

**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

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**FURTHER 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 THETUHORONUKU  
DEED OF MANDATE**

Dated 07 November 2014

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**RECEIVED**

Waitangi Tribunal

**7 November 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 also filed evidence in these proceedings dated 4 June 2014 (“my First Brief of Evidence”)<sup>1</sup> and I confirm its contents as being true and correct. That evidence was filed in support of urgency applications opposing the Crown’s recognition of the Tūhoronuku mandate. On or about the 22<sup>nd</sup> of September 2014 the two hapū also filed a Statement of Claim and a joint application registered as Wai 2483 in the Wai 2490 Ngapuhi Mandate Inquiry in opposition to the Crown recognition of the Tūhoronuku Mandate.
3. I am providing this Brief of Evidence to update the Tribunal about what has occurred since my First Brief of Evidence and those briefs filed by Moka Kaenga Maata Puru filed on behalf of Wai 1140<sup>2</sup> and Matutaera Te Nāna Clendon filed on behalf of Wai 1307<sup>3</sup> also in support of the urgency applications.
4. I do not intend to repeat the rationale for our hapū opposition to the Crown recognition of the Tūhoronuku mandate. However I can reiterate that at no time prior to or since the filing of my first Brief of Evidence have the hapū Ngāti Kuta and Patukeha nor any of the named claimants for Wai 1307 & Wai 1140 given authority to Tūhoronuku to represent our claims in the Waitangi Tribunal in respect of the historical grievances of

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<sup>1</sup> Wai 2341, #A17(b).

<sup>2</sup> Wai 2341, #A16.

<sup>3</sup> Wai 2341, #A15(a).

our two hapū as represented in our filed claims (Wai 1307 and Wai 1140)<sup>4</sup>.

5. I have discussed the Crown's insistence on requiring us to go through a process for withdrawal from the Tūhoronuku mandate in my first Brief of Evidence. The Crown's position of requiring us to withdraw and undertake an oppressive process is abhorrent and would not be required of our claimants or hapū in any legal sense.
6. In addition to what I have stated in my first Brief of Evidence, I say that in my view there is no point in our having to withdraw something that we never granted in the first place.

### **Update**

7. I first wish to update the Tribunal on events that have occurred since my first Brief of Evidence.
8. The two hapū have held meetings on the following dates:
  - 1 June 2014, Te Rāwhiti marae (23 in attendance),
  - 19 July 2014, Te Rāwhiti marae (20 in attendance),
  - 5 August 2014, Tikipunga (21 in attendance),
  - 30 August 2014, Te Rāwhiti marae (23 in attendance),
  - 27 September 2014, Te Rāwhiti marae (26 in attendance),
9. At those joint hapū hui, resolutions were passed by consensus confirming the continued support of the two hapū Ngāti Kuta and Patukeha to pursue our hapū settlement through Ngā Hapū o Te Takutai Moana.
10. Further on 1 June 2014 the kaumatua and kuia of our respective hapū Moka Kaenga Maata Puru, Marara Te Tai-Hook and Matutaera Te Nāna Clendon wrote to the Minister of Treaty Settlements, care of the Office of Treaty Settlements setting out once again the opposition of the two hapū

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<sup>4</sup> These claims are in Wai 1040 Te Paparahi o Te Raki.

to the Tūhoronuku mandate. In particular they voiced their opposition to Tūhoronuku's Kaikōrero Representation process and the requirement by Tūhoronuku that to remove a kaikōrero who has been nominated 90 registered persons had to oppose their nomination. Our hapū opposed the nomination of Joe Bristowe as the kaikōrero for Patukeha. As I mentioned in my First Brief of Evidence, Mr Bristowe was never nominated or authorised by our hapū.

11. As stated in the letter to the Minister, it is particularly distressing for our kaumatua and kuia that Mr Bristowe ignored our hapū process despite being present at hui where it was resolved that anyone who wanted to represent the hapū should seek endorsement from the hapū. Annexed and marked "**A**" is a copy of that letter.
12. In that letter our kaumatua and kuia also repeated our insistence that our two hapū be removed from the Tūhoronuku Deed of Mandate.
13. On 11 August 2014 Minister Finlayson wrote to the two hapū in response to the 01 June 2014 letter from our kaumatua and kuia. This is the first direct communication that the claimants and the hapū have had from the Crown during the entire process which started back in 2009.
14. In that letter he stated that the Crown was unable to withdraw the two hapū from the Tūhoronuku Deed of Mandate and also suggesting that the two hapū meet with Office of Treaty Settlements director Nigel Fyfe. I find it extraordinary and incomprehensible that they have made this suggestion to talk so late in the piece, when so much appears to be set in concrete. Annexed and marked "**B**" is a copy of the Minister's letter.
15. The Minister repeated the mantra in his letter that in order to withdraw our hapū had to follow the process set down in the Tūhoronuku Deed of Mandate Addendum, a process which as I said in my First Brief of Evidence is extremely prejudicial to our hapū, is unreasonable and expensive. We are not funded to conduct those processes that the Crown has funded Tūhoronuku to convene.
16. I now note that Joe Bristowe was confirmed as a hapū kaikōrero and his nomination and appointment was unopposed. Annexed and marked "**C**"

is a copy of the nominations for these positions from Tūhoronuku's website, showing his appointment.<sup>5</sup> There is no reference to a hapu appointee for Ngāti Kuta who happily remain unrepresented on Tūhoronuku

17. I also note that Tūhoronuku has completed the next step with the election of the 22 Tūhoronuku IMA Trustees and again no one with the authority of two hapū Ngāti Kuta and Patukeha is part of that group. I understand the 15 regional hapū representatives were elected by the hapū kaikōrero. Annexed and marked "**D**" is a copy of the Declaration of Tūhoronuku Independent Mandated Authority Appointments.
18. In addition I have read that Tūhoronuku has called for people who want to be negotiators to put themselves forward. I understand that process has now closed. Again there are people purporting to sit around the table with the Crown to negotiate our Ngāti Kuta and Patukeha claims. On their website Tūhoronuku say they expect to appoint those people by the end of this year and be in negotiations in early next year with the Crown.<sup>6</sup>
19. All of this shows that Tūhoronuku and the Crown are marching ahead regardless, without any regard for our mana and our desire to say who settles our claims.

### **Communications with the Crown**

20. I should point out that one of the named claimants for Wai 1140 Robert Willoughby responded by email on 06 October 2014 to the letter from Minister Finlayson to try to ensure that the door to the Crown remained open. Annexed and marked "**E**" is a copy of the email.
21. Following on from that communication and after a brief telephone conversation Robert Willoughby tells me he had with Nigel Fyfe Director of OTS and Robert Willoughby, we held a joint hapū hui of Ngāti Kuta and Patukeha on 11 October 2014 in Tamaki Makaurau attended by 48

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<sup>5</sup> <http://www.tuhoronuku.com/panui-news?r=21&> dated 5 November 2014.

<sup>6</sup> <http://www.tuhoronuku.com/panui-news>, dated 5 November 2014.

people. That provided hapū members with the opportunity to discuss whether or not there should be a meeting with the Crown and OTS.

22. At that hui it was resolved amongst other matters that the two hapū Ngāti Kuta and Patukeha:
- continue to oppose the Tūhoronuku Deed of Mandate
  - will not meet with the Crown as per their letter dated Aug 2014
  - reiterate our commitment to Ngā Hapū o Te Takutai Moana as our large natural grouping for settlement
  - are committed to working together to achieve the return of our whenua/moana – Hapū Rangatiratanga
23. We also asked our legal counsel, Te Kani Williams to respond to the Crown letter of 11 August 2014 on our behalf demanding our withdrawal from Tūhoronuku Deed of Mandate. He wrote such a letter dated 21 October 2014 and advised the Crown that the two hapū had resolved that they did not wish to meet with the Crown or its representatives or any representatives of Tūhoronuku, given the Crown's refusal to provide for the removal of our claims from the Deed of Mandates. Annexed and marked "F" is a copy of that letter.

### **Official Information Documents Release**

24. I have had the opportunity to view the documents released by the Crown as a result of the Official Information requests made on behalf of some hapū of Ngāpuhi.
25. The documents provided have raised issues which are of much concern to our claimants and to our hapū. For example, in several of the documents, our independent status as hapū is queried or undermined or not even acknowledged.
26. One example is in an internal OTS document dated 26 September 2014, both hapū are referred to as ririki hapū, with the tuakana Hapū being

"Ngāti Tawake". Annexed and marked **"G"** is a copy of that document.<sup>7</sup> This insults our mana and cannot be justified. Our hapū rangatiratanga has been set out in the evidence of our kaumatua. I do note that they say Ngāti Kuta is a hapū expected to oppose the Deed of Mandate.

27. In another document dated 4 September 2014, which is an email from Maureen Hickey of OTS to an unknown person, Ngāti Kuta and Patukeha are listed there at pages 8 and 9 of the attached list as active hapū, which we are, so where this idea of our being "ririki" comes from and under the umbrella of "Ngāti Tawake", is perplexing. Annexed and marked **"H"** is a copy of that document.<sup>8</sup> Mr Bristowe is noted as being the hapū kaikōrero for our hapū. We refute that strongly – he is an individual who has been put forward without any authority from the claimants or the hapū.
28. Similarly another internal OTS document which lists all the Tūhoronuku hapū kaikōrero who have been elected or appointed, lists both hapū under Te Pewhairangi but does not explicitly list Patukeha as an active hapū. Annexed and marked **"I"** is a copy of that document dated 22 July 2014.<sup>9</sup>
29. There are a number of other anomalies with the Crown documents which give us cause for concern such as, in an earlier document attached to an email to Maureen Hickey of OTS dated 8 June 2014, at page 4, there is no mention of Patukeha made at all. Ngare Raumati is listed as the hapū with marae at Te Rawhiti and Kaingahoa along with Ngāti Kuta. Whilst our people acknowledge Ngare Raumati descendants the hapū of Ngāti Kuta and Patukeha are mana whenua in our rohe and on those marae not Ngare Raumati. Annexed and marked **"J"** is a copy of that document.<sup>10</sup> Again we cannot see who prepared this.

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<sup>7</sup> Wai 2490, #3.1.174(a), p175, 1.

<sup>8</sup> Wai 2490, #3.1.174(a), p176, 8.

<sup>9</sup> Wai 2490, #3.1.174(a), p185, 86.

<sup>10</sup> Wai 2490, #3.1.174(a), p191, 137.

30. I note however that there was an updated version sent on 9 June 2014 but that was not released amongst the information. Further in that email of 8 June 2014, it states that 47 hapū are confirmed as supporting Tūhoronuku but no evidence is provided in support of that number. I would like to know the basis for coming to that number.
31. I also note that in a report from OTS officials to the Ministers of Finance and Treaty Negotiations dated 25 February 2014 asking for money to fund the Tūhoronuku election process, I note that one of the justifications for more funds from the Crown for Tūhoronuku was that those opposed to the Tūhoronuku Deed of Mandate would field candidates in "as many of the hapū kaikōrero positions as possible"<sup>11</sup>.
32. Firstly I had thought that was the point of the process, not predetermined outcomes. Secondly, we made it very clear that our hapu did not support the election process and would not support the nomination of anyone, so where they got that idea from who knows. However it obviously convinced the Ministers who signed off on the funding. This report was attached to an email from Maureen Hickey to someone dated 14 march 2014. Annexed and marked "**K**" is a copy of that email and the attached briefing report.<sup>12</sup>

### **Nature of Opposition to the Crown's recognition of the Tūhoronuku Deed of Mandate**

33. Several documents, in my view, are very telling in the comments about the perceptions by Tūhoronuku, the Crown and its agents of the nature of the opposition.
34. In a report from Tūhoronuku, specifically from Raniera (Sonny) Tau to the Prime Minister dated 10 April 2014. In his summary to the Prime Minister he says:

*"No doubt you have heard the "noise" from a few dissenters based here in the North. It is important to recognise that this is not unusual, and happens with all Treaty Settlements (...)"*

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<sup>11</sup> Wai 2490, #3.1.174(a), Paragraph 11.

<sup>12</sup> Wai 2490, #3.1.174(a), p210, 318.

35. His dismissal of our position is totally incorrect and an insult to the many people who are trying simply to get their message across to the Crown that we do want to have our claims heard and we do want to work towards settlement, but for us, Ngāti Kuta and Patukeha that is not through Tūhoronuku who does not and cannot represent us. We have sent that message loud and clear to the Crown and they continue to ignore us with repeated platitudes. Annexed and marked "L" is a copy of that report.<sup>13</sup>
36. The real reason, in my view, that the Crown does not want to deal with alternatives is that they perceive that job as too difficult. In a paper to the Cabinet committee on Treaty of Waitangi Negotiations dated 17 June 2014 where officials were seeking more funding for Tūhoronuku, at page 2, paragraph 9, it is stated:
- Crown experience is that Northland presents a difficult mandating and negotiating environment. While there is a universal Ngapuhi identity, there is also a lack of internal cohesion and leadership has been strongly contested. Within the rohe Ngapuhi are strongly hapu based and want any settlement process to allow hapu autonomy and decision making. With up to 109 Ngapuhi hapu, there has been a strong risk Ngapuhi will fragment into a unknown number of settlement groupings, increasing the cost, timeframes and complexity of any settlement negotiations.*
37. Essentially the Crown is saying, it is too hard and too expensive despite acknowledging our desire for hapu rangatiratanga. Annexed and marked "M" is a copy of that paper.<sup>14</sup>
38. Further in an email dated 24 June 2014, the new director of OTS and the Crown's lead negotiator, Nigel Fyfe, has passed on to someone "talking points" for a meeting he and others were attending with Kelvin Davis MP at parliament.
39. In these notes Mr Fyfe summarises the Crown view of the advantages of a single settlement. He makes assumptions on our behalf about interrelationships between hapu about how a pan-iwi settlement is preferable from an economic perspective and "some groupings"

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<sup>13</sup> Wai 2490, #3.1.174(a), p157, 242.

<sup>14</sup> Wai 2490, #3.1.174(a), p190, 124.

overestimating what they could achieve outside a single settlement. Again the Crown telling us what we think and what is best for us. Annexed and marked "N" is a copy of the email.<sup>15</sup>

40. Further Mr Fyfe states that:
- *The level of opposition to the mandate is clearly significant. We want to find a way to bring people on board, if it's possible to do so.*
  - *We are open as to how that might be achieved, but it does seem to me that the problem is more around internal iwi politics and rivalries than because of any real problem with the mandate.*
  - *Tuhoronuku gets lots of criticism but we cannot see it is justified. It will be controlled by hapu representatives. It seems that it is really nothing more than its Runanga origins that is the problem.*
41. That is not the view of our hapu. Yes, there are issues that we have with the Runanga, but that is only part of the story. The structure of Tūhoronuku will never provide for our hapū representatives to be round the table. We can already see that with the process and nature of the Trustees elected or appointed. We have seen that with the fact that Tūhoronuku representatives have never made any effort to come and talk to us kanohi ki te kanohi, which is the very least we would expect.
42. We can also see that with the fact that they are trying to take control of our claims without our permission or authority and extinguish our claims for us, without our consent.
43. We as claimants and hapū are ready and willing to work towards a process with those of our whanaunga hapū as I have already stated in my First Brief of Evidence. That grouping - and not Tūhoronuku – is transparent, accountable and has capacity, and we know that our hapu Ngāti Kuta and Patukeha will be appropriately represented. That is for us to determine not the Crown and certainly not Tūhoronuku.
44. Another reason that is often used by those who favour this mandating process is that we need a settlement now. So I did think it was very revealing that in speaking notes to the Board of the Tūhoronuku

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<sup>15</sup> Wai 2490, #3.1.174(a), p143, 114.

Independent Mandated Authority Board dated 22 August 2014, Mr Fyfe said:

*We know this process will take time. Perhaps it will take three years. But we must proceed in a measured pace.*

45. Annexed and marked "**O**" is a copy of those notes.<sup>16</sup> What this illustrates is that the Crown knows there is no magic bullet to this settlement with a single entity. Those of us who have been working on this for some years, those of my kaumatua and kuia who have been working on this for many years, we acknowledge that it has taken a long time to get where we are now, but we are also prepared for the fact that it might still be some time until we can settle in a robust and sustainable way. The Crown is not offering any quick fixes either in a single settlement process for Ngapuhi, so that argument does not have any traction.

#### **Funding of Tūhoronuku**

46. There are a lot of documents in the OIA release talking about funding of this process by the Crown. I note that the Cabinet has increased its upper claimant funding limit for Ngapuhi from \$1.213 million to \$6.1 million "due to the size and complexity of the matter". Annexed and marked "**P**" is a copy of the Minute of the Decision dated 25 June 2014.<sup>17</sup> Further annexed and marked "**Q**" is a copy of the request to the Minister from OTS to approve the first funding milestone allocation dated 21 July 2014.<sup>18</sup>
47. Further I note that in a letter from the Minister to Mr Tau dated 23 July 2014 advising Tūhoronuku of this the Minister does acknowledge the possibility that a pan-Ngapuhi settlement might become untenable. Annexed and marked "**R**" is a copy of that letter.<sup>19</sup>
48. The point is that the Crown is prepared to fund Tūhoronuku to a much higher degree than it would fund a claimant group. In addition the Crown

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<sup>16</sup> Wai 2490, #3.1.174(a), p178, 24(a).

<sup>17</sup> Wai 2490, #3.1.174(a), p 188, 112.

<sup>18</sup> Wai 2490, #3.1.174(a), p140, 88.

<sup>19</sup> Wai 2490, #3.1.174(a), p184, 80.

is also saying that at some point during the process (after it has spent some of that funding) it might not proceed. What a waste of money and why does the Crown just not listen to us and halt this spending.

### **Ngati Wai Deed of Mandate**

49. I outlined in my first Brief of Evidence that at the same time as fighting this battle we have been fighting one on another front, our claims having been included in the Ngāti Wai Deed of Mandate without our agreement or authority.

50. Our claims have been removed from the Deed of Mandate that was publicly notified and dated 08 July 2014. Annexed and marked "S" is a copy of that Deed of Mandate. It states at page 37:

*Following consideration of submissions and discussions with OTS the following amendments have been made converting the mandate strategy into this Deed of Mandate:*

*Hapū and Wai claims removed from the mandate include:*

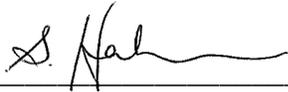
- *Ngāti Kuta and Patukeha (WAI1307) have been removed and replaced with Ngare Raumati,*

51. This removal of our claims has occurred as a result of our submissions to Ngāti Wai and the Crown, why can this not be the same simple process with Tūhoronuku.

### **Conclusion**

52. The Wai 1307 claimants and the Wai 1140 claimants filed the respective statements of claim with the Waitangi Tribunal for and on behalf of our hapū Ngāti Kuta and Patukeha a very long time ago. We have worked hard together to progress our claims in the years leading up to Te Paparahi o Te Raki Hearings that began in 2010. During that time, and in particular presenting our evidence in the Stage II Hearings, we have worked hard to involve our people and in my First Brief of Evidence I outlined the many ways we have worked to keep our people engaged and still do.

53. If the Crown continues to push ahead with this settlement entity and process, where does that leave our people? We are not Tūhoronuku. They do not speak for us, yet they want to settle our claims for us.
54. In my First Brief of evidence and that of our kaumatua 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. Anything else is unacceptable to us.
55. It is for these reasons and those outlined in my First Brief of Evidence and the Briefs of Evidence of our kaumatua, that we make this urgent application alongside those of our wider Ngāpuhi whanau.



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Shirley Louise Hakaraia