

IN THE WAITANGI TRIBUNAL

WAI 1531

WAI 1957

WAI 1968

WAI 2005

WAI 2061

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

a claim by Te Enga Harris on behalf of the Wiremu Hemi Harris and Meri Otene whanau and on behalf of Ngāti Rangi, Ngāti Here, Ngāti Tupoto, Ngāti Hohaitoko, Ngāti Kopuru, Te Rarawa and Ngāti Uenuku; and a claim by Wiremu Reihana for and on behalf of Ngāti Tautahi ki Te Iringa hapū; and a claim by Reuben Porter on behalf of himself, his whanau, Kaitangata, Nga Tahawai and Whanau Pani; and a claim by Denise Egen on behalf of herself, her whanau and Te Mahurehure; and a claim by James Te Tuhi on behalf of himself, his whanau and Te Hikutu

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**Second Brief of Evidence of Te Enga Harris**

Dated 7 November 2014

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**TamakiLegal**  
Barristers & Solicitors

10 Stratford Road, Manurewa, Auckland  
PO Box 75517, Manurewa, Manukau, 2243, Auckland  
P. 09 266 2927

E. [darrell@tamakilegal.com](mailto:darrell@tamakilegal.com)

**Counsel Acting: Darrell Naden**

**RECEIVED**

Waitangi Tribunal

**7 Nov 2014**

Ministry of Justice  
WELLINGTON

## MAY IT PLEASE THE TRIBUNAL

### Introduction

1. My name is Te Enga Harris. This urgency claim is made on behalf of myself, my whanau and members of Ngāti Rangī Ngāti Here, Ngāti Tupoto, Ngāti Hohaitoko, Ngāti Kopuru, Te Rarawa and Ngāti Uenuku, the Wai 1531 claimants of the Te Paparahi o Te Raki District Inquiry.
2. We do not wish to be represented by Te Rōpū o Tūhoronuku ("Tūhoronuku"). We want our claims to be heard and reported on by the Tribunal and then we want the opportunity to negotiate and settle our Treaty claims for ourselves. We believe our inclusion within Tūhoronuku's Deed of Mandate will prevent this from happening.
3. I have already filed a brief of evidence with the Tribunal dated 11 June 2014.<sup>1</sup> I seek leave to file supplementary evidence in light of the Official Information Act ("OIA") documents that have recently been released by the Crown.

### Predetermination

4. In a document dated 17 June 2014, the Minister of Treaty of Waitangi Settlements ("MofTOWN") makes the case to the Cabinet Committee on Treaty of Waitangi Negotiations for an increase in the upper claimant funding limit for Ngāpuhi to \$6.1 million. This document is **attached** at pages **1-8** of the Exhibits. This document shows the eagerness of the Crown to have a single settlement with Ngāpuhi. It also shows that "[s]ince 2009 the Crown has provided \$3.507 million of exceptional funding as a contribution to Ngāpuhi costs". The document, "Office of Treaty Settlements Pre-Mandate Claimant Funding", shows that normally pre-mandate funding to any one group is capped at \$50,000.00. This document is **attached** at pages **9-10** of the Exhibits.
5. Advice from the Office of Treaty Settlements ("OTS") to the Minister of Finance and MofTOWN about the increase to the upper claimant funding

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<sup>1</sup> Brief of Evidence of Te Enga Harris, Wai 2341, #A28.

limit, dated 12 June 2014, provides a breakdown of the \$3.507 million (at paragraph [8]), including \$260,000.00 in 2009, \$251,325.00 in 2011, and \$2,184,993.00 in 2013 to Te Rūnanga a iwi o Ngāpuhi (“the Rūnanga”) “to partly reimburse pre-mandate costs incurred ... on behalf of Tūhoronuku between 2009 and 30 June 2013.” There were also provisions for costs incurred in the elections process and to reimburse Tūhoronuku for operating costs between mandate recognition and its separation from the Rūnanga. This document is **attached** at pages **11-21** of the Exhibits. It appears that the Crown committed to these payments before the mandate was recognised. This document also describes the Crown’s eagerness to achieve a quick, single settlement with Ngāpuhi. I believe that the Crown has “picked a winner” and funded and supported it, with the intention of advancing its wish to bring the settlement process to an end as quickly as possible.

6. In OTS advice to MofTOWN dated 21 July 2014, it is noted that “under the current claimant funding matrix Ngāpuhi would have an upper claimant funding limit of \$1.213 million”. This document is **attached** at pages **22-27** of the Exhibits. This means that with \$3.507 million of exceptional funding, the Crown has committed roughly 3 times the normal upper claimant funding limit to an entity *at the pre-mandate stage*. This shows the extravagance of the Crown, and its generosity to Tūhoronuku and the Rūnanga, in its efforts to get a single negotiating body in Ngāpuhi.
7. This predetermination negatively affects our right to be heard, as I have stated in my earlier evidence, because it is likely that Tūhoronuku will settle with the Crown before the Tribunal has reported on our claim. There is an inbuilt conflict between early settlement and exercising the right to be heard. Despite this, the Crown Forestry Rental Trust (“CFRT”) has made a one-off change to its policy to grant funding to claimants on a “dual” basis, which encourages them to seek settlement alongside a Tribunal hearing. This decision is described in an email from Nigel Fyfe dated 24 June 2014 and is **attached** at pages **28-29** of the Exhibits. This email also explains the Crown’s desire for a speedy settlement process. I have noticed that this decision by CFRT came after a letter, dated 1 April 2014, from MofTOWN to CFRT stating that “the Crown encourages CFRT to consider the option for dual funding and would appreciate CFRT supporting both processes.”

This letter is **attached** at pages **30-31** of the Exhibits. This shows the efforts of the Crown to maintain its position, despite so much opposition.

8. The pre-mandate funding of \$2,184,993.00, transition funding of \$470,934.00 and election costs funding of \$340,085.00 are also described in OTS advice to MofTOWN dated 17 April 2014 (**attached** at pages **32-46** of the Exhibits), an OTS letter to Sonny Tau dated 23 April 2014 (**attached** at pages **47-49** of the Exhibits) and an OTS memorandum dated 4 July 2014 (**attached** at pages **50-53** of the Exhibits). The letter to Sonny Tau confirms that the exceptional circumstances funding was granted in April 2013, nearly a year before the mandate was given to Tūhoronuku.
9. However, it appears the transition funding was not enough because it took longer than expected (by Tūhoronuku, and by the Crown) for Tūhoronuku's mandate to be recognised. The letter to Sonny Tau states that "the final stages of the mandate process took longer than expected and Ministers did not decide to recognise TIMA's mandate until February 2014." In OTS advice to MofTOWN dated 21 July 2014, it is said that "[a]t the time of approval it was anticipated that Tūhoronuku's deed of mandate could be recognised as early as August 2013. However, Tūhoronuku's mandate was not recognised until 14 February 2014." This document is **attached** at page **22-27** of the Exhibits. It is clear to me that predetermination has occurred, with so much funding going to Tūhoronuku long before its mandate was recognised, and with these OTS documents showing clear expectation that the mandate would be recognised, well in advance of that actually happening.
10. I also see that in a letter to OTS from Tūhoronuku dated 22 May 2013, about this pre-mandate funding, the author refers to payments to be made "to the Tūhoronuku Independent Mandated Authority (TIMA)" while acknowledging that "TIMA will not 'activate' until the Deed of Mandate is recognised". This document is **attached** at pages **54-55** of the Exhibits. It is clear from this that the correspondents were in the habit of referring to Tūhoronuku as "the mandated authority" nearly a year out from official recognition of that mandate, although they recognised that official recognition was required for the mandate to "activate". To me this is a further indication that the mandate was a "done deal" at this early stage.

## Flawed Process

11. Predetermination on the Crown's part is also shown by its refusal to deal with the serious flaws in the elections process for hapū kaikorero and to admit that these flaws destroy any legitimacy in Tūhoronuku's mandate. This process is seriously flawed because it allows candidates for election to stand without the endorsement of the hapū they claim to represent. Given that many hapū do not recognise the mandate of Tūhoronuku, and so don't want to be involved in the elections process, the process can lead to the result of individuals being elected without any real endorsement.
12. This problem has been brought to the Crown's attention, for example by a meeting with Ngāti Hine on 24 April 2014 (see the OTS file note of the meeting **attached** at pages **56-59** of the Exhibits), a letter from Ngāti Hine to MofTOWN rejecting candidates representing hapū in Ngāti Hine (see document **attached** at pages **60-63** of the Exhibits), and a letter from Te Ringa Whaia o Ngāti Toki and Ngāti Horahia to MofTOWN and the Independent Returning Officer objecting to the nomination of Janelle Beazley as representing Ngāti Toki (see document **attached** at pages **64-66** of the Exhibits).
13. However, MofTOWN has stated that this is a Tūhoronuku process that the Crown is unable to interfere with (see document **attached** at pages **67-69** of the Exhibits). The Minister fails to appreciate that the issue goes to the heart of the mandate problem, and exacerbates it. By ploughing ahead in a situation where Tūhoronuku is not recognised by huge numbers of Ngāpuhi, the result is increasing false representation and more alienation of the Claimants. The Crown needs to understand that it cannot continue to force a process on the people of Ngāpuhi.
14. According to OTS documents, only 46 of 110 Ngāpuhi hapū had hapū kaikorero appointed by the end of July 2014. These documents are **attached** at pages **70-100** of the Exhibits. Of these, a number of the appointees do not actually have the endorsement of their hapū.
15. Despite these problems, hapū are effectively barred from withdrawing from the Tūhoronuku mandate. A letter dated 22 July 2014 from MofTOWN to Ngāti Manu outlines the onerous requirements the Crown demands before

withdrawal would be recognised, including the requirement that the process for withdrawal “would need to be as robust as the process followed to seek the mandate.” This document is **attached** at pages **101-103** of the Exhibits. I wonder whether the Crown would be prepared to provide \$3.507 million in funding for hapū to engage in such a process.

16. A document of unknown origin, dated 20 December 2013 and entitled, “Ngāpuhi: summary of advice relating to hapū withdrawal”, provided by the OTS under the OIA, notes that “withdrawal mechanisms can be found in other recognized deeds of mandates such as Ngāti Tuwharetoa, Ngāti Haua and Ngāti Rangitīhi”, but shows concern that “building in clauses allowing for hapū to withdraw would fundamentally undermine the Tūhoronuku mandate and future settlement negotiations.” This document is **attached** at page **104-106** of the Exhibits. Here we have further evidence, at the pre-mandate stage, of an intention to railroad hapū into this process without recognition of their mana and rights of tino rangatiratanga, which should be protected under Te Tiriti.
17. Our concerns are well understood by MofTOWN, which is shown in an Aide Memoire to the Minister dated 13 February 2014 (**attached** at page **107-123** of the Exhibits), where it is said that Claimants are concerned about the Tribunal process being able to continue; that hapū mana will not be respected under a Tūhoronuku mandate; that the Rūnanga will control negotiations; and that there will not be a withdrawal mechanism for hapū. Despite this knowledge, the Crown insists on charging forward with a process that is tainted by predetermination and prejudice against Claimants. The Crown’s stubbornness in this matter will only worsen, and not heal, the damage being caused.
18. Finally, I note an internal OTS email dated 1 September 2014 in regard to Ngāti Manu, which discusses “shifting the focus of the talking points to be less on the ‘Crown policy’ and more on how the Crown can best meet some of Ngāti Manu’s settlement aspirations within a single settlement negotiation and what the alternative pathways look like.” This document is **attached** at page **124** of the Exhibits. It says to me that there is further interference with due process in the Crown’s efforts to maintain the unstable situation that it has created. It looks like the Crown is effectively

entering into a sideline negotiating process in an effort to draw the unhappy hapū into the fold.

A handwritten signature in cursive script, appearing to read 'Te Enga Harris', is written above a horizontal line.

Te Enga Harris

7 November 2014