Treaty claims;
- j. I/we support the submissions of Te Runanga o Ngati Hine/Te Maara a Hineamaru, our Marae and our hapu, opposing the Tuhoronuku Deed of Mandate.
- k. I/we support the submissions of our/my Marae, hapu and Marae opposing the Tuhoronuku Deed of Mandate.¹

16. Of the Ngati Manu “Corporate” Submissions purportedly on behalf of the collective of our hapu and by our iwi in opposition to the Tuhoronuku Mandate, 4.6% (2 submissions) identified that they were sourced from the Ngati Manu Trustees meeting convened at Ngati Manu Marae, Karetu on 24 July 2013 where the Trustees passed a unanimous resolution that:

We do not agree to our marae being included in the Tuhoronuku Deed of Mandate and that the Trustees do not wish Tuhoronuku to negotiate our Marae/hapu claim.

Ngati Manu Template Submissions

- 17. Of the Ngati Manu Submissions, 65% (41 submissions) were identified by the Office of Treaty Settlements as being template submissions (“the Ngati Manu Template Submissions”);
- 18. Of the Template Submissions, 43.9% (18 submissions) identified that they were in support of the Tuhoronuku Deed of Mandate. I attach herewith as appendix “C” a true copy of the Template Submissions in support of the Tuhoronuku Deed of Mandate.

¹ Ngati Manu Submissions Analysis – Page 2;

19. There were three consistent themes identified in the Template Submissions as reasons promoted for supporting the Tuhoronuku Deed of Mandate which I summarise as follows:
- a. Increased hapu representation on a regional basis;
 - b. An independent entity from Te Runanga o Ngapuhi being formed for negotiations;
 - c. An independent Returning Officer being appointed for the nomination and election process to the entity.
20. Of the Template Submissions, 56% (23 submissions) were in opposition to the Tuhoronuku Deed of Mandate. I attach herewith as appendix “D” a true copy of the Template Submissions in opposition to the Tuhoronuku Deed of Mandate.
21. There were a number of consistent themes identified in the Ngati Manu Template Submissions for opposing the Tuhoronuku Deed of Mandate which I have summarised as follows:
- a. The negotiations process will undermine the current Waitangi Tribunal Stage Two Hearing process currently underway;
 - b. The ratification process does not reflect a majority of Ngapuhi;
 - c. The several processes that have been undertaken to address issues between those opposing the mandate have not been resolved;
 - d. The Tuhoronuku Deed of Mandate does not recognise hapu mana and hapu rangatiratanga as guaranteed in Te Tiriti o Waitangi;
 - e. The Tuhoronuku Deed of Mandate does not allow Marae/hapu/Wai claims to withdraw their mandate or select an alternative;
 - f. Without our permissions, the Tuhoronuku Deed of Mandate has included our hapu, Marae and Treaty claims;

- g. I/we support the submissions of our/my Marae, hapu and Marae opposing the Tuhoronuku Deed of Mandate.

22. A number of the Ngati Manu Template submissions also drew on earlier submissions that were referred to and repeated assertions 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 Manu'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 processes; inclusion in the Tuhoronuku Deed of Mandate itself; and withdrawal from Te Runanga A Iwi o Ngapuhi; and
- e. Failing to protect the right of self-independence of Ngati Manu in any settlement negotiation process.

Conclusion

23. One of my greatest concerns in the Crown process of vetting of submissions received is the way there seems to be an undermining of our tikanga in the way that the analysis of submissions received for and on behalf of Ngati Manu has been approached by the Crown.

24. As a Kaumatua of Ngati Manu any collective decisions made after proper advertising at our marae and after discussion made by all hapu members present in a kanohi ki te kanohi engagement would always have more binding force for us than particular individual assertions made in correspondence by whanau or hapu members especially where those submissions have been made without reference or discussion with our hapu and Iwi as a whole.

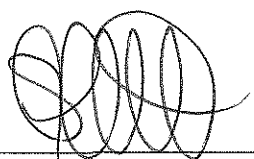
25. Even if the process of weighting individual submissions against collective decision making is given equal weight in the final assessment process it is still clear to me that Ngati Manu clearly has significant opposition to the Tuhoronuku Mandate and wishes two fundamental things to occur prior to any engagement with the Crown proceeding in the settlement of their claims. They wish to have the right to be heard and to present to the Waitangi Tribunal a synopsis of their claims against the Crown with respect to their allegations of breaches of Te Tiriti o Waitangi and they want the guarantee of hapu autonomy and iwi self governance to underpin the process of development of any entity to represent them in settlement discussions and negotiations.

26. Ngati Manu and the Karetu Marae Committee removed itself from Te Runanga a Iwi o Ngapuhi and have consistently opposed Tuhoronuku and do not wish to be a part of it and all our correspondence to the Crown has clearly stated these facts.

27. The Tuhoronuku mandate proposal undermines these guarantees of tino rangatiratanga; ignores the significant concerns around the irregularities in the process of engagement between the representatives of Tuhoronuku, the Crown and the peoples of Ngati Manu and weights individual submissions equal or at least equivalent to collective decisions of our collective hapu and Iwi in breach of our tikanga.

Nā Arapeta Hamilton

Sworn at Auckland this)
11th day of June 2014)
before me:)

A solicitor of the High Court of New Zealand

Emily Stenhouse-White
Barrister
Auckland