

BEFORE THE WAITANGI TRIBUNAL

WAI 2490
WAI 2429

IN THE MATTER OF

Te Ture Te Tiriti o Waitangi 1975

AND

IN THE MATTER OF

The Ngapuhi Mandate Inquiry (Wai 2490) and the claims concerning the Crown's recognition of the Tuhoronuku Deed of Mandate Wai 2341, Wai 2429, Wai 2431, Wai 2433, Wai 2434, Wai 2435, Wai 2436, Wai 2437, Wai 2438, Wai 2440, Wai 2442, Wai 2442, Wai 2483

AND

IN THE MATTER OF

An application by Waihoroi Shortland and Pita Tipene on behalf of Ngati Hine for an urgent inquiry into the Tuhoronuku Deed of Mandate (Wai 2429)

BRIEF OF EVIDENCE OF WAIHOROI SHORTLAND**Dated this 13th day of November 2014**

RECEIVED

Waitangi Tribunal

13 Nov 2014Ministry of Justice
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Introduction

1. My name is Waihoroi Shortland and I am the current Chairman of Te Runanga o Ngati Hine (“TRONH”).
2. On 14 April 2014 I, along with Pita Tipene and Erima Henare, filed an affidavit in support of the application by Ngati Hine for an urgent inquiry into the Crown’s recognition of the Tuhoronuku Deed of Mandate.
3. Ngati Hine chose to file an application for an urgent inquiry by this Tribunal because after years of opposition to the Tuhoronuku mandate process we had nowhere else to go. We filed the application because we are suffering prejudice, because the Crown, since 2010, has refused to abide by the decision of Ngati Hine to oppose and withdraw from Tuhoronuku in order to prevent the Crown from settling our historic Te Tiriti o Waitangi claims through a single, comprehensive, Ngapuhi settlement with Tuhoronuku. We filed the application because we are suffering prejudice because we are being forced into a mandate process which pits hapu against hapu, taurahere against the haukainga, and hapu against the Crown. We believe the Crown has an obligation under Te Tiriti o Waitangi to recognise and protect our rangatiratanga and work with us in partnership towards the settlement of our Te Tiriti o Waitangi claims.
4. We challenged the Crown to demonstrate where within the Tuhoronuku mandate process, are the figures or valid process that would enable the Crown to say that Ngati Hine has given Tuhoronuku a mandate on such a significant issue as the settlement of our historical Te Tiriti o Waitangi claims. Ngati Hine are able to, and have demonstrated, through consistent and clear collective decision making in opposition to the Tuhoronuku mandate process over the past five years, that no such mandate exists.
5. We have already provided a substantial body of evidence to this end and I do not want to be repetitious. Rather, the purpose of this evidence is to:
 - (a) Refer the Tribunal and parties to my existing evidence on the Wai 2490 Record of Inquiry and briefly summarise what that evidence has covered; and
 - (b) Respond to the specific Statement of Issues for this Inquiry, in particular:

- (i) *Issue 1.2 b) How did the Crown make the decision to recognise the mandate of Tuhoronuku: To what extent was the Crown's decision to engage with Tuhoronuku to develop a mandate strategy influenced by the views of hapu?*
- (ii) *Issue 1.3 g) Having made the decision to engage with Tuhoronuku to develop the mandate strategy for Ngapuhi, how did the Crown deal with the hapu and other groups in relation to the mandate. In particular: To what extent did the Crown consider the position of hapu and its obligation to actively protect the ability of hapu to exercise rangatiratanga?*
- (iii) *Issue 4) What events have occurred since the mandate decision and what impact if any do those events have?*
- (iv) *Issue 5 b) In terms of the mandating process as a whole, to what extent, if any, have the Crown's actions or omissions impacted on whanaungatanga/relationships within Ngapuhi? And to what extent is the Crown culpable for any negative impact?*
- (v) *Issue9) As to remedies, how might that prejudice be remedied?*

6. In responding to the above issues I:

- (a) Attach new documents as exhibits (see para 9 below);
- (b) Discuss the relevance of the Ngati Hine withdrawal from Te Runanga a Iwi o Ngapuhi ("TRAION"), which is a proceeding currently before the Maori Land Court; and
- (c) Provide the Tribunal with new evidence about events that have taken place since the last filing of evidence in June 2014, in particular, on how the Tuhoronuku Independent Mandated Authority election process has been carried out and how Ngati Hine are being forcibly included in the Tuhoronuku Deed of Mandate against our wishes.

7. Throughout my entire evidence I believe I provide relevant information pertaining to Issue 5 a) *In terms of the mandating process as a whole, to what extent can the mandate process be said to be open, fair and transparent enough*

to produce a robust and enduring settlement. In short, I say that the mandating process will not produce a robust and enduring settlement by virtue of the fact that the mandate process has not been open, fair and transparent.

Evidence on the Wai 2490 Record of Inquiry

8. My earlier evidence is contained on the Wai 2490 Record of Inquiry at the following references:

- (a) Wai 2490, #A4, Affidavit of Waihoroi Shortland (dated 22 August 2011) received, 19 September 2011 – this affidavit was filed in the Maori Land Court proceeding where Ngati Hine applied for a determination of a dispute that the Court assist in the withdrawal of Ngati Hine from TRAION. The affidavit was also filed in support of the then Wai 2341 application for an urgent inquiry into the application of the Crown’s settlement policy in Ngapuhi, due to the relevance of the issues before the Maori Land Court to the Crown’s mandate process for Tuhoronuku;¹
- (b) Wai 2490, #A12, Affidavit of Waihoroi Shortland, 14 April 2014 (sworn 19 May 2014) – in this affidavit I provide an overview of the TRONH structure, Ngati Hine hapu and marae, Ngati Hine’s vision and position on Tuhoronuku and the settlement of our Te Tiriti o Waitangi claims. I also discuss issues concerning the withdrawal of Ngati Hine from the Tuhoronuku Deed of Mandate and the nature of the division that has been caused in Ngapuhi due to the Tuhoronuku Deed of Mandate process;² and
- (c) Wai 2490, #A34, Affidavit of Waihoroi Shortland in reply to evidence of the Crown, 16 June 2014 – in this affidavit I discuss how, because of the flawed mandate process conducted between the Crown and Tuhoronuku, there is no Ngati Hine mandate for Tuhoronuku. I provide evidence against the Crown’s statement that we have not suffered significant and irreversible prejudice, and also go on to provide

¹ Herein referenced as “Wai 2490, #A4, Affidavit of W Shortland”.

² Herein referenced as “Wai 2490, #A12, Affidavit of W Shortland”.

information about the nature of the Tuhoronuku Independent Mandated Authority election process in so far as it affected Ngati Hine.³

New evidence – Exhibits

9. Attached to this brief of evidence are the following documents:
- (a) Exhibit “**A**” – Media release of Tuhoronuku dated 4 November 2014;
 - (b) Exhibit “**B**” – Letter dated 13 October 2014, from Minister Finlayson to Waihoroi Shortland regarding Ngati Hine submissions against Tuhoronuku Independent Mandated Authority Elections;
 - (c) Exhibit “**C**” – Letter dated 1 September 2014, from Waihoroi Shortland to Minister Finlayson filing papers in objection to the election of representatives to the Tuhoronuku Independent Mandated Authority;
 - (d) Exhibit “**D**” – Open Letter to Ngapuhi Nui Tonu – Ngapuhi have spoken again! Tuhoronuku IMA Structure;
 - (e) Exhibit “**E**” – Open Letter dated 30 July 2014, from Raniera Tau (Te Runanga a Iwi o Ngapuhi) regarding hapu representation at Iwi Chairs Forum;
 - (f) Exhibit “**F**” – Letter dated 13 February 2014, from Waihoroi Shortland to Raniera Tau responding to his letter regarding issues that arose at the Iwi Chairs Forum held from 4–5 February 2014 at Waitangi;
 - (g) Exhibit “**G**” – Letter dated 30 July 2014, from Minister Finlayson to Waihoroi Shortland advising that Nigel Fyfe, Lead Crown Negotiator will attend Ngati Hine Waitangi Tribunal hearing;
 - (h) Exhibit “**H**” – Letter dated 12 June 2014, from Waihoroi Shortland to Minister Finlayson inviting the Minister to attend the Ngati Hine Waitangi Tribunal hearing;

³ Herein referenced as “Wai 2490, #A34, Affidavit of W Shortland”.

- (i) Exhibit "I" - Letter dated 28 August 2014, from Waihoroi Shortland to Iwi Leaders Forum regarding TRAION's opposition to Ngati Hine attending the forum; and
- (j) Exhibit "J" – Letter dated 4 November 2012, from Waihoroi Shortland to Raniera Tau regarding issues that arose between TRAION and TRONH at a TRAION hui held on 3 November 2012.

Statement of Issue 1.2 b), 1.3 g) – The Crown's regard for hapu and active protection of hapu rangatiratanga

10. The Tribunal asks:

- (a) *Issue 1.2 b) How did the Crown make the decision to recognise the mandate of Tuhoronuku: To what extent was the Crown's decision to engage with Tuhoronuku to develop a mandate strategy influenced by the views of hapu?*
- (b) *Issue 1.3 g) Having made the decision to engage with Tuhoronuku to develop the mandate strategy for Ngapuhi, how did the Crown deal with the hapu and other groups in relation to the mandate? In particular: To what extent did the Crown consider the position of hapu and its obligation to actively protect the ability of hapu to exercise rangatiratanga?*

11. The very reason Ngati Hine commenced the application for urgency is because of a strong belief that the Crown had failed in its obligation to actively protect the ability of hapu to exercise rangatiratanga, and that the Crown had failed to adequately take into account the views of hapu.

12. One of the matters for the Tribunal to consider in addressing these issues is the nature of hapu rangatiratanga, and I acknowledge that this has been covered by Erima Henare in his evidence. What I do want to describe for this Tribunal, is how Ngati Hine rangatiratanga and tikanga have evolved and how they are exercised and translate into decision making in Ngati Hine today, for it is these cultural facets that the Crown has in my view, an obligation under Te Tiriti o Waitangi to understand, respect and actively protect hapu in any settlement process concerning Ngati Hine Te Tiriti o Waitangi claims.

13. I start with Ngapuhi.
14. Ngapuhi is described as a hapu based iwi. Erima draws the analogy with the proverb “Ngapuhi Kowhaorau” - if that were the primary definition of what Ngapuhi is, then Ngati Hine by the same definition is an iwi in its own right. I have long held the view that Ngapuhi is a flag of convenience that is unfurled from time to time to rally hapu to a shared objective. “Ngapuhi kowhaorau” speaks not of our division but of our fierce spirit of independence.⁴ Ngapuhi exists when hapu choose, of their own accord, to confederate. It has rarely been a “one in, everybody in” proposition that the mandate espouses. In essence, you may call hapu together, but they are not obliged to come. It is tikanga based on whanaungatanga and not of convenience.⁵ Our history is full of examples where the body corporate has not garnered the full will of the iwi. Ngati Hine itself is witness to the fragility of relying on Ngapuhi support through affiliation.
15. As Erima has said, the notion of Ngapuhi as an iwi has been manipulated and elevated through colonisation and political expediency. As this Tribunal will well know, the law has long since gained supremacy in matters that were once considered the domain of tikanga as it pertained to the collective ethos of the people/hapu. This estrangement from tikanga and collective decision making process that was tino rangatiratanga at work, has today left so many dislocated from both personal and cultural identity. Out of sight of that hegemony, Ngati Hine try to keep to the principles of what may be considered our cultural mores and practices, many of which have proven to be the best means of expressing our personal and collective responsibilities to one another.
16. Ngati Hine has, through its post Te Tiriti history, been blessed with singularly strong leadership; Kawiti, Maihi, Hoterene, Porowini Kaka, Te Riri Maihi Kawiti, Sir James Henare.⁶ The first two were potentate, Hoterene was transitional, Porowini Kaka was a strong personality that exerted his influence upon the

⁴ Wai 2490, #A34, Affidavit of W Shortland, para 12.

⁵ Wai 2490, #A34, Affidavit of W Shortland, para 12.

⁶ See Ngati Hine Statement of Evidence for Wai 1040 Te Paparahi o Te Raki Stage Two Hearings, in particular Te Wahanga Tuatahi – Biography of key Tupuna. This evidence is attached to the Brief of Evidence of Erima Henare.

people. The latter two could best be described as having gained the will of the people through exemplary service.

17. It was in 1887 that Maihi Kawiti established a runanga to provide political and operational leadership to Ngati Hine. Today Ngati Hine maintains that tradition, through TRONH, which is comprised of eight recognised hapu and thirteen marae.⁷
18. The last 25 years since the death of Sir James, the leadership vacuum in Ngati Hine has been filled by a growing collective of politically savvy, educationally endowed, well informed, professional and homespun mix of young and older ground-breakers. There is no doubt that a new regime of leadership is unfolding that will build upon Ngati Hine's past and set its own course into the future.
19. The strong language base that can still be found in Ngati Hine has ensured that the base for decision making is still an integral part of its cultural inheritance. But where it was once innate and instinctual, it now requires to be taught and learnt. Tikanga, which is the cornerstone of decision making as we know it, must adapt to the new demands that confront Ngati Hine but again, they are influenced by tradition.
20. I will now explain in some detail the structure of Te Runanga o Ngati Hine to demonstrate how Ngati Hine rangatiratanga and tikanga is preserved and respected in this model.⁸
21. Ngati Hine's vision is:

***Ma Ngati Hine ano a Ngati Hine e korero
Ma roto i te whanaungatanga me te Kotahitanga
'Self-determination through kinship and unity'***

22. By this, we mean that Ngati Hine will:
 - (a) Decide what is important for ourselves;
 - (b) Be unified, well organised and think strategically;

⁷ For recognised hapu and marae see Wai 2429, #A12 – Affidavit of W Shortland, para 6-7.

⁸ Set out at Wai 2490, #A4, Affidavit of W Shortland, Exhibit A.

- (c) Kia kotahi te reo, ko taua reo kia Ngati Hine – speak with one clear voice and that voice be Ngati Hine;
 - (d) Uphold with pride ‘te tu o Ngati Hine’;
 - (e) Re-establish control of te rohe o Ngati Hine and manage all our resources and taonga on our own terms; and
 - (f) Thrive economically and be politically independent.
23. The fact that the TRONH structure today reflects the choice by Ngati Hine to maintain its Runanga under tikanga and not to allow it to be encapsulated by legislation, is a pointer to how Ngati Hine intends to drive its decision making into the future. By having an executive body created as a legal entity that is clearly responsible to the tikanga based entity, Ngati Hine ensures that it is the people who determine the way forward and not the Trust it created as a functionary to administer its will.
24. For Ngati Hine, TRONH is the collective persona of every descendant of Hineamaru. When in attendance at any meeting of its representative body Te Mara a Hineamaru, they have full speaking rights. With a few exceptions they will also enjoy the right to vote on most issues. That is tikanga at work. Te Mara has an elected executive known as Te Manawatopu o Ngati Hine, and it is this body that will engage at every level, and in the case of Te Tiriti claims, to do the bidding of Te Mara and TRONH. Every decision made must inevitably be sanctioned or endorsed by Te Mara a Hineamaru. Again, this clearly demonstrates tikanga at work.
25. Even before the quest to secure a Ngapuhi mandate was launched, Ngati Hine made it clear to TRAION, and then to the Minister of Treaty Settlements and his officials, that Ngati Hine would not concede the negotiation of its Te Tiriti grievances to a TRAION sanctioned entity. This was because it was very clear to us that the Crown and TRAION, for all intent and purposes, seemed bent on a one size fits all settlement outcome; a single, comprehensive settlement for Ngapuhi.⁹ While the Crown appears on paper as willing to consult, it would be

⁹ See table of opposition contained in Wai 2429, Wai 2431 # 3.1.42, Opening Submissions, the letters and submission by Ngati Hine to the Minister contained in Wai 2490, #A12, Affidavit of W

fair to say that no alternative strategy was proffered or taken up when one was offered by Ngati Hine and others.¹⁰

26. From Ngati Hine's point of view, at that time the mandating process was flawed and a parallel negotiation was set up to cut across the proper investigation of our grievances. A one settlement scenario was loaded in favour of the Crown with its capped outcome more likely to yield a forgone conclusion rather than a real effort to come to a fair and just settlement. It would, and did, pit hapu against hapu in trying to achieve any kind of equity. People with no collective interest in what happened to Ngati Hine as a consequence of the Crown's breaches of Te Tiriti, would determine what might accrue to Ngati Hine in the final analysis. Ngati Hine, for its part, gained no comfort from being a part of a settlement of others grievances that had no bearing on our past, or more precisely, influence how Ngati Hine might engage with its future.
27. In fact, Ngati Hine took exception to being told by those promoting the mandate that all claims would be set aside in favour of Ngapuhi, that what happened to hapu or its claimants were to be taken as a grievance against Ngapuhi.¹¹ The arrogance of such an assertion cuts to the heart of why Ngati Hine regards the usurpation of its claims as a slight that is only being exacerbated further by the Crown's endorsement of the mandate.
28. It was for these reasons that, as early as November 2010, Te Mara a Hineamaru of TRONH, exercised rangatiratanga and collective decision making and passed the resolution to oppose TRAION/Te Ropu o Tuhoronuku from directly negotiating the settlement of Ngati Hine Te Tiriti o Waitangi claims.¹² We have been embroiled in this fight ever since.

Shortland, and the letters attached to this brief of evidence for occasions where Ngati Hine met and wrote to the Minister regarding settlement, including the option to work with other groups.

¹⁰ Ibid.

¹¹ Ibid.

¹² Statement of claim, 14 April, Wai 2429, #1.1.1, para 13.

Ngati Hine withdrawal from Te Runanga a Iwi o Ngapuhi

29. In August 2011, Ngati Hine commenced a proceeding in the Maori Land Court under the Maori Fisheries Act 2004, where the assistance of the Court was sought to resolve the dispute concerning the withdrawal of Ngati Hine from the Te Runanga a Iwi o Ngapuhi charitable trust. Due to the relevance of this case to the Tuhoronuku mandate, in September 2011 we included the evidence and, later in 2014 the Court decisions, in our evidence that was filed in support of this urgent Inquiry.¹³
30. Without cumbersome repetition I do wish to restate key points from the Maori Land Court proceeding in order to demonstrate the complexity of the issues that arise for Ngati Hine in being forced into the Tuhoronuku Deed of Mandate by the Crown and also to highlight that the Crown, who joined as a party to the proceeding, was very well informed of the relationship between Ngati Hine and TRAION and Ngati Hine's position on settlement.
31. TRAION is a charitable trust established in the late 1980s. It was Hakopa Te Whata who wrote to Kevin Prime asking if Ngati Hine wished to join the Charitable Trust he was establishing for Ngapuhi. Ngati Hine agreed, and because Ngati Hine already had its own representative structure with defined hapu and marae we were added as a takiwa in our own right.
32. The TRAION Board consists of eight trustees elected by groupings of marae and hapu within Ngapuhi (known as "takiwa") and two trustees elected from Ngapuhi living in Auckland and Waitakere. Our elected trustee was, until an alleged conflict of interest regarding settlement matters, Pita Tipene.¹⁴
33. The amendments in 2008 to the TRAION Trust Deed enabled TRAION to become the joint mandated iwi organisation for Ngapuhi for the purpose of receiving Ngapuhi's share of the controversial Maori fisheries settlement.
34. There was a distinct difference in the way TRAION operated compared to Ngati Hine. One of the by-products is that, during TRAION's early operation, Ngati

¹³ See Wai 2490, #A 4, Affidavit of W Shortland. See Wai 2490, #A13, Affidavit of P Tipene, Exhibit D and E.

¹⁴ Wai 2490, #A13, Affidavit of P Tipene, para 13.

Hine established our health trust, radio station and environmental and education units.

35. Given that it was under Sir James Henare's direction that Ngati Hine first joined TRAION, it was perhaps fitting that it was his son, Erima Henare who led submissions to the Maori Affairs Select Committee that resulted in Ngati Hine being given the right to withdraw from TRAION pursuant to the Maori Fisheries Act 2004.
36. Ngati Hine did not make the decision to leave TRAION and exercise our statutory right to withdraw lightly. It was the subject of a great deal of discussion and debate but, at the end of the day Ngati Hine decided that TRAION was not an organisation that has served its needs well. In addition, the decision to exercise our right to withdraw stems from our vision:

***Ma Ngati Hine ano a Ngati Hine e korero,
Ma roto i te whanaungatanga me te Kotahitanga
'Self-determination through kinship and unity'***

37. We had completed the preliminary and formal process of withdrawal as set out in the Maori Fisheries Act, including the need to conduct hui to obtain a mandate to withdraw from TRAION. In each round of hui there was overwhelming support (99%) for the decision to withdraw.
38. Regrettably, despite considerable efforts extending back several years, Ngati Hine were unable to resolve issues with TRAION that would see the completion of Ngati Hine's withdrawal from the charitable trust.
39. Even whilst we were in the midst of the withdrawal process from TRAION, TRAION continued to undermine Ngati Hine's right to withdraw by first promoting and then implementing a proposal to seek a mandate to settle Ngati Hine's historical Te Tiriti o Waitangi claims. This was despite the fact that we consistently advised TRAION that Ngati Hine did not support its mandate proposal.
40. In fact, one of the outcomes of our continued opposition to the Tuhoronuku mandate proposal was the unwarranted exclusion of our Takiwa representative

Mr Pita Tipene from those parts of the TRAION Board meetings at which the Tuhoronuku proposal was discussed, due to his alleged conflict of interest as Chairman of Te Kotahitanga o Nga Hapu Ngapuhi (“TKONHN”).

41. Ngati Hine sought Court orders that Ngati Hine be removed from the Tuhoronuku mandate process on the basis that the mandate proposed to bind Ngati Hine to the very entity that it was seeking to exit. This argument raised questions concerning the independence of TRAION from Tuhoronuku and, even three years since that application was filed, a quick scrutiny of the Tuhoronuku Independent Mandated Authority shows that many of the members are very closely connected to TRAION. To state the obvious, the two entities share the same Chairman.
42. When Ngati Hine included its objection to the mandate in its application to the Maori Land Court to withdraw from TRAION, it is noteworthy that the Crown saw fit to join TRAION and oppose Ngati Hine. I ask this Tribunal, can the Crown be considered to be acting in good faith and reasonably towards Ngati Hine, when it joined in support of TRAION to circumvent Ngati Hine’s decision to withdraw from TRAION and the Tuhoronuku Deed of Mandate?
43. From our point of view, the Crown’s interest was about protecting a one size fits all mandate and one settlement for Ngapuhi. When the Maori Land Court declined the application for lack of jurisdiction, the Maori Appellate Court followed suit while pointing us to another jurisdiction. As I mentioned, our point was then and still is now, that while we are trying to exit TRAION on one hand, the Crown in conjunction with the mandate seekers were set to draw us back in under the guise of this mandate. The fisheries settlement was anathema to Ngati Hine in 2004, and a decade later this new concoction of the same foul process is no less odious. To use a fishing metaphor, it stinks to high heaven.
44. Since 2013, Ngati Hine and TRAION have been engaged in out of Court discussions (as directed by the Court) in an attempt to reach a resolution without the intervention of the Court. Little if any meaningful progress has been made.

Statement of Issue 4) - Impact of events that have occurred since the mandate decision

Ngati Hine representatives on Tuhoronuku IMA

45. The Tribunal asks:

(a) Issue 4) What events have occurred since the mandate decision and what impact if any do those events have?

46. In my reply affidavit for this Inquiry I discussed the election process for the Tuhoronuku Independent Mandated Authority that was taking place at that time.¹⁵

47. I noted that the election process for hapu kaikorero to the Tuhoronuku IMA was being executed at a rapid pace, with very little information and that it was difficult for our people to engage and oppose the process. Our people were frustrated as they could not believe that, in the face of our consistent and clear opposition, we were still included in the Deed of Mandate and forced to be involved in the election process.

48. It was only on 5 May 2014 that it came to our attention via a notice from the business contracted to scrutineer the process, Electionz, that nominations had been received for Marcia Hau (Ngati Hine), Joe Davis (Ngati Kopaki) and Mere Mangu (Te Kau i Mua) to represent Ngati Hine on the Tuhoronuku IMA. This was the first formal notice we received of their nominations and we found it on their website. No meetings were called by those nominated hapu kaikorero to seek approval from Ngati Hine. Because they were the only nominees for those hapu, it meant that an election for these Hapu Kaikorero was not required and they were automatically elected to the Pewhairangi Taiwhenua grouping of the Tuhoronuku Independent Mandated Authority.

49. Like a number of hapu, Ngati Hine gave the whole of Tuhoronuku IMA due consideration before passing a resolution not to acknowledge, join or participate in any selection process that would take place as a result of the Crown endorsing the mandate. Ngati Hine overwhelmingly voted to reject the mandate outright and signalled through its Marae representatives, as well as its

¹⁵ Wai 2490, #A34, Affidavit of W Shortland, para 20 – 39.

hapu constituency, to oppose any nominations that may arise as a consequence of this mandate.¹⁶

50. Ngati Hine was therefore required to commence a process to address the representation issues which had arisen because of three individuals accepting positions on the Tuhoronuku IMA against the wishes of hapu. The process for the withdrawal of a nominee as prescribed by the Deed of Mandate was convoluted and entirely impractical. Where someone can be nominated and elected by one individual, it then requires the signature of 90 registered members to remove that person and, according to the Deed of Mandate, that process could simply repeat.
51. As part of our opposition to the nominations:
 - (a) On 7 and 16 May 2014, we wrote to the Minister notifying him of issues with the election process, including representation issues that had arisen due to a process which allowed individual nominations and automatic elections to the IMA. We questioned how acceptable such a process was, that an individual might seek to represent against the collective will of its constituents;¹⁷
 - (b) On 14 May 2012, we held a special hapu hui at Otiria Marae. The primary hapu in this hui passed another set of resolutions rejecting once again the Tuhoronuku kaikorero election process and the nominees;¹⁸
 - (c) On 19 May 2014, a representative of TRONH commenced a submission process and received over 1000 signatures opposing the Tuhoronuku Deed of Mandate and nominated Hapu Kaikorero;¹⁹
 - (d) On 7 June 2014, representatives of TRONH travelled to Auckland to hold two hui to inform our people about Tuhoronuku; and
 - (e) On 24 July 2014, a hui was called by Mere Mangu (Tuhoronuku IMA representative for Te Kai i Mua) to discuss their appointments. There

¹⁶ Wai 2490, #A12, Affidavit of W Shortland, Exhibit C.

¹⁷ Wai 2490, #A34, Affidavit of W Shortland, 27, 29, 30, 31.

¹⁸ Wai 2490, #A34, Affidavit of W Shortland, 27, 29, 30, 31, for resolutions see para 28.

¹⁹ Attached to this evidence as Exhibit "K".

was a significant turn out, with the hui opposing all three nominated Hapu Kaikorero for Ngati Hine.

52. These submissions, collected in opposition to Tuhoronuku and the nominated hapu kaikorero, and the letter to the Minister dated 1 September 2014 are attached to this Brief of Evidence as Exhibit "K".
53. Inevitably, as mentioned above, three people were nominated to represent Ngati Hine hapu and in the end it took only one person to nominate another to ensure that that person's name would go forward as a hapu kaikorero. In the case of the three nominees from within Ngati Hine, only Mere Mangu by any measure could be said to have some local profile. One was nominated from Sydney, Australia where she had lived for the last forty years. The other was nominated from Vanuatu, one presumes, because he could not find another person from within the hapu who would put his name forward. All three at some point attended public hui called in the main by the hapu concerned and were asked to stand down. Every one of them refused to do so.
54. I was present at two of the meetings involving kaikorero purporting to represent Ngati Hine. At both, against the obvious objections of the attendees, there was no way of dissuading the nominees from the course they had chosen to take.
55. In short, this process which sought to usurp the collective rights of hapu by exerting the right of the individual to stand on a one person nomination, then insisted that it would take the registration of 90 objectors to remove the nominee. When Ngati Hine tried to register its objections, the supervisory agency, Electionz, begged off saying it merely ran the election process not the objection process. When we approached the Tuhoronuku board, we were told that no objections could be dealt with until the new board had been elected. This meant that all nominated hapu kaikorero would engage in the election of the Tuhoronuku IMA without intervention. In short, it would do the one thing we objected to most without fear of contradiction, which is exemplary of the entire mandate process.
56. The Minister of Treaty Settlements took time out from campaigning to congratulate the newly elected Tuhoronuku IMA as if it were an overwhelming

endorsement of the mandate, the Crown's support of it and the dissipation of any opposition that may have existed.

57. In truth, in the Taiwhenua that involves Ngati Hine, eight individual Kaikorero were endorsed, seven assumed their places unopposed and got to elect three of its number to represent the 23 individual hapu advertised for Te Pewhairangi. Eight of those hapu were from within Ngati Hine. Kara George (Te Kapotai), Te Huranga Hohaia (Ngati Rehia) and Mere Mangu (Tekau i Mua) are the three elected members for Te Pewhairangi. I just simply cannot fathom how such an election and representative structure could have been endorsed by the Crown.
58. Typically we received an underwhelming acknowledgement from the Crown of the 1000 plus objections collected from within Ngati Hine opposing Tuhoronuku and the nominated Hapu Kaikorero for Ngati Hine. The Minister advised that his officials have discussed the submissions with representatives of Tuhoronuku and they will be considered at the next Tuhoronuku Board meeting.²⁰

I expect that Tuhoronuku will consider your correspondence in accordance with the processes set out in the Deed of Mandate Addendum at pages 18-20 and my officials will report to me once Tuhoronuku's review is complete.

59. So again we have complete power and decision making occurring between the Crown and Tuhoronuku and our rights and interests remain at their whim.
60. In this letter, the Minister goes on to talk about the condition of the mandate that Tuhoronuku is to develop communication and negotiation plans that recognise the specific hapu interests saying:²¹

This mandate condition was imposed to address issues raised through the mandating process by groups within Ngapuhi, and by the Crown, and to acknowledge the importance of hapu mana within Ngapuhi.

The newly elected Tuhoronuku hapu kaikorero and trustees will need to develop these plans. The Crown will make an assessment

²⁰ See Exhibit "B".

²¹ See Exhibit "B".

to determine whether Tuhoronuku has sufficiently fulfilled its mandate conditions and whether negotiations should begin or whether further work is required.

As I advised in my letter of 23 May 2014, it would assist me if you could provide further information on your concerns about Tuhoronuku's mandate maintenance as soon as possible.

61. The Minister also advised that the Lead Crown Negotiator was also available to meet to discuss our concerns and to “find a pathway forward for the benefit of Ngati Hine and for all Ngapuhi”.²²
62. Having been in this process for so long, personally I feel this letter shows that the Crown continues to force Ngati Hine to remain in the Tuhoronuku mandate while appearing conciliatory to change. That change never comes. There is no tenable process for withdrawal. The Crown is once again testing the resolve of hapu to hold out. In the case of Ngati Hine, I believe the Crown has wrongly assumed we are doing so in order to get more. We could equally assert that the Crown is holding out against the overwhelming evidence that this mandate is indefensible under any scrutiny, simply so that it has to give up less.
63. The question Ngati Hine might pose is, “we might get more than what?” Settlements have shown that the Crown has always fallen well short of what is due - Maori having to settle for what it manages to extract from a well-known recalcitrant.
64. This is usurpation of mana by stealth, it was the one thing the Crown could not achieve with the original signatories to Te Tiriti o Waitangi and, as flawed as this mandate is, if it is allowed to stand, Tuhoronuku will do irreversible damage to the last vestiges of tino rangatiratanga hapu still enjoy. After this there will be nothing to salvage of the promise both sides may have intended so long ago. Even as time has proved, we have never really understood what William Hobson obviously did not know when he uttered meaninglessly, “He iwi kotahi tatou.”

²² See Exhibit “B”.

Recent media release by Tuhoronuku

65. The most recent media release from the Chairman of Tuhoronuku is most concerning. I copy it here before responding:²³

Waitangi Tribunal urgent hearing “unnecessary, a waste of money and will further hold back Ngāpuhi and Northland socially and economically” – Ngāpuhi leader Raniera (Sonny) Tau

- *The hearing’s estimated \$2 million total cost could provide a million hot meals for Ngāpuhi and Northland schoolchildren*
- *Waitangi Tribunal has already “pre-determined the outcome” of the one-week hearing from 1-5 December*

The December Waitangi Tribunal urgent hearing into the Tūhoronuku mandate is “unnecessary, a waste of money and will hold back Ngāpuhi and Northland socially and economically,” says Ngāpuhi leader Raniera (Sonny) Tau.

After the biggest awareness and communications exercise in the history of iwi Māori, Ngāpuhi overwhelmingly gave their mandate to Tūhoronuku in 2011 – 76.4% of those who voted.

“Since then, a small but vocal group – with no democratic representation that we are aware of and no accountability – has forced delay after delay to the historic Ngāpuhi settlement, which will funnel hundreds of millions of dollars into the Northland economy, with resultant jobs, housing and health improvements.”

Earlier this year the opposing grouping went to the Waitangi Tribunal seeking an urgent hearing into the validity of the Tūhoronuku mandate.

The Waitangi Tribunal has agreed to hold an urgent hearing from 1-5 December, in a written decision which said the claimants “are suffering or likely to suffer significant and irreversible prejudice”.

Said Mr Tau: “What is the point of holding a \$2 million hearing if the Tribunal has already pre-determined its outcome, before it hears all the evidence?”

“Has it taken into consideration that:

- *by far the majority of Ngāpuhi want settlement so their iwi can finally move from grievance to development mode*
- *Tūhoronuku has made concession after concession to the small opposing grouping, but nothing is ever enough for them*

²³ Exhibit A.

- *Ngāpuhi hapū now have the majority voice at the Tūhoronuku table, with 15 of the 22 representatives (this was the small grouping's main issue in the beginning)*
- *most telling, the small opposition grouping refused to participate in any way in our recent representative elections – worse than that, they intimidated those who did take part.*

“The four or five so-called leaders of this small grouping have to look into their souls. Because, what they are doing is holding back the Ngāpuhi nation. Their own people - some of whom are the poorest and their children the most vulnerable in the land – possibly for a further five, ten years or even generations.

“They have their own personal agendas, which are about gaining power for themselves, not about advancing the sacred house of Ngāpuhi and its people.

“As for the Waitangi Tribunal, at this time when the entire nation is focussed on child poverty, how can it justify the shocking waste of approximately \$2 million – because that will be the ballpark total cost for the Tribunal, Crown, claimants and Tūhoronuku preparing for and attending this hearing.

“It is important to realise how urgent settlement is needed in Northland, where we have:

- *approximately 50 percent of Māori (15 and over) living on \$20,000 or less a year, which is regarded as the poverty line*
- *just over 50 percent of Ngāpuhi in Northland (15 and over) have no work*
- *70 percent of Far North school-children are in Decile 1-3 schools.*

“These are shocking statistics, provided to us by Statistics New Zealand and the Ministry of Education.

“You only have to look at the benefits post-settlement iwi, such as Ngai Tahu and Tainui, are bringing to their people. Both have assets of more than \$1 billion each, and in the case of Ngai Tahu, has created more than 600 jobs. Each of Ngai Tahu's 18 regional rūnanga gets \$320,000 annually.

“This could be happening in Ngāpuhi and Northland, except for a small group who don't seem to care that their own people are poor, going to school without food, and if they have their way this could be the lot of Ngāpuhi for generations to come.”

66. I now respond. My message to the Crown and Tuhoronuku is this; the capacity of the Chairman of TRAION/Tuhoronuku to mislead the public on everything to do with the settlement of the last big treaty claims in the North seems to know

no bounds, that his incredulity can only be matched by his comments on the urgency hearing next month.

67. For an organisation whose leadership has seen in excess of \$3 million dollars of public funds to attract a mere 5,000 of the 120,000 Ngapuhi to support this mandate, it is a bit rich to be calling others wasteful.
68. TRAION is hardly an endorsement for the advancement of Ngapuhi. It took a 60+ million fisheries settlement, de-valued it, spends more than 70% of its annual income administering itself, and has not by any measure shown remarkable investment nous, if buying into a petrol station, a paper plus store and pulling down a derelict hotel is anything to go by. We should be concerned that this is the track record of the organisation pushing to settle our Te Tiriti claims.
69. To say the Tribunal has “pre-determined the outcome” of the urgency hearing is ill-informed, and making assertions with no regard to fact or fiction. The fact is, the Waitangi Tribunal has made no such determination and what is more, it was at great risk to the applicants that the hearing was even granted. The Tribunal could have said that there was no case to answer.
70. What TRAION/Tuhoronuku should be afraid of is that their so-called mandate will now come under close examination and that it will not withstand the scrutiny. Their ally, the Crown, who is at the butt end of this challenge, is where we are focused. TRAION and Tuhoronuku are merely interested parties.
71. If Tuhoronuku and TRAION were confident with the veracity of their mandate, it could indeed be a waste of their time, in which case all they need to do is not turn up.
72. To align the settlement of our Te Tiriti grievances with the impoverished state of the Northland economy as if it were the fiscal responsibility of hapu to drag the North out of its malaise, is to assume that hapu are somehow responsible for it. The truth is that in most of the areas where settlements have been made there is no perceptible difference to the everyday lives of most Maori.
73. Settlements have hardly been equitable and yet they are expected to deliver where governments have not.

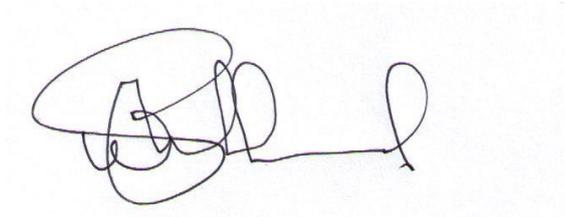
74. Job prospects in Northland may be a concern for all of us, but treaty settlements are not the panacea we are waiting for.
75. Most Maori children attend decile 1-3 schools all over the country. Settlements have not changed a single school anywhere and it will not in Northland.
76. Quoting the Ngai Tahu and Tainui billion dollar economic base is as much about TRAION and Tuhoronuku's own grandiose pretensions and self-seeking agenda they so quickly want to attribute to others, but fail to see in themselves. Leadership of hapu in Ngapuhi cannot afford to be supplanted by an organisation that has been created by a flawed process. The urgency hearing is the only option left to those who want to see a fair, just and durable settlement in the North.

Statement of Issue 9) – How might any prejudice be remedied - He ara hou

77. At Issue 9 the Tribunal asks:
 - (a) *Issue 9) As to remedies, how might that prejudice be remedied?*
78. There always were and there still are other options for negotiating and settling our claims. If we began with where we want to end up and what that might look like when we get there, then plotted our way back to where we are now, we will surely be more certain of finding the solution that will best deliver what is right, just and enduring.
79. Even if there was a time Ngapuhi acted cohesively in the interest of its constituent parts, it is not today's reality. At best there are at least five natural groupings of hapu. There may be more, but there certainly is not less.
80. Much of the thinking around alternative models for settlement has already been done, and they exist in the reports of Te Roopu Whaiti, Tuku Mogan's He Ara Hou and our own letters and correspondence with the Crown.
81. We seek from the Tribunal findings and recommendations that will give us the capacity to negotiate a mandate with those with whom we have a shared history, whose experience with the Crown mirrors our own, whose interests going forward will fall within the ambit of Ngati Hine's own needs, economic potential and social responsibilities. The capacity to promote the mutual benefit

of collective action with those we have learnt to trust. If all else is unattainable, then to be allowed to simply start again.

82. To Tuhoronuku I say step down, step away and allow hapu the time and space to rebuild a purposeful future based on now and not be imposed upon by the past. Self-determination demands it.
83. To the Crown, I ask for an open and fair engagement that we can look back on with pride, carry forward with dignity and hang on to honestly without fear of contradiction.

A handwritten signature in black ink, appearing to be 'Waihoroi Shortland', written in a cursive style. The signature is contained within a light blue rectangular border.

Waihoroi Shortland, 12 November 2014