

**IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

**WAI 2490
WAI 745, WAI 1308**

IN THE MATTER OF

the Treaty of Waitangi
Act 1975

AND

IN THE MATTER OF

A claim by Paki Pirihi on
behalf of Patuharakeke te
Iwi

AND

IN THE MATTER OF

The Ngapuhi Mandate
Inquiry

**SECOND BRIEF OF EVIDENCE OF DR GUY GUDEx
ON BEHALF OF PATUHARAKeKe**

Dated this 26th day of November 2014

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Introduction

1. My name is Guy Gudex. I am a member of the Patuharakeke Te Iwi Trust Board (“PTB”) Waitangi Claims subcommittee.
2. I am authorised to provide this Brief of Evidence on behalf of Patuharakeke Te Iwi Trust Board an incorporated body representing Patuharakeke’s interests.
3. I have read the evidence of the Crown, the Tuhoronuku Independent Mandate Authority (“TIMA”) and those in opposition to this application. I am providing this second Brief of Evidence in response to some of the issues raised within the Crown and TIMA Briefs of Evidence.

Lack of Consultation with PTB

4. The mana and authority of hapu was destroyed by the Native Land Court through the individualisation of title. The Crown deliberately set out to marginalise the traditional social organisation of Maori society.
5. A key component of the settlement process is that through acknowledgment of historical Treaty breaches, cultural and financial redress, hapu restoration can occur. The Crown has an obligation to recognise the Treaty rights of hapu and to actively foster hapu redevelopment through its settlement process
6. The Crown through its large natural grouping policy is preventing hapu restoration by unilaterally deciding to negotiate and seek settlements with political organisations of its choosing, simply to make the goal of full and final settlements easier to achieve for the Crown. It is a model inconsistent with tikanga.
7. Patuharakeke has had a transparent governance entity in the form of a charitable trust (PTB) that was established in 1990 well before the commencement of the Waitangi Tribunal process. PTB has a mandate from

Patuharakeke to progress it's Wai claims and has never ceded that mandate to any other group

8. The PTB Wai claims were included in TIMA without any formal consultation with PTB. This does not reflect a transparent process and does not fit with PTB principles of tikanga tangata , tikanga rangatira and tikanga whenua. PTB has a governance structure on the other hand that is transparent, and accountable to its claimant community

9. Nigel Fife says in his brief of evidence

In the now more than six months since I assumed my role I have sought to engage with as many Ngapuhi as possible. My purpose has been both to explain the Crown's approach to settlement and its support for the Tuhoronuku IMA mandate on the one hand, and to obtain as clear an understanding as possible from those groups who have indicated their opposition to the mandate the basis for their concerns. I have travelled to several marae across Te Whare Tapu O Ngapuhi to meet with Patuharakeke, Ngati Manu, Hokianga O Nga Hapu... .

10. This meeting in August 2014 with PTB , as outlined in my previous brief of evidence was the sum total of the engagement by the Crown. The meeting was simply an opportunity for OTS to confirm to Patuharakeke that its claims would be settled by the three groups that the Crown would mandate. There was no consultation
11. To attempt to begin an engagement process that did not include consultation within the last 6 months, well after the fact of accepting the Tuhoronuku mandate clearly illustrates how the Crown had pre-determined who it would settle with.
12. The relevant Treaty principles for settlement were summarized in the Te Arawa mandate report and are as follows:

The principle of reciprocity - in exercising kawanatanga the Crown must provide for iwi and hapu to exercise their tino rangatiratanga in the settlement of their claims .The Crown must also consider its Treaty obligation to a particular group or groups if their circumstances warrant an alternative approach to the Government negotiation policy, processes and targets for the settlement of claims

The principle of partnership - where the particular circumstances of a group or groups warrant a more flexible approach the Crown must be prepared to apply its policies in a flexible, practical and natural manner

The principle of active protection - the relationship between the Treaty partners creates responsibilities analogous to fiduciary duties .The duty of the Crown is not merely passive but extends to active protection of Maori in the use of their lands and resources

The principles of equity and equal treatment – this principle places an obligation on the Crown to act fairly and impartially towards Maori by ensuring it treats Maori hapu/iwi fairly vis-à-vis each other¹

13. Central to this is the principal that claimants are entitled to be consulted regarding the negotiation and settlement of their claims. Patuharakeke have not been consulted by the Crown or Tuhoronuku, even more surprising given the specific nature of many of its claims and the acknowledgment already by the Crown that hapu in the Whangarei area were left landless by their actions.
14. PTB has demonstrated that it has significant support within its claimant community to negotiate settlement of its historical claims and there will be

¹ Waitangi Tribunal Te Arawa Mandate Report 2007 Chapter 5 :Findings and Recommendations

significant irreversible prejudice if its claim is settled or extinguished without its consent.

Single Settlement

15. Nigel Fyfe in his brief of evidence (#A103) states at paragraph 37,

A single settlement would provide the best chance of all Ngapuhi receiving the benefits of settlement at the earliest possible time. If there are multiple settlements then the benefits of settlement will be delayed at least for some and possibly for all Ngapuhi. Delay will be to the cost of Ngapuhi - cost in both cultural and economic terms.

16. Similarly, at paragraph 20 he states,

The commercial aspects of a settlement at a Ngapuhi scale - whether in cash or land - will be significant. The Minister and Prime Minister have indicated their view that it will likely be comparable to the largest settlements reached to date. The same resources divided will not have the same economic force.

17. Interestingly in the brief of evidence (#A105) by Dr J Yeabsely at paragraph 30, he outlines the economic benefits of a single settlement and uses the analogy of \$100 million quantum versus five of \$20 million. Although he acknowledges this is not to imply that this will be the amount of the Ngapuhi settlement he chose this amount for his economic model rather than for instance the \$350 million quantum that the six Ngati Kahunungu settlements are likely to total.

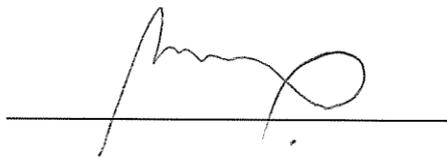
18. Given that the population of Nga Puhī is double that of Ngati Kahunungu and both the Prime Minister and the Minister think that this settlement will be “comparable” the settlement quantum will be at least \$750 million.

19. If that is the case then there can be several settlements for NgaPuhī each

of more than the \$100 million that the economists seem to think are fiscally efficient.

20. The Crown wishes to settle Ngapuhi historical claims quickly to meet its own self imposed deadlines for the least financial redress possible. It wishes to do that before the Tribunal can report on the Stage 2 hearings. It has clearly not learnt from past lessons and runs the risk of forcing a mandate and a settlement that will not be durable.
21. Patuharakeke believes that the mandating and settlements should be by hapu for hapu, using the core values that underpin tikanga Maori-whanaungatanga, mana, tapu and kaitiakitanga. Each hapu will have its own view on ideas on these values and will know best which groups they naturally align with - not to be forced into a single entity that meets a Crown driven agenda.

Dated the 26th day of November 2014 in Auckland.

A handwritten signature in black ink, appearing to read 'Guy Gudex', is written over a horizontal line. The signature is stylized and cursive.

Dr Guy Gudex