

Wai 2433

Before the Waitangi Tribunal

Under s6 of the Treaty of Waitangi Act 1975

And

In the matter of an application by the Hapū of Te Waiariki, and Ngāti Korora, Ngāti Taka Pari for an urgent inquiry into the Crown's recognition of the Tūhoronuku Mandate

And

Concerning the continued viability of applicants claims under Wai 620, Wai 1411, Wai 1412, Wai 1413, Wai 1414, Wai 1415, Wai 1416 and Wai 2239

Affidavit of Pereri Mahanga in Reply

Dated: 30 day of June 2014

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AMT-110184-1-6-V1

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Waitangi Tribunal

30 Jun 2014

Ministry of Justice

WELLINGTON

I **PERERI MAHANGA** of Te Waiariki, Taiharuru swear as follows:

Introduction

1. On 12 May 2014, I filed an affidavit¹ in support of the application by Te Waiariki, Ngāti Korora, Ngati Taka Pari for an urgent inquiry into the Crown's recognition of the Tūhoronuku Deed of Mandate.
2. I have read the affidavit of Maureen Hickey² filed on behalf of the Crown and the affidavit of Raniera Sonny Tau³ filed on behalf of the Tūhoronuku Independent Mandate Authority ("TIMA"). The purpose of this affidavit is to reply to that evidence.
3. I will do so by speaking to the following topics:
 - 3.1 Hapū rangatiratanga;
 - 3.2 Pre-determination; and
 - 3.3 Level of opposition.

Hapū rangatiratanga

4. While reading both Mr Tau's and Ms Hickey's affidavits, I cannot ignore the continued emphasis that is placed upon the role of individuals through the entire Tūhoronuku process. Although they speak of hapū representation and the ability of hapū kaikōrero to play a significant role for their hapū within the TIMA structure, in actual fact it is the individual that has the ability to make the decisions and can do so without hapū consent at all. This goes directly against our fundamental tikanga of hapū rangatiratanga.

¹ Wai 2341, #A18 Affidavit of Pereri Mahanga dated 12 May 2014

² Wai 2341, #A26, Affidavit of Maureen Hickey dated 6 June 2014

³ Wai 2341, #A25, Affidavit of Raniera Sonny Tau dated 4 June 2014

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5. I have seen this occur already within the election process where many hapū did not even realise someone had put their name forward to speak on behalf of their hapū. In some cases this was done even when an individual knew that their hapū did not support Tūhoronuku. I spoke about our own hapū experience around this in my affidavit filed in support of our urgency application where a member of our hapū put her name forward without our knowledge.
6. Following a hapū hui and discussions with this hapū member, she formally retracted her name as a hapū kaikorero for Te Waiariki and supported our hapū position to oppose Tuhoronuku. Attached and marked "**Appendix A**" is a copy of her letter requesting withdrawal.
7. Furthermore, it is my understanding that there are now 3 hapū who have formally retracted their hapū kaikōrero nominations (Te Waiariki, Ngāti Korora, Ngāti Taka Pari, Ngāti Torehina ki Mataka and Ngāti Uru. There may be more.) This was a result of hapū hui being held to discuss the matter and the hapū deciding the course of action they wished to take. Hapū rangatiratanga.
8. In Ms Hickey's affidavit she states that the Crown will only recognise a mandating process that is robust and transparent. I would suggest the ability for an individual to speak on behalf of a hapū without the hapū knowing or providing their consent, is neither robust nor transparent.
9. My last comment on this topic surrounds the kōrero in the affidavit of Mr Tau and Ms Hickey where they mention the amendments and compromises Tūhoronuku have made to the original Deed of Mandate in order to incorporate suggestions received from Te Kotahitanga, Hapū, whānau and individuals. Although some amendments were made, the fundamental request for the ability of

hapū to decide whether or not they wanted to participate was not altered.

10. This is a bottom line for Te Waiariki, Ngāti Korora, Ngāti Taka Pari. We cannot compromise on that point as that would be compromising our own hapū rangatiratanga.

Pre-determination

11. The Crown, in response to the 11 urgency applications filed with the Tribunal, has stated that there has been no pre-determination by the Crown to recognise Tūhoronuku as the mandated body to settle Ngāpuhi te Tiriti o Waitangi claims. However, I note at paragraph 59 of the affidavit of Ms Hickey, she refers to correspondence dated 30 March 2011 from Paul James to Te Kotahitanga that addresses this very issue.
12. He noted, *"It seemed Te Kotahitanga wanted the Crown to stop the Tūhoronuku mandate process and clarified the Crown was not in a position to make mandate decisions for Ngāpuhi; nor could it prevent an entity going out and testing its support in the claimant community"*.
13. While the Crown has not tried to stop Tūhoronuku, it is my understanding they have funded a huge portion of money so that the seemingly "robust and transparent" process that was undertaken by Tūhoronuku was funded by the Crown. This type of funding was not afforded to any other claimant community who wished to go out and test its support. To me, this is pre-determination and clearly favours one group over any other.

Level of Opposition

14. While reading the affidavit of Mr Tau, I noted on 4 separate occasions he used terms such as “a small (albeit vocal) minority” and “loud minority”, when referring to the level of opposition there currently is towards Tūhoronuku.
15. I believe this is just simply wrong.
16. Te Waiariki, Ngāti Korora, Ngāti Taka Pari are a medium to large size hapu and we are only one. The fact that there are another 8 hapū, many of which have a greater amount than Te Waiariki, Ngāti Korora, Ngāti Taka Pari, with urgency applications before the Tribunal, shows that the level of opposition is more than a small minority. It is my understanding that there is even more hapū, whanau and claimant groups that oppose Tūhoronuku and support these urgency applications.
17. Given that only just over 5,000 Ngāpuhi voted in support of Tūhoronuku in the 2011 Ballot Vote and the level of opposition currently with hapū is in beyond the tens of thousands, I would suggest that the small minority are actually those in support of Tūhoronuku.
18. I also believe that Ngāpuhi are becoming more inquisitive as to what Tūhoronuku are actually trying to achieve. As a result, we have seen unprecedented amounts of participation in voting, submissions, hui and hearing processes. And this is only growing. In 2010 the Office of Treaty Settlements received 31 feedback forms about the Tūhoronuku Mandate Strategy (all of which were in opposition)⁴. Just 3 years later a total amount of 4,015 submissions on the Tūhoronuku Deed of

⁴ Wai 2341, #A26, Affidavit of Maureen Hickey dated 6 June 2014, para 51
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Mandate were filed with OTS (63% of which opposed Tūhoronuku)⁵. It is interesting to me that this is one of the only statistics that was not mentioned in Mr Tau's affidavit.

19. Additionally, I disagree with Mr Tau at paragraph 6.21 of his affidavit where he states, "*..Tūhoronukus support continues to be significant amongst wider Ngāpuhi and is actually growing. One of the ways this has been demonstrated is by the increase in the number of registrations on the Ngāpuhi database..*"⁶ You cannot simply assume support for Tūhoronuku through an increase in database registrations.
20. This growing level of engagement and in turn opposition cannot be ignored or simply referred to as a vocal minority.
21. It is prejudicial to Te Waiariki, Ngāti Korora, Ngāti Taka Pari for the Crown to recognise the Tūhoronuku Deed of Mandate in the face of such a level of opposition.

Conclusion

22. Since the recognition of the Tūhoronuku Deed of Mandate, we as a hapū have still not received any correspondence whatsoever from Tūhoronuku. I once again express my concerns about communication and accountability of a body that has not once engaged with us on a hapū level to discuss the mandate to settle our hapū historical te Tiriti o Waitangi claims. This is prejudicial to us as Te Waiariki, Ngāti Korora, Ngāti Taka Pari and cannot be reversed. And I strongly believe that it will only continue.

⁵ Ibid para 146

⁶ #A25 para 6.21

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23. I emphasize the position made in my affidavit filed in support of our urgency application, that the Crown in choosing to recognise the Tūhoronuku Deed of Mandate, has breached the principles of te Tiriti o Waitangi and the duties owed to Te Waiariki, Ngāti Korora, Ngāti Taka Pari. To continue with this mandating process would only exacerbate that further and create even more division, unrest and distrust between factions within Ngāpuhi and between Te Waiariki, Ngāti Korora, Ngāti Taka Pari and the Crown.
24. As Ms Hickey states herself in her affidavit, *"the mandating process had already been divisive for Ngapuhi.."*⁷.
25. Once again, I ask that the Tribunal grant our application for urgency.

Dated at Whangarei this 30th day of June 2014

SWORN at Whangarei)

by Pereri Mahanga)

this 30 day of)

June 2014)

before me:-)


Pereri Mahanga

Deputy Registrar
A Solicitor of the High Court of New Zealand



⁷#A26 para 161.1
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L M Fromont
Deputy Registrar
High / District Court
Whangarei