

**IN THE WAITANGI TRIBUNAL**

**WAI 2490**

**IN THE MATTER**

of the Treaty of Waitangi Act 1975 (as amended)

**AND**

**IN THE MATTER**

of the Ngāpuhi Mandate Inquiry (Wai 2490)

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**BRIEF OF EVIDENCE OF MOANA TUWHARE FOR TE POPOTO**

**Date 17 November 2014**

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## **BRIEF OF EVIDENCE OF MOANA TUWHARE**

**Ko Whakarongorua te maunga  
Ko Utakura te awa  
Ko Utatewhanga te raorao  
Ko te mana kei Te Rakepuka  
Ko Tauratumarū te tangata  
Ko nga hapū Te Popoto, Te Hohihoni, Te Ngahengahe, Ngati Toro, Ngati Hao  
Ko Nga Puhi te iwi  
Ko Ngatokimatawhaorua te waka**

### **Introduction**

1. My name is Moana Tuwhare. I am the elected hapū kaikōrero for the Te Popoto hapū.
2. Te Popoto is generally located in the Utakura and Waihou valleys and at Te Ahuahu. The hapu affiliates to the following marae (along with other hapu): Mokouiarangi, Mataitaua, and Tauratemaru.
3. I am also one of the three mandated hapū kaikōrero on the Tuhoronuku Independent Mandated Authority (TIMA) on behalf of the Kaikohe Te Waimate Taiamai region and am therefore a TIMA Trustee. I am also a member of the Executive Committee on TIMA.
4. I am a claimant lawyer representing several Ngāpuhi claimant groups within Te Paparahi o Te Raki Inquiry - Wai 1040, Stage 1 and Stage 2.

### **Te Kotahitanga**

5. Prior to becoming hapū kaikōrero, I was an active participant in Te Kotahitanga o Nga Hapū Ngāpuhi. I did not represent Te Kotahitanga as their legal counsel but rather was a part of the Te Kotahitanga working party and the committee that was addressing the issues of the constituent groups of Te Kotahitanga in relation to the Tuhoronuku mandate issues. In this regard I was involved in many of the steps, meetings and communications between the parties to this proceeding. For example, I was part of the delegation that met with Minister Finlayson, Hon. Jim Bolger; part of the Te Whaiti group and part of the delegation that met with Tuku Morgan on behalf of Te Kotahitanga. These events and associated documents have been covered by others and I merely add some further comment on the outcomes.

6. There were three key issues for Te Kotahitanga which all had sub-issues underneath them, the majority of which I believe Te Kotahitanga managed to resolve and many of the changes we sought were achieved. When the Crown recognised the Tuhoronuku mandate, it was a significantly different mandate from its original form.
7. For example, it was considered to be of vital importance for the Te Paparahi o Te Raki hearings to continue. The funding by CFRT of a parallel process was also important in this context. These matters have been resolved. As I understand it there is no risk to the continuation of the stage 2 hearings. We are now in rotation two of the Stage 2 hearings and many of the hapū groups that want to be heard either have been or are shortly about to be heard, so preparation for negotiation is not so burdensome for those groups involved in the parallel process. CFRT has confirmed funding of the Stage 2 hearings.
8. Some matters weren't completely resolved such as the dedicated Runanga seat. However, the Runanga would only have one trustee among 22 other trustees so this was not significant in my view.
9. The name of the organisation remains problematic. The perceptions amongst some of our people have not changed regarding the structure even though the structure and the people driving it have changed significantly.
10. The role of hapū within the process was always of utmost importance. I can deal with this matter more specifically below, based on my direct experience so far as part of the new Tuhoronuku arrangement.
11. It was and remains particularly important in my opinion that the mandate has been recognised on several conditions. Of particular significance is the condition that the newly elected IMA will be required to develop and include detailed communication and negotiation plans in the Terms of Negotiation, which will outline:
  - 11.1 How it will regularly communicate with the claimant community to ensure Ngāpuhi are aware of progress and provide opportunities for participation as appropriate;
  - 11.2 How it will include the claimant community in the negotiation

and design of the redress package (which will need to recognize specific hapū interests in cultural and commercial redress). The Ministers consider there are a number of options for this including having regionally based working parties or hapū based discussions. The Crown will organise its negotiation team to mirror the approach Ngāpuhi wish to take in negotiations - including exploring options that enable hapū participation in the design of the settlement package.

12. Further to this the IMA is required by the conditions to engage with Ngāpuhi on the post settlement governance options at the Agreement In Principle stage, which is generally earlier than has occurred in other settlements. This is to ensure there are robust discussions within Ngāpuhi on the shape of the future Iwi governance and asset management. In effect, this means that hapū are to be directly involved in the negotiation of redress and how the redress is managed post settlement.

### **Te Popoto**

13. Prior to the election process for hapū kaikōrero, members of our hapū Te Popoto were attending both Te Kotahitanga and Tuhoronuku hui and stating that although Te Popoto hapū were opposed to aspects of the Tuhoronuku mandate they were going to participate in it. I was not involved in these earlier Te Popoto decisions to participate in the Tuhoronuku process but I was aware of them because of these announcements at hui.
14. Te Popoto fell within the Kaikohe - Te Waimate Taiamai region. We have been traditionally regarded as part of the Hokianga although our interests around Lake Omapere and Taiamai are undeniable. On the ground, we overlap both the Kaikohe - Te Waimate Taiamai and the Hokianga regions.
15. It was understood that we had the ability to appoint or elect one hapū kaikōrero for each hapū. Nominations for hapū kaikōrero positions were called for by public notice. There were 21 days to make nomination(s) and I understand this nomination period was extended.
16. Where more than one nomination was received, a hapū hui was be

held and a vote taken. Votes could be lodged at the hapū hui, online and by postal vote. There was a requirement however, that you must be either registered with the Runanga o Ngāpuhi to be eligible to vote, or you must complete a Register to Vote form which was scrutinized to confirm your eligibility.

17. Only individuals who can whakapapa to the hapū were eligible to vote. If you whakapapa to more than one hapū you could vote for your other hapū nominees as well.
18. Once the nomination process got underway, I was approached by one of our kuia, Ramari Kingi to stand for the hapū kaikōrero position. I considered the request carefully and I felt with my experience and knowledge of the TIMA processes and structure, the Ngāpuhi claims generally and the negotiations landscape that I could assist our people. So my response was that if the hapū supported it I would do it.
19. My nomination form was submitted and Te Popoto called a hui in March 2014 before the nomination process had closed at Mokonuiarangi marae, Utakura. Those members of the hapū that attended had differing views on negotiations generally and there was robust discussion and debate about a whole range of issues. It was a thorough and considered discussion.
20. In the end, there were in fact three nominations for the hapū kaikōrero position, myself, Te Pania Kingi and Aperahama Anihana.
21. Tuhoronuku held a meet the candidates hui at Rahiri, Pa Te Aroha Marae, where Aperahama and I were asked a lot of very good questions about what we would bring to the role of hapū kaikōrero and about the processes we were expected to deliver on generally. I found this opportunity to be a very helpful one.
22. The voting took place and a day or two later an Electionz representative called to inform me that I had won the election. He also informed me that there were over 400 votes cast for the Te Popoto hapū and that I had received over 200 of them.
23. I was buoyed by this news as it informs me that our hapū, where ever they are (as nothing like 400 Te Popoto attend our hapū hui)

participated, and are supportive of having a hapū representative in the negotiation process. It also informed me that our people understood the process for voting etc and that the communications within the hapū and within Tuhoronuku generally were reaching people. I believe this is a positive for the hapū and undeniably a great starting point from which to build and promote the Te Popoto hapū vision, aspirations and negotiation plan, to make the best out this process that we are in, for Te Popoto.

24. I want to address the matters raised in other evidence such as Tamihana Pomare. Firstly I believe he confuses the role of hapū kaikōrero and taumata. My role was never intended to nor would it ever be able to replace the role of our Taumata. I am a tonotono and conduit for information and decisions of the hapū to the region and to the trustees and back again. I have made this clear at all our hapū hui I have attended. I believe that my whanaunga Tamihana has been at all of those hui as well.
25. I will not make key decisions without the hapū involvement and direction and of course that includes the views and direction of our taumata, and kaumatua kuia.
26. Both this evidence and that of others also seem to assume that because they as individuals are not in support that the hapū are not in support of Tuhoronuku. That is not necessarily the case and is certainly not the case for Te Popoto.

### **Tuhoronuku**

27. At several of our hui it has been expressed that Te Popoto historically have always been actively involved in the key events within Ngāpuhi such as trade and enterprise, the signing He Whakaputanga. Signing of Te Tiriti, many of our rangatira signed Te Tiriti, and the many events that followed including the Northern Wars. It was also expressed that our participation within Tuhoronuku was conditional on Tuhoronuku delivering what our hapū expected of the process and therefore if at any point we cannot achieve what Te Popoto seek to achieve from the negotiations then it will be a hapū decision on whether to withdraw.
28. However, so far, in the very short time we have had to settle into the

positions and into the process (as we really are still in the settling in period now) things are looking positive that the Tuhoronuku process and structure can deliver for Te Popoto.

29. There are some points in this regard that I would like to highlight. For one, there is a considerable amount of hapū autonomy within the process in that we as Te Popoto can and likely will meet independently with the negotiators to ensure they understand what we as the hapū seek in terms of hapū specific redress.
30. We the hapū are developing our own hapū negotiation plan with all aspects of the redress that we would like pursued identified. We are identifying our priority issues. We are able to and are supported to work collectively with our whanaunga and neighbouring hapū both in Te Waimate Taiamai and Kaikohe and within Hokianga to ensure that our overlapping interests, which in many cases are significant, can be discussed and dealt with at the hapū level.
31. In this way I consider that hapū rangatiratanga is supported appropriately having regard to our significant overlapping and collective interests and our close whanaungatanga. It is our hapū rangatiratanga also that led our hapū to becoming part of the process and it will be the same that may lead to a withdrawal from it if that ever became necessary.
32. In my experience within Tuhoronuku, the hapū kaikōrero that are part of the process are all looking to achieve the best result for their hapū and are maintaining and enhancing the mana of the hapū in that regard. Tuhoronuku as an organisation and structure is firmly placed on the foundation of hapū and it is really up to us as people to ensure that it remains grounded on this base throughout the process and that the redress reflects this also.
33. To this end, I know that the potential of devolution of settlement redress to hapū is likely. There is also the ability to design post settlement governance arrangements that reflect this. How any redress is to be devolved or transferred is something that is a way off in the future for consideration and decision but these options and the likelihood of this is understood by all parties. This again provides the level of flexibility within the structures that can account for the differing

interests within Ngāpuhi.

34. Obviously being the biggest Iwi it is no surprise that we would need this sort of flexibility. The respective interests of the hapū of Ngāpuhi are complex and overlap significantly as between hapū groups. Any proposed settlement structure and process that did not cater for this in a practical way will break under the strain of competition and opposition.
35. I believe the structure and the developing processes within Tuhoronuku are flexible enough to accommodate the uniqueness of different hapū and collective of hapū in real terms both in respect of the negotiation phase and certainly I believe this will be an extremely important aspect in the development of the post settlement governance arrangements.
36. I also believe that a single negotiation process (with possible constituent parts within it) is the best negotiation footing for Ngāpuhi. We would then have a more powerful negotiation position and are more likely to achieve a collective outcome we can all be comfortable with. There are some critical issues where we need to adopt a collective Ngāpuhi position such as constitutional matters. This is particularly pertinent given the recent Stage 1 report findings.
37. The alternative, being separate negotiations of different component parts, is fraught because of the overlap in interests that will require us to work together anyway in a Te Hiku forum type way. This I think will be more difficult and certainly slower. Whilst the speed of negotiations is not really a concern to me because it's more important we get it right, I think we do ourselves a disservice if we reduce our significant negotiation power by dividing into completely separate mandates.
38. In any event, the hapū of Te Popoto wants to progress with settlement negotiations. Therefore any outcome this Tribunal makes needs to be cognisant of the fact that hapū that are actively participating in the current arrangements may be prejudiced by any findings and recommendations.

**DATED** this 17<sup>th</sup> day of November 2014

A handwritten signature in black ink, appearing to read 'Moana Tuwhare', written in a cursive style. The signature is positioned above a horizontal line.

**MOANA TUWHARE**