

Wai 2490, #A10
Wai 2341, #A10
Wai 2429, #A1
Wai 2431, #A1
Wai 2433, #A1
Wai 2434, #A1
Wai 2435, #A1
Wai 2436, #A1
Wai 2437, #A1
Wai 2438, #A1

Before the Waitangi Tribunal

Wai
[Wai 1508 and 1757]

Under s6 of the Treaty of Waitangi Act 1975

And

In the matter of an application by Ngāti Torehina ki Matakā for an urgent inquiry into the Crown's recognition of the Tūhoronuku Mandate

And

Concerning the continued viability of applicants claims under Wai 1508 and 1757

**Affidavit of Herb Vincent Rihari in support of
Application for Urgent Inquiry**

Dated: ^{May} 8 April 2014

RECEIVED Waitangi Tribunal
8 May 2014
Ministry of Justice WELLINGTON

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OR NM

I **HERB RIHARI** swear as follows:

Introduction to Ngāti Torehina ki Matakā

1. Since the marriage of Rangi Wheiao and Marokura, Ngāti Torehina ki Matakā have held mana whenua on the Purerua Peninsula, which we traditionally know as Mataroa and have done so since as early as the fifteenth century.
2. Mai i Ngākiriparouri tae noa atu ki Waihapuku (ki te tonga) Ka rere tonu tika ki Tureikura, ko TunaPohePohe, ko Matapuratahi tae noa atu ki Hohi (Oihi) ko Rangihoua, te Pa Tapu o nga Tupuna. Ka rere ano au ki Te Puna, ka tae ki Poraenui, ki te kiokionga o taku whenua i reira ka mihi au ki te toka ko Mapuna tera ko te toka tera i herengia ia taku waka ko Maurirere. Ka huri taku titiro ka tika tonu taku rere ki Kaihiki ki Wharengaere, ki te kainga o aku Tupuna. Ka tika tonu taku haere ki Patuni, ki Tangitu, ki Oneroa, ki Kaira, i reira ka whakawhiti atu ki Ngakiriparauri i ei ko Ngati Torehina ki Matakā.
3. Ka huri au ki te taha moana. Ka timata mai ki a Waihapuku (ki te tonga) tae noa atu ki Tikitiki ka huri haere ki nga motumotu o te Taitokerau tae noa atu ki te awa o te Kerikeri te awa i ki ana i nga matua Tupuna ko te awa o te rangatira he anganga titi iho ai o te rangi me nga motu katoa o roto ko Motupapa tera tae noa atu kite Piri kawau. Ka hoki mai ano ki TeTii Mangonui mai i Te Akeake tae noa atu ki Purerua ki te awa o Nga Kiriparauri i reira ka whakata.
4. Like our majestic maunga Matakā, we are kaitiaki of this whenua, the awa which run upon it, the moana which lies around it and all the taonga it conceives including sites of historical significance such as Rangihoua Pa, Te Puna and Hohi. Our rohe is the gateway to Pewhairangi.

5. We continue to live under the rangatiratanga which was declared by our tupuna Wharepoaka (Warepoaka) in He Whakaputanga o ngā Rangatira o Niu Tireni.

Introduction to Herbert Vincent Rihari

6. I am of Ngāti Torehina ki Matakā descent and a direct descendant of the tupuna Te Reinga. I am one of the named claimants for our hapū.

7. I come to this matter in the following respects:

- 7.1 I am an uri of Ngāti Torehina ki Matakā.

- 7.2 I have deep connections to our whenua, the surrounding moana and its history having been raised there.

- 7.3 I have represented and served my hapū and whenua since the age of 19. I am now 44.

- 7.4 By virtue of my whakapapa, descent and the support of my people:

- (a) I am one of the elected representatives on the Ngāti Torehina ki Matakā Te Tiriti o Waitangi Claims Working Group; and

- (b) I supported the evidence that was given in relation to Ngāti Torehina ki Matakā in Stage One of Te Paparahi o te Raki (Northland) Hearings held at Te Tii marae, Waitangi.

8. I have personal knowledge of the affairs and matters relevant to the prosecution of the Ngāti Torehina ki Matakā claims before the Tribunal.

9. I provide this evidence in support of the urgency application in relation to our Ngāti Torehina ki Matakā claim into the Crowns recognition of the Tūhoronuku Mandate.

Ngāti Torehina ki Matakā Te Tiriti o Waitangi Claims

10. The following Wai claims were filed for and on behalf of Ngāti Torehina ki Matakā:

(a) Wai 1508 being a claim by Hugh Te Kiri Rihari, Whakaaropai Hoori Rihari, Piri Ripeka Rihari, Hare Himi Paerata Rihari, Mamateao Himi Rihari Hill, David Grant Rihari, Mama Waiahurangi Scott, Te Hurihanga Rihari and Herbert Vincent Rihari for the descendants of and the rightful successors to the chiefs and people of Ngāti Torehina ki Matakā hapū into the Crowns actions that led to the loss of whenua tupuna, resources, taonga and waahi tapu and as set out further in the statement of claim; and

(b) Wai 1757 being a claim by Hugh Te Kiri Rihari, Whakaaropai Hoori Rihari, Piri Ripeka Rihari, Hare Himi Paerata Rihari, Mamateao Himi Rihari Hill, David Grant Rihari, Mama Waiahurangi Scott, Te Hurihanga Rihari and Herbert Vincent Rihari for the descendants of and the rightful successors to the chiefs and people of Ngāti Torehina ki Matakā hapū into the Crowns actions that led to the loss of whenua tupuna, resources, taonga and waahi tapu and as set out further in the statement of claim.

11. My whanaunga Hugh Te Kiri Rihari, Te Hurihanga Rihari and I were given the mandate to advance these claims on behalf of Ngāti Torehina ki Matakā.

12. We maintain the key institution of hui through our tikanga. For key decisions we always take our matters back to hui of our Hapū. We don't proceed without a mandate of our Hapū. A single person is unable as a matter of tikanga to bind our Hapū. A hui is required to bind the Hapū. Our tikanga dictates that we are also unable to abdicate our Mana.
13. We have also been staunch in the maintenance of our Mana. We did not cede our sovereignty to the Crown. We also do not intend to abdicate our authority to anyone else. We, as a collective, decide what we do, no-one else.
14. On 16 June 2010, Ngāti Torehina ki Matakā presented part of our claim before the Waitangi Tribunal. My whanaunga, Hugh Te Kiri Rihari and Te Hurihanga Rihari, provided kōrero to the Tribunal on Stage One issues of Te Tiriti o Waitangi and He Whakaputanga. That kōrero was intended to form the basis of our Stage Two specific claim issues that will be presented in mid-2015.

General background of the Tūhoronuku Mandate campaign

15. At the 2008 Annual General Meeting for Te Runanga a Iwi o Ngāpuhi ("TRAION"), Te Roopu o Tūhoronuku ("Tūhoronuku") and a subsequent interim working party were established primarily for the benefit of exploring options for the settlement of Ngāpuhi Te Tiriti o Waitangi claims.
16. In 2009, Tūhoronuku announced that they would begin its processes to seek a mandate from Ngāpuhi to enter direct negotiations with the Crown. The sole purpose being to achieve a single, comprehensive settlement for all Ngāpuhi Treaty of Waitangi Claims. This included those of Ngāti Torehina ki Matakā.

17. In 2010, Tūhoronuku began its round of information hui in relation to the Tūhoronuku Deed of Mandate Strategy. These were not hui for Hapū. They were for individual members of Ngāpuhi to attend. Members of our hapū were present at a number of these information hui that were held in Northland and Auckland. On 6 July 2010 I, along with my mum and whanaunga Te Hurihanga Rihari, attended the information hui held at Papakura Marae where I voiced queries and concerns on behalf of my hapū.
18. On 5 January 2011, the Crown endorsed the Tūhoronuku Deed of Mandate Strategy and called for public submissions. That strategy included Ngāti Torehina ki Matakā and their Tiriti o Waitangi claims.
19. In July 2011, Tūhoronuku began its round of mandating hui in relation to the Tūhoronuku Deed of Mandate. But again, these were not hui of Hapū. They were for individuals. Members of our hapū were present at a number of these mandating hui that were held in Northland and Auckland.
20. On 21 July 2011, the Right Honourable Jim Bolger facilitated discussions between Tūhoronuku and Te Kōtahitanga o Ngā Hapū Ngāpuhi in order to explore options for a united approach to resolving Ngāpuhi' s historical Treaty grievances. Hugh Te Kiri Rihari and I attended this hui in our capacity as a kaikōrero for Ngāti Torehina ki Matakā, supported by several other members of our hapū.
21. What I believed was one of the major issues discussed at Whitiara Marae on this day was the opposition of hapū to the Tūhoronuku Deed of Mandate Strategy. Ngāti Torehina ki Matakā have been supportive of the efforts of Te Kotahitanga o Ngā Hapū Ngāpuhi to ensure Ngāpuhi claims get presented before the Tribunal. Ngāti

Torehina ki Matakā supported the kōrero that was given at this hui, in opposition to Tūhoronuku.

22. On 20 August 2011, I attended Tūhoronuku' s mandating hui held at the O tara Leisure Centre where I again voiced concerns and opposition on behalf of my hapū.
23. The Ngāti Torehina ki Matakā claim representatives decided to withhold from voting in the Tūhoronuku Postal Ballot Votes altogether in order to fully oppose the process.
24. In September 2011, the mandate result confirmed that 76.4% (5210 individuals) of Ngāpuhi who voted (by ballot), supported Tūhoronuku obtaining a mandate to represent Ngāpuhi in negotiations for settlement of all Crown breaches and grievances against Ngāpuhi under Te Tiriti o Waitangi.
25. On 31 March 2012 the original Deed of Mandate was finalised. A copy is **attached and marked "Exhibit A"**.
26. Following the ballot vote of individual Ngāpuhi electors and further hui between Tūhoronuku, Te Kotahitanga and representatives from the Crown, amendments were made to the Deed of Mandate by way of an Addendum on 5 July 2013.
27. In July 2013, the Crown called for public submissions on the amended Tūhoronuku Deed of Mandate and Addendum. A copy is **attached and marked "Exhibit B"**. Tūhoronuku was now referred to as the Tūhoronuku Independent Mandate Authority. That Deed of Mandate included Ngāti Torehina ki Matakā and our Tiriti o Waitangi claims without our express approval.

28. On 18 August 2013, Ngāti Torehina ki Matakā filed a submission in opposition to the Tūhoronuku IMA Deed of Mandate. **Attached and marked “Exhibit C”** is a copy of that submission that raised the following issues:
- 28.1 Lack of hapū consultation;
 - 28.2 Error in voting processes and representative structure;
 - 28.3 Lack of support for Tūhoronuku; and
 - 28.4 Impact of settlement on Ngāti Torehina ki Matakā Te Tiriti o Waitangi claims.
29. In total, the Crown received an unprecedented 3,990 submissions on the Tūhoronuku Mandate. 63% of these submissions were in opposition to the Tūhoronuku Mandate.
30. On 14 February 2014, the Crown formally recognised the Tūhoronuku Mandate. A copy of the letter from the Minister of Treaty Settlements recognising the mandate is **attached and marked “Exhibit D”**. That Deed of Mandate still included Ngāti Torehina ki Matakā and our Tiriti o Waitangi claims.
31. On 19 February 2014, by way Counsel, Ngāti Torehina ki Matakā wrote to the Office of Treaty Settlements (“OTS”) pursuant to the Official Information Act requesting all submissions and related documentation on the Tūhoronuku Mandate. A copy of the request is **attached and marked “Exhibit E”**.
32. On 6 March 2014 the Te Roopu o Tūhoronuku Independent Mandated Authority or TROTIMA, was incorporated under the Charitable Trusts

Act 1957. A copy of the deed of trust is **attached and marked “Exhibit F”**.

33. On 19 March 2014 a reply was received advising of an extension to the request until 16 April 2014. **Attached and marked “Exhibit G”** is a copy of the response from OTS and the email conversation between OTS and Counsel. It is my understanding that on 31 March 2014, the submissions were made available on the OTS website.

Ngāti Torehina Ki Matakā’s attempts at protecting hapū rangatiratanga and preventing usurpation by the Tūhoronuku Mandate Process

34. Ngāti Torehina ki Matakā have been active in relation to the whole Tūhoronuku mandating process in that, we have attended hui and participated in information and feedback hui. In fact, from the beginning we wanted to ensure that we were making informed decisions and in that regard, tried to have someone from Ngāti Torehina ki Matakā attend most Tūhoronuku hui as mentioned earlier on.
35. On 24 November 2010, at a hui held at Parawhenua Marae, Ngāti Torehina ki Matakā made it clear that we do not support Tūhoronuku seeking a mandate to negotiate with the Crown on our behalf. This position was further confirmed at a hapū hui held on 19 February 2011. To ensure that Tuhoronuku were well aware of our position, we followed this up with correspondence dated 4 March 2011. **Attached and marked “Exhibit H”** is a copy of that letter.
36. As mentioned above, Ngāti Torehina ki Matakā filed submissions in opposition to the Tūhoronuku IMA. We submitted to the Crown that there were, and still are, issues in the Deed of Mandate that Ngāti Torehina ki Matakā did not support.

37. After the submission deadline, we had hoped we would be contacted to discuss the points that were raised. We had hoped that we would have the opportunity to hui with the Crown and Tūhoronuku to address these concerns. We had hoped that the Crown would require Tūhoronuku to adopt the suggestions and changes put forward by Ngāti Torehina ki Matakā. But more importantly, we had hoped that the Crown and Tūhoronuku would recognise our opposition to be included in the Deed of Mandate and subsequently action our withdrawal. This did not occur.
38. A current development that has me concerned is the implementation of the election process. Following the recognition of the Tūhoronuku Mandate of 14 February 2014, elections for hapū kaikōrero began with a deadline of 21 March 2014 and I personally was apprehensive with the speed with which everything happened. We were still awaiting direct confirmation from the Crown confirming our opposition by removing all references to our hapū and claims from that Deed.
39. On 21 March 2014, I became aware that one of our hapū members had accepted a nomination to be hapū kaikōrero for Ngāti Torehina ki Matakā and submitted a form to the Elections Office.
40. On 22 March 2014 and on 29 March 2014, Ngāti Torehina ki Matakā held hui to discuss the Crown's recognition of the Tūhoronuku Mandate. At those hui, Ngāti Torehina ki Matakā confirmed their continued opposition to the Tūhoronuku Mandate, resolved that we would not participate in the election process and that we would file an urgent application with the Waitangi Tribunal in relation to the Crown's recognition of the mandate. **Attached and marked "Exhibit I"** is a copy of the resolutions passed at those hui.

41. On 24 March 2014, by way of our Counsel, a letter was sent to the Tūhoronuku IMA and the Chief Returning Officer requesting that the nomination form submitted be removed and retracted. We also requested that Ngāti Torehina ki Matakā and our claims be removed and retracted from the Deed of Mandate. **Attached and marked “Exhibit J”** is a copy of that letter.
42. On 26 March 2014, we received a response from Sonny Tau, for and on behalf of the Tuhoronuku IMA. **Attached and marked “Exhibit K”** is a copy of the letter in response. In his correspondence, Mr Tau advised the following:

...we have considered your request to have Ngati Torehina ki Matakā “removed” from the Tuhoronuku Deed of Mandate. The Tuhoronuku representation structure has been consulted on extensively and allows any member of Ngapuhi to be nominated for the position of Mandated Hapu Kaikōrero for their hapu. Your letter assumes that a hui a iwi can determine whether individuals participate within this structure, but this is not the process set out in the Deed of Mandate Addendum or our Trust Deed. Accordingly, we can see no legal basis for this being a “condition precedent” or for the requested removal.

We remain open to, and would welcome, the participation of the individuals you represent within Tuhoronuku in the future.

43. On 28 March 2014, Ngāti Torehina ki Matakā wrote to the Tūhoronuku IMA by way of Sonny Tau requesting clarification on our request to retract our hapū kaikōrero nomination. **Attached and marked “Exhibit L”** is a copy of that letter.
44. On 3 April 2014 I was forwarded an email advising me that the Independent Returning Officer, Warwick Lamp had withdrawn the hapu kaikorero nomination for Ngāti Torehina ki Matakā. **Attached and marked “Exhibit M”** is a copy of that email correspondence.

45. Although we were able to rescind the nomination and maintain our position to not be involved in the elections process, I am still concerned about the importance the Tūhoronuku IMA election process places on the individual as opposed to the hapū and in particular the response received from Mr Tau. If one individual can nominate another individual to stand as a kaikōrero for their hapū without their hapū consent surely the process is flawed and should raise concerns to the Crown. This just shows the importance that has been placed on the individual within this deed of mandate structure as opposed to the hapū. I hope the Crown listens to our experience in this regard as I am sure we are not the only hapū who have been through something similar.
46. Furthermore, on 21 April 2104 a media release announced that the Crown had appointed its negotiator for the pending Ngāpuhi settlement. **Attached and marked "Exhibit N"** is a copy of that media statement. With this recent move, it is clear that the Crown are preparing to enter negotiations to settle Ngāpuhi claims in the face of Te Waiariki, Ngāti Korora, Ngati Taka Pari continued opposition.
47. It is sad to see that the hapū base, who were once recognised as the primary source of authority and vigorously courted and seduced for the support and development of Nu Tireni' s early political beginnings on an international scale, has now been blatantly ignored and disregarded by the very co-Tiriti partner they trusted.
48. It is sad to see the Crown making a greater effort to push for a swifter, settlement cloaked in controversy rather than a fair and durable one.
49. It is sad to find that even after 174 years that Māori remain the only treaty partner honouring Te Tiriti.

50. It is sad to find that one party to Te Tiriti, who have spent the last 174 years preaching their own intellectual prowess are still yet to learn the power and beauty of combined strength, collaborative gains and meaningful, genuine engagement.

Withdrawal from Deed of Mandate

51. Right from the beginning Ngāti Torehina Ki Matakā have sought to embrace this Ngāpuhi enquiry believing that this is the appropriate arena to properly express, reconcile and resolve the fundamental issues which inhibit the true essence of Te Tiriti being fulfilled. At the heart of these fundamental issues and inhibiting factors is the matter of our unextinguished tenure and Sovereignty. We maintain that these matters must be addressed and properly recognised before any true settlement can take root. He tino ora te whenua, he pai te hua mo nga wa katoa.
52. In April 2010 I attended a hui at Te Mahurehure Marae. It was here that I learned that our Ngāpuhi Runanga had not chosen to challenge these fundamental matters and instead chose to seek settlement via direct negotiations. I was devastated. I was heartbroken.
53. All along the way we have held strong to the hope that our Runanga and Tūhoronuku would eventually see how important it was for our Ngāpuhi hapū, whanau and Rangatira to unearth and express their mamae. Our tangihanga are much the same. The opportunity must be provided for all concerned to grieve and then rise with renewed strength and hope. The opportunity to share kōrero and learn from the past is a gift that can only brighten our futures. Sadly, the Crown and Tūhoronuku remain unenlightened.

54. When Tūhoronuku first announced that they were going to seek a mandate from Ngāpuhi, we believed, as Ngāti Torehina ki Matakā that it would simply be a matter of opposing the inclusion of our claims and reference to our iwi, hapū and marae at one or more of their information and mandating hui.
55. We believed that our hapū rangatiratanga would be recognised by Tūhoronuku and the Crown and that our claims would be removed from any Mandate document purporting to represent us in Te Tiriti settlement negotiations. We did not think that hapū claims could be included in a deed of mandate without that particular hapū consent. This was not the case.
56. Throughout the whole process, and to this current day, Ngāti Torehina ki Matakā have continued to oppose Tūhoronuku and any attempts to negotiate Ngāti Torehina ki Matakā claims without their consent. We have continued to attend hui to voice our concerns over the Tūhoronuku IMA.
57. As mentioned above, on 22 March 2014 and 29 March 2014, Ngāti Torehina ki Matakā held hui to discuss the Crowns recognition of the Tūhoronuku Mandate. At those hui, Ngāti Torehina ki Matakā confirmed their continued opposition to the Tūhoronuku IMA and desire to withdraw from the Deed of Mandate.
58. As mentioned above, on 24 March 2014, Ngāti Torehina ki Matakā, by way of our lawyer, wrote to the Tūhoronuku IMA requesting formal withdrawal of Ngāti Torehina ki Matakā claims from the Tūhoronuku Mandate. On 9 April 2014 this correspondence was also sent to the Office of Treaty Settlements for their information. **Attached and marked "Exhibit O"** is a copy of that email correspondence.

59. Therefore, the efforts to have our withdrawal recognised by Tūhoronuku and the Crown have included the following:

- (a) Concerns raised by Ngāti Torehina ki Matakā members at early stages of the information hui;
- (b) Further concerns raised by Ngāti Torehina ki Matakā members at mandating hui;
- (c) Submissions in opposition to the Tūhoronuku Mandate;
- (d) Hapū hui that voted, resolved and confirmed to withdraw from the Tuhoronuku Mandate;
- (e) Correspondence sent to OTS and the Tūhoronuku IMA to inform them of the withdrawal;
- (f) Attendance at protests opposing the recognition of the mandate;
- (g) Attendance at Tuhoronuku IMA post-recognition information hui for elections to advise parties of the withdrawal.

Current Ngāti Torehina ki Matakā position

60. Firstly, Ngāti Torehina Ki Matakā are intent on preserving the sanctity and mana of He Whakaputanga. We will not put it at risk and we will strongly oppose anyone, group or thing that does.

61. Secondly, Ngāti Torehina Ki Matakā seek to exercise our rights, declared and guaranteed by He Whakaputanga and reaffirmed by Te Tiriti, towards settlement outcomes that are achieved on our terms and through genuine, meaningful engagement.

62. Thirdly, Ngāti Torehina Ki Matakā maintain the rightful expectation of having our Stage Two evidence presented upon the foundational challenges and kōrero laid out during Stage One. That report is yet to materialise and we urge the Crown to pour its energy into expediting its completion instead of expediting the demise and destruction of hapū mana.
63. I strongly believe that if this settlement negotiation goes any further with the Tūhoronuku IMA as the sole Authority representing all of Ngāpuhi' s interests, Ngāti Torehina Ki Matakā will be robbed of it's rightful, 'one and only' chance of a pivotal reconciliation process and settlement.
- (a) We are, and will, be deprived a full and robust hearing process through the Waitangi Tribunal. A process that Ngāti Torehina ki Matakā have supported since the filing of our first claim.
 - (b) We are, and will, be forced into settlement negotiations that we simply do not support. We have not given our mandate to the Tūhoronuku IMA. They do not know what our hapū claims and grievances are and neither do they know what our hapū desires in settlement are, so how will they be able to negotiate on our behalf;
 - (c) This far down the track and we have not been contacted directly from the Crown to discuss this mandating and negotiating process. We are already being subsumed under the weight of the Crowns desire to bluntly pursue a 'quick and hasty' settlement with their brokering agent, Tuhoronuku 'unwittingly' (or not) serving their own interests and that of the Crown, not Ngāpuhi' s;

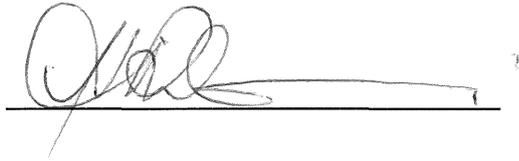
- (d) We do not believe that it's necessary for us to undertake such a process as extensive as what Tūhoronuku IMA went through to simply remind them and the Crown, yet again, that we wanted no part of their autocratic regime. The result of 4.2% buy in from Ngāpuhi, to such a regime, strikes us as a fruitless waste of time and resources.
- (e) I am witnessing tribal conflict and division almost everywhere I go in Ngāpuhi because of the effect this recognition is having on our people at home. Our whanaungatanga and kotahitanga is being tested by the very people that we entered into a relationship with to protect this tikanga. It is time the Crown stopped for a moment and set aside its own hidden 'political' agendas to hear and heed the genuine concerns of the hapū of Ngāpuhi such as Ngāti Torehina ki Matakā and thus show respect for Te Tiriti and its principles.
- (f) It is our wish to achieve a fair, robust and enduring settlement after the hearing of our claims in the Waitangi tribunal but as has been said before this cannot happen if the Crown continues to bully us into an undesirable structure and authority whilst supporting and encouraging that authority towards bullying us into negotiations prematurely.

Conclusion

- 64. The hapū base of Ngāpuhi deserve the respect and patience guaranteed to them by He Whakaputanga and Te Tiriti instead of the 'stockyard' coercion they've received over the many generations.
- 65. My last comments in supporting this application relate to the fundamental concept and tikanga tūāpapa on which we operate in

our rohe. Ngāti Torehina ki Matakā have not been afforded the rights to exercise our hapū rangatiratanga and decide for ourselves the path that would see the best outcome for Ngāti Torehina ki Matakā.

Dated at Auckland this ^{1st} day of ^{May} April 2014

A handwritten signature in black ink, appearing to be 'H. Rihari', written over a horizontal line.

Herb Vincent Rihari

Wi Pere Mita
Solicitor
AUCKLAND

A handwritten signature in black ink, appearing to be 'W. Mita', written to the right of the typed name.