

IN THE WAITANGI TRIBUNAL

WAI 2490, WAI 2483

IN THE MATTER

of The Treaty of Waitangi Act 1975

AND

IN THE MATTER

of a claim by Matutaera Te Nana Clendon, Robert Sydney Willoughby and Te Aroha Rewha for and on behalf of themselves, their whanau and the hapū of Ngāti Kuta ki Te Rawhiti and of a claim by Moka Kaenga Maata Puru, Moses Richard Witehira, Peti Pukepuke Ahitapu and Shirley Louise Hakaraia for and on behalf of themselves, their whanau, and the hapū of Patukeha

**THIRD BRIEF OF EVIDENCE OF SHIRLEY LOUISE HAKARAIA
ON BEHALF OF TE PATUKEHA KI TE RĀWHITI AND NGĀTI KUTA
KI TE RAWHITI IN SUPPORT OF AN APPLICATION FOR AN URGENT
INQUIRY INTO THE CROWN'S RECOGNITION OF THETŪHORONUKU
DEED OF MANDATE**

Dated 25 November 2014

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Waitangi Tribunal

25 Nov 2014

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

Introduction

1. My name is Shirley Louise Hakaraia and I am one of the claimants for Wai 2483 the Ngāti Kuta and Patukeha Tūhoronuku Deed of Mandate claim. I am the hapū coordinator for the Ngāti Kuta Wai 1307 & Patukeha Wai 1140 Claims and have held this responsibility since November 2011.
2. I am authorised to give this evidence on behalf of both hapū. I have filed two briefs of evidence in support of the urgency applications opposing the Crown's recognition of the Tūhoronuku mandate. The First Brief of Evidence is dated 4 June 2014¹ and the second brief of evidence is dated 7 November 2014² and I confirm the contents of both as being true and correct. Briefs of evidence were also filed by our kaumatua Moka Kaenga Maata Puru on behalf of Wai 1140³ and Matutaera Te Nāna Clendon on behalf of Wai 1307⁴ also in support of the urgency applications.
3. On or about 22 September 2014 the two hapū filed a joint Statement of Claim and Application opposing the Tūhoronuku mandate which is registered as Wai 2483 in the Wai 2490 Ngapuhi Mandate Inquiry.
4. I am providing this third brief of evidence to respond to aspects of evidence filed by witnesses in this urgency proceeding on behalf of the Crown, Tūhoronuku and other interested parties in opposition to the Applications.

¹ Wai 2490, #A17(b).

² Wai 2490, #A59.

³ Wai 2341, #A16.

⁴ Wai 2341, #A15(a).

Response to Raniera Sonny Tau⁵

5. I wish first to respond to comments Raniera Sonny Tau ("Sonny"), makes about the Deed of Mandate hui in 2011 and to my evidence about those hui in my first brief of evidence.⁶ Sonny has referred to my evidence about the Avondale premandating hui. He makes his own comments about people's behaviour towards Tūhoronuku members⁷ but his evidence fails to address my comments where I said that I was appalled at the behaviour of Tūhoronuku supporters and stated that:⁸ *"The heckling, the intimidation and bullying by the Tūhoronuku advocates towards whanau voicing their opinions was oppressive and appalling."*
6. Specifically, I was referring to an incident where during the Avondale hui Mr Denis Hansen who has been an urban representative on Te Runanga a Iwi o Ngāpuhi but has no formal role in Tūhoronuku but appeared to be acting in a supportive role for Tūhoronuku was prowling up and down the back of the room, acting like a policeman when he came across George Puru and myself. George is Moka Puru's son, one of the claimants for Patukeha and our kaumatua. Denis was trying to intimidate and antagonise George Puru verbally, and we were just standing there, not acting in any way disruptively or aggressively. However, George held his cool even when Denis referred to my Uncle Moka, George's father, as being *"a son of a bitch"*. That is what I was referring to when I was talking about the heckling, intimidation and bullying.
7. George just said, "Hang on I will ring my father and you can tell him that yourself."
8. Sonny also states that: *"there were no Mongrel Mob members employed as security"* at the hui at Hoani Waititi marae.⁹ In my evidence I said "we were told" that Mongrel Mob were there acting as security should anyone step out of line. It may well be that they were not employed as security guards, but that is the role we were told they were performing when we arrived. In my view, the mongrel mob members were being used to

⁵ Wai 2490 #A98.

⁶ Wai 2490, #A17(b).

⁷ Wai 2490 #A98, para 4.38.

⁸ Wai 2490, #A17(b) para 40.

⁹ Wai 2490 #A98, para 4.39.

deliberately intimidate people from speaking in opposition to the Tūhoronuku kaupapa. They were certainly not there to encourage us to speak our minds.

9. Sonny also says that my statement that Hone Sadler told the hui they would not be taking any questions from the hui is incorrect.¹⁰ He says that it was not the case that Tūhoronuku was not taking questions. Sonny is incorrect. Hone Sadler did say that and I stand by my statement.
10. Sonny also says in his evidence that ringing the bells at Te Mahurehure marae was used to bring the hui back to order.¹¹ It may be that people were interrupting, but that was caused by the frustration of the people present venting their frustration due to the fact that the Tūhoronuku representatives were not listening to them.
11. At paragraph 4.53 of Sonny's evidence he states that the post grant of mandate hui at Paihia and at Whangarei were postponed due to safety concerns. That allegation is ridiculous. What was clear is that they just did not want to hear any further opposition. The cancellations put people to great inconvenience who had travelled long distances to attend them.¹²
12. I note that Sonny also says at paragraph 4.53 of his evidence that those hui postponed were reconvened at Whitiara, Te Tii and Te Aroha marae Mangakahia after the Australian meetings. However I could not attend those reconvened hui and as they were being held at marae that were of those hapū that supported Tūhoronuku, I had no confidence that we would be heard in any event.

Other matters Sonny raises in his evidence.

13. At paragraph 2.3 of his evidence he says that the process for electing trustees was: *"widely advertised and promoted in order to reach Ngāpuhi everywhere, was fair and transparent, and all who whakapapa to Ngāpuhi were able to participate."*

¹⁰ Wai 2490, #A17(b).

¹¹ Wai 2490 #A98, para 4.40

¹² Wai 2490 #A17(b), paras 54-55

14. It may be that the election process was advertised and promoted. However, our hapū did not agree to the actual process of elections. That was due to the fact that people could self-nominate or be nominated by individuals to the position of Tūhoronuku Hapū Kaikōrero and from there put themselves forward to the position of Tūhoronuku trustee. There is no way we would agree that the process was fair and transparent. The process also fails to appreciate the legal interests of the actual claimants which is being subverted by this process as well as the tikanga that the mana of the iwi comes from the hapū and not merely by virtue of an individuals whakapapa to the iwi.
15. I refute Sonny Tau's statement at paragraph 5.10 of his evidence that the "*process saw hapū nominate hapū kaikōrero*". This is blatantly incorrect. As I have said previously in my evidence Joe Bristowe did not have the authority of our hapū to stand for the position. Further in respect of Ngāti Kuta no one stood, because no one had the hapū authority to do so. It is glaring in my view that Joe Bristowe has filed nothing to respond to this issue.
16. Therefore it is incorrect for Sonny to say in paragraph 5.10 that the Trustees who were chosen as the Hapū Kaikōrero are hapū representatives. Tūhoronuku may intend these individuals to act in that capacity for Tūhoronuku but Joe Bristowe is not and has not been chosen by our hapū as our hapū kaikōrero and he is not our hapū representative.
17. He also states at paragraph 6.17 of his evidence that:
If hapū do not wish an individual to speak on their behalf, then they need only vote to elect a different MHK. But to deny an individual their right to represent their hapū because some disagree is to usurp the mana of the individual.
18. To that I say the mana of an individual can never override the mana of the hapū or the legal rights of the actual claimants. It is ignorant of Sonny and very pakeha to suggest that the rejection of an individual by the hapū (which is what he is suggesting) usurps that individual's mana. If an individual does not have the support of their hapū then the individual does not have the mana to occupy that role, has no understanding of hapū rangatiratanga and is thinking only of themselves.

19. The other point is that Sonny's comment arrogantly assumes that we want or have to be a part of their entity. We don't want to be a part of it. Therefore, it is not only about the individuals on the entity but the entity itself that we do not wish to be a part of and as such the election of a different Hapū Kaikōrero does not remedy that fact. The fact that the hapū does not support anyone as a Hapū Kaikōrero in this process is not, as Sonny Tau puts it at paragraph 5.21 of his evidence, "*calling into question the democratic credentials*" of Tūhoronuku. Tūhoronuku fails to appreciate the legal rights of the claimants and the mana of the hapū. Those are the issues in question. Tūhoronuku can represent those who wish it to represent them. We do not want that.
20. Further at paragraph 6.13 of his evidence Sonny says that: "*hapū cannot refuse to participate in elections and then contend that they are not represented on a body that makes express provision for their involvement in those elections.*" Tūhoronuku cannot force us to participate or be a part of their process or settlement. Just because you provide for a hapū to be a part of their entity does not mean that we are a part of their entity. Sonny's position is a nonsense.
21. Tūhoronuku may well have done everything by the Crown book with the elections, advertised them in every which way and used the best election administration company to organise the elections etc etc. What our hapū are saying is that we do not want to be part of them or this settlement process regardless of how they have organised it.
22. Sonny revisits this same ground at paragraph 8.1(a) of his evidence where he does not seem to grasp that it is not just the process that we criticise but the Tūhoronuku entity as well.
23. Sonny also says paragraph at 6.14 of his evidence that Hapū Kaikōrero can be removed at any time by the process they have set out in the Addendum. Why should we have to try and remove someone who we have never agreed to assuming a position in the first place. That would only remove the individual, not our hapū or our claim which is far more important and which Sonny either neglects or ignores.

24. Our kaumatua Uncle Moka stated this very point at the recent Hokianga hui with Crown negotiator Nigel Fyfe, "*Why do we need to remove ourselves from something that we never agreed to in the first place*"?
25. Our hapū disagree with the trustee structure set out at paragraph 2.5 of Sonny Tau's evidence, with separate kaumātua/kuia representation as I have already stated above. Nor do we support urban representation or the need for the Runanga to have a seat, as already stated in my first brief of evidence¹³.
26. As we have said, the grievances occurred at the haukainga. Any representation must have hapū and the claimants' authority, support and endorsement because it is the whanau and hapū who have suffered the indignities and loss and the claimants are progressing the claims of the whanau and hapū not Tūhoronuku. Further the Runanga (TRAION) does not have any Wai claims before the Waitangi Tribunal and as such is not a claimant and does not act as a claimant in a representative capacity, so it should not be represented on Tūhoronuku. Hapū are the voice of Ngāpuhi, and not just the majority voice like Sonny Tau seems to think it should be.
27. At paragraph 2.8 of his evidence Sonny Tau states that claimants in this Inquiry "*only represent a minority of Ngāpuhi*". Where is his evidence to back that up? I am comfortable with the knowledge that our kaumātua and kuia are the ones who are supporting the direction of our hapū and that our claimants and our two hapū are engaging with and listening to our people and the clear message is that the hapū must be the ones who control the negotiation and settlement of our claims and grievances with the crown.
28. I note at paragraph 3.31 Sonny outlines how Tūhoronuku came to list the hapū in the Deed of Mandate by establishing a group of kaumātua and kuia. Noone came and talked to either of our hapū about that at the time.
29. Sonny Tau also, in paragraphs 3.36 to 3.39 of his evidence, outlines some of the negative socio-economic issues faced by our people of Ngāpuhi. These support his rationale for going down this settlement track - that it is going to fix all our ills in one foul swoop. As I said in my second

¹³ Wai 2490 #A17(b), paras 77 and 78.

brief of evidence, the Crown is not offering any quick fixes with this route and our people have come too far now not to get it right and our claims negotiated and settled in a robust, transparent, accountable and sustainable way.¹⁴

30. Sonny states at paragraph 4.69 of his evidence, that Tūhoronuku amended its structure to give hapū "a stronger voice". That should be the starting point, not the result of several years of debate and two facilitation processes. Even then the process is still not hapū driven. The amendments are lip service designed to placate the dissenters rather than provide any real mana to the hapū.
31. He says further that hapū and Wai claimants can participate in settlement negotiations at paragraph 5.5 of his evidence. That cannot be the case when hapū representatives on Tūhoronuku do not have the authority of the hapū or claimants, and definitely not in respect of Ngāti Kuta and Patukeha. Nor should we be mere participants, which I think is the key issue. The claimants and hapū must be at the forefront of the negotiations and not just participants. It is their claims that will be settled and extinguished and that is a matter which Sonny and Tūhoronuku have failed to grasp as they want to take control of our claims and our redress. It is not theirs to control.
32. Sonny makes a big deal out of the strict accountability requirements and the supposed rigour of the process Tūhoronuku has undertaken to achieve the Deed of Mandate. What he omits to reflect is that the Crown is funding all of this. The process could not have happened without that funding. Sonny criticises Te Kotahitanga o ngā hapū Ngāpuhi (Te Kotahitanga) at paragraph 6.25 of his evidence, for not providing information about Te Kotahitanga as an organisation. However we need to remember Te Kotahitanga is a voluntary grouping of hapū who wish to progress their claims against the Crown based on tikanga. It has not sought any Deed of mandate and has no Crown funding or legal status. It is not a competing entity for mandate.

¹⁴ Wai 2490 #A17(b), para 45.

Withdrawal

33. At paragraph 8.1(c) Sonny defends the onerous withdrawal process from the Deed of Mandate without any real substance to his defence. He simply says it is the way it has to be to go forward with the single settlement model. Again, I say ad nauseum that we do not want this single settlement model. That is the Crown's preference, not ours as it only suits the Crown and not us. Our hapū have no ability to fund a withdrawal and as I have said before, we should not have to withdraw from something we did not wish to be a part of in the first place and at the moment we are stuck in the proposed and imposed single settlement model and we do not wish to stay there. No non Maori person or entity in New Zealand would accept a situation of an entity being imposed upon them to settle their claim. We are not going to accept that either.

Settlement options

34. Sonny has outlined his view at paragraphs 7.6-7.16 about one settlement versus any other approach. He is entitled to his view. There are plenty of examples around the motu which give lie to his view. Maybe they are not achieved quickly or without robust debate. That does not in itself justify the single settlement approach. I have already said that for us it is the sustainability of a settlement, the nature of which our hapū have control over. That is most important, not the speed at which settlement is achieved.
35. At paragraph 8.1(j) of his evidence Sonny says that in my second brief of evidence at paragraph 54 my statement, that our hapū are committed to working with Ngā Hapū o te Takutai Moana,¹⁵ diminishes hapū rangatiratanga.
36. It is not for Sonny Tau to tell us what does and does not diminish our hapū rangatiratanga and is illustrative of his ignorance and arrogance. If our hapū wish to work with a group of neighbouring hapū for any reason then that is for us to decide and we will do that. In that way we have a vehicle that is transparent, accountable and has capacity as I said at

¹⁵ Wai 2490 #A17(b).

paragraph 43 of my second brief of evidence.¹⁶ Importantly it will be because we choose to be represented by those people and not because others are telling us who will be our representatives.

Response to Nigel Fyfe¹⁷

37. Nigel Fyfe, the Crown's chief negotiator makes some points in his evidence which I wish to respond to.¹⁸
38. In respect of Nigel Fyfe's comments about the settlement with Te Rarawa.¹⁹ My understanding is that what he says about Te Rarawa and Te Karae station does not take into account that the actual claimant whanau at Te Karae - the Chapmans and Aronas, the ones who have suffered the actual loss, have been ignored. Further there has been no actual redress provided to those whanau or hapū.
39. As for Warawara, which is a conservation area in the far north, it remains in DOC, that is, Crown ownership. What Nigel Fyfe refers to at paragraph 13 of his evidence shows that the rights and responsibilities of mana whenua hapū are reduced to performing a 'role' without any real power or control over their lands. Whilst I do not wish to criticise the settlement Te Rarawa have negotiated, that is not what we want to occur with our claims and for our hapū.
40. As a result of what is in the Te Rarawa deed regarding their land loss and other grievances, I also understand that two of Te Rarawa's hapū have withdrawn completely from the Te Rarawa Runanga - Te Popoto at Owhata and Patu Pinaki at Herekino. I understand that they are moving to establish their own hapū councils and therefore this, in my view, is an example showing that the settlement has not developed unity.
41. Further at paragraph 19.1 of his evidence Nigel Fyfe talks about the strength of single settlement models. At 19.1 he said that:

¹⁶ Wai 2490 #A17(b).

¹⁷ Wai 2490 #A103.

¹⁸ Wai 2490 #A103.

¹⁹ Wai 2490 #A103, paras 12-13.

One of the reasons the Waikato-Tainui, Ngāi Tahu and Ngāi Tuhoe settlements are as strong as they are is because those iwi negotiated as one;

19.1.1 They undoubtedly had internal differences but their leadership ultimately managed to overcome those and come to the Crown collectively, from a position of strength.

42. I understand from my counsel and from my own mahi that this is a distortion of what has actually occurred and within Tuhoe division continues to be rife as a result of the divisive negotiation process undertaken by Te Kotahi a Tuhoe and Te Uru Taumatua (the Tuhoe negotiating body and settlement entity) and the Crown.
43. I understand that Te Uru Taumatua has issued a booklet which outlines that they are continuing to have internal problems and divisions with their own hapū and as such the settlement process has not assisted the unity of that iwi.²⁰ Annexed and marked "B" is a copy of that booklet.
44. The response therefore to Mr Fyfe is, that just because the iwi wants the support of the hapū that does not mean that it will happen. He has underestimated the depth of mamae that the process has and had caused to people and between hapū.

Response to Toko Tahere²¹

45. Toko Tahere, a Tūhoronuku Hapū Kaikōrero for Ngāti Tautahi, in his evidence references the whakatauki: "Ngai Tāwake ki te Hauauru, Ngai Tāwake ki te Rāwhiti, Ngai Tāwake ki te Waoku, Ngai Tāwake ki te Tuawhenua."²²
46. He talks about the political coverage of Ngai Tāwake:²³ *"Rangatiratanga arises from the area of land that rangatira had power over, from the west wind, to where the sun rises."*

²⁰ He Koronga Whakataenga, Te Uru Taumatua, Tuhoe 2014.

²¹ Wai 2490, #A86.

²² Wai 2490 #A86, para 11.

²³ Wai 2490 #A86, para 15.

47. We acknowledge that Ngāti Kuta ki te Rāwhiti and Patukeha ki te Rawhiti are linked through whakapapa to Ngai Tāwake. However the fact is that our two hapū now are mana whenua at Te Rāwhiti not Ngai Tawake. Our two hapū have their own authority, their own autonomy which is not subject to Ngai Tāwake authority and they exercise mana Whenua over their rohe at Rawhiti and the surrounding islands. Annexed and marked "C" is a copy of the evidence in the Wai 1040 hearings of Moka Puru which sets out the rohe of Ngāti Kuta ki te Rāwhiti and Patukeha ki te Rawhiti for clarification.²⁴
48. Ngāti Kuta ki te Rāwhiti and Patukeha ki te Rawhiti refute any insinuation that Toko Tahere is making in this evidence that Ngai Tawake are mana Whenua in our rohe or that by virtue of those historical whakapapa links he may claim to represent our two hapū in respect of our rohe and our hapū on Tūhoronuku or that Ngai Tawake and have the ability to settle claims or that they can and should obtain redress in our rohe.
49. In particular I refer to paragraph 44 of Uncle Moka's evidence in Wai 1040 where he said that his tupuna Rewa after the battle that was crucial in determining mana whenua in the rohe:
- Rewa turned then to the Ngāpuhi alliance and said at that peacemaking, that from this day on we will be known as Te Patukeha (to remind Ngapuhi of the killing of our mother Te Auparo on the māra kai).*
50. Further Ngāti Kuta ki te Rāwhiti and Patukeha ki te Rawhiti reject Toko Tahere's comment that Tūhoronuku: *"is the only way to move forward and is a way to get our whenua back. Where we can't get whenua back, we can get compensation. That is all anyone cares about."*²⁵
51. It is precisely that kind of statement that we object to – that others purport to know what is important to our two hapū and what we care about.

²⁴ Wai 1040 #F21(a).

²⁵ Wai 2490 #A86, para 18.

Response to Nora Rameka²⁶

52. Nora Rameka is a Tūhoronuku kuia representative and Trustee from Ngāti Rehia. I said in my first brief of evidence, our two hapū do not support the concept of separate kaumātua/kuia representation on Tūhoronuku as each hapū has our own kuia and kaumātua.
53. In her evidence she discusses how Ngāti Rehia and other hapū formed the grouping now known as Nga Hapū o Te Takutai Moana about six years ago:²⁷
- The hapū that established Takutai Moana were Ngāti Rēhia, Ngāti Hine, Ngāti Kuta, Patukeha, Te Kappotai (sic), Ngāti Torehina, Ngāti Kawa, Ngāti Rahiri, Matarahurahu and Ngāti Manu.*
54. This is the grouping which our two hapū and claims have been part of since that time. The original rationale for the formation of this grouping was, as Nora has said, designed to strengthen the whanaungatanga of all the hapū within the rohe of Takutai Moana and our hapū have supported that. Over time the desire for an alternative route to negotiation became a part of those discussions and in my previous evidence I have stated that we have resolved at several joint hapū hui to maintain that support.
55. Our two hapū continue to support this grouping and are committed to working to progress our own Deed of Mandate, in conjunction with other hapū and negotiate our claims and grievances with the Crown.²⁸
56. Nora Rameka also mentions Ngāti Rehia support for Te Kotahitanga, the wider grouping of hapū which has met regularly to discuss progression of the Ngāpuhi historical claims Inquiry and negotiations options.
57. Ngāti Rehia has now agreed to move away from this position in respect of both groups after all this time of working closely with us. It is disappointing that Ngāti Rehia has done this and discarded this kaupapa, as in our view, the best path forward towards negotiation is a way that provides the hapū with an ability to negotiate their claims within an entity that they are confident will represent them appropriately. Tūhoronuku will not and does not provide that.

²⁶ Wai 2490 #A91.

²⁷ Wai 2490 #A91, paras19- 25.

²⁸ Wai 2490, #A59, p13.

Joe Bristowe Tūhoronuku Hapū Kaikōrero

58. I would like to make a point that Joe Bristowe who has been appointed as Tūhoronuku Hapū Kaikōrero for Patukeha unauthorised by our hapū has not provided any evidence in this Urgent Inquiry. Not only has he not come to ask for the authority of the hapū but he has also not provided any explanation for his support of Tūhoronuku in this forum. I note that Joe was a Wai 1140 claimant but was removed at a Patukeha hapū hui because he declared his alliance to the Rūnanga and Tūhoronuku and this is another example of the fact that he does not have the support of our hapū.

Response from the Crown

59. The Crown by letter from the Minister has responded to the letter from our counsel which is referred to in my second brief of evidence.²⁹ That letter was sent by our counsel to the Minister for Treaty Negotiations advising the Crown that our hapū did not wish to meet with the Crown. The letter also insisted that our claims be withdrawn from the Tūhoronuku Deed of Mandate

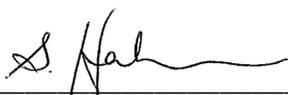
60. The letter from the Minister once again fails to recognise the withdrawal of our hapū claims and merely advises that Mr Nigel Fyfe is still available to meet. Clearly that is not what our hapū want and the Minister's letter is indicative of the paternalistic manner in which the Crown has continued to treat us. Annexed and marked "A" is a copy of the Ministers letter dated 20 November 2014.

Conclusion

61. I stand by what I and my kaumātua have stated already to this Tribunal. We are not Tūhoronuku. Tūhoronuku do not speak for us, yet they want to settle our claims for us.

²⁹ Wai 2490, #A59.

62. In my First Brief of evidence and that of our kaumātua we said, that we are already committed to working with and within Ngā Hapū o Te Takutai Moana to progress our own Deed of Mandate and negotiate our grievances with the Crown. That is the agreed and appropriate vehicle for Ngāti Kuta and Patukeha.
63. The damage done by the Crown in terms of the theft of our whenua was done to our whanau and hapū. The damage in terms of overriding hapū mana and tino rangatiratanga in breach of Te Tiriti was done to our hapū and the Crown continues to trample on our mana by forcing us into a process that we do not support. Unless that damage is remedied with our hapū and not some wider body that has not suffered the direct loss, then nothing is resolved.



Shirley Louise Hakaraia