BEFORE THE WAITANGI TRIBUNAL

WAI 2490
WAI 2431
WAI 2429

IN THE MATTER OF	The Treaty of Waitangi Act 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 Te Riwhi Whao Reti, Hau Hereora, Romana Tarau and Edward Cook on behalf of Te Kapotai for an urgent inquiry into the Tuhoronuku Deed of Mandate (Wai 2431)
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 WILLOW-JEAN PRIME IN REPLY

Dated this 27th day of November 2014

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Introduction

1. My name is Willow-Jean Prime. I am Te Kapotai, Ngati Hine and Ngapuhi. I provide this reply evidence in support of Te Kapotai (Wai 2431), Ngati Hine (Wai 2429) and hapu and whanau who oppose the Tuhoronuku Deed of Mandate.

2. My evidence responds to the following evidence by Tuhoronuku and the Crown:

   (a) Kara Paerata George (Wai 2490, #A85);

   (b) Sonny Tau (Wai 2490, #A82);

   (c) Marcia Hau, dated 14 November 2014;

   (d) Sam Napia (Wai 2490, #A90(b)); and

   (e) Maureen Hickey, dated 20 November 2014 (Wai 2490, #A108)

3. Ms Hickey's affidavit was lengthy and she has spent considerable time responding to my evidence, with more than 40 references to me personally and the evidence I have filed. I cannot accept the evidence Ms Hickey has provided in response, or agree with the conclusions she reaches and the generalisations and assumptions that are made therein. In fact, Ms Hickey's evidence raises more questions than it provides answers, because for the very first time in four years, the Crown is now responding to some of the issues that we have raised in what appears to be an attempt to protect itself and win this case. Throughout my evidence, I put these questions for the Tribunal's consideration and the Crown's. I am interested in getting more answers, whether it be through a report by this Tribunal or a response by the Crown.

4. I apologise to the Tribunal in advance for the length of my evidence, and where it is repetitious at times. However, I felt that I must respond to points where I believe Ms Hickey has misinterpreted my evidence, and where there has been a misrepresentation of our hapu position and flaws in the process. I hope that my reply evidence further clarifies some of the key issues for our hapu.

5. What I ask the Tribunal to do is look at the evidence, which in my view makes it very clear that there has been issue after issue in terms of the process, and that the Crown has failed to resolve the issues as they have arisen. To say now that Tuhoronuku has a mandate and they are so far into the process that it is too late, is, quite frankly, wrong. The mandate was not validly acquired, and the Crown was aware of the issues every step of the way but did not stop the process.

Brief of Evidence of Kara Paerata George, 14 November 2014 (Wai 2490, #A85)

6. In response to Mr George's affidavit I would like to provide the following general responses.

7. To be clear, Mr George is not a mandated hapu kaikorero for Te Kapotai.

8. Mr George's affidavit is largely opinion and he does not provide any evidence to substantiate his statements.

9. Mr George is desperate to justify his actions and to prove that he has some kind of mandate from the hapu. His actions are not pono and tika and they undermine our hapu rangatiratanga.

10. Furthermore, the Crown, Tuhoronuku and Electionz have been made aware of our issues and that Mr George is not a mandated hapu kaikorero for Te Kapotai, and we believe they have all been complicit in the undermining of our hapu rangatiratanga.

11. My affidavit shows it is clear that:

    (a) Mr George has taken it upon himself to make decisions for Te Kapotai, whilst disrespecting and undermining our hapu tikanga, processes and decisions;

    (b) Mr George is an individual with his own agenda going against the position of our hapu;

    (c) Mr George has been unable to get hapu support through our hapu processes, so he has chosen to circumvent them by using the

Tuhoronuku process to be "elected" as a Mandated Hapu Kaikorero for Te Kapotai for the Tuhoronuku IMA; and

(d) The Crown and Tuhoronuku have been informed about our issues and have ignored them and continue to push through the settlement process.

12. I will now deal with specific points in Mr George's affidavit.

13. Paragraphs 2, 3 and 4 are Mr George's opinion. Our evidence shows that:

(a) The election process was not fair;

(b) Our hapu do not see Tuhoronuku as the way forward;

(c) There is/are in fact alternatives;

(d) Tuhoronuku could still settle our claims before they have been heard in the Te Paparahi o Te Raki Inquiry;

(e) A parallel process does not give Te Kapotai comfort and it is still an issue; and

(f) Tuhoronuku have not listened to the opposition and they have not made changes to their Deed of Mandate, which illustrates to us that Tuhoronuku is dedicated to representing the views of Te Kapotai and Ngapuhi.

14. In terms of the background and Mr George's suggestion that *"This is why I have the mana to speak on these issues for Te Kapotai"*[1], Mr George has no mana to speak on these issues for Te Kapotai. Mr George is no longer a mandated hapu kaikorero for Te Kapotai. What mana he did have to represent Te Kapotai Te Tiriti o Waitangi Claims has clearly been revoked, and this is evidenced in my earlier affidavit and in this reply affidavit.

15. My evidence also shows that at a number of meetings, namely the Waikare Marae Trustees Hui, Waikare Maori Committee Hui and Te Kapotai Hapu Claims Hui, resolutions were passed which clearly show that Te Kapotai no

[1] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 6.

longer support Mr George as a mandated hapu kaikorero for Te Kapotai, and have opposed Mr George's nomination and election to the Tuhoronuku IMA.

16. Therefore, Mr George does not have the support of our hapu to represent our hapu on Tuhoronuku. Nor does he have the support of our hapu to speak and make decisions for our hapu which concern the settlement of our Te Tiriti o Waitangi claims. Karen Herbert and I continue to have a mandate from our hapu to be hapu kaikorero for Te Kapotai for our Te Tiriti o Waitangi Claims, and we continue to faithfully represent the position of our hapu.

17. At paragraph 8 of his evidence Mr George says:[2]

> *I became disillusioned alongside a number of other whanau and hapu members when there was a lot of raru with Te Kotahitanga and Ngati Hine. Once Willow Jean-Prime began acting as a lawyer for Ngati Hine there was much obfuscation about where the Te Kapotai Claim was being taken and in what direction the hapu was being dragged.*

18. Who are the whanau and hapu members Mr George refers to and at which hui were these issues raised? There has been no obfuscation and Te Kapotai has not been dragged in any direction. Our decisions were made at hui, they are very clear and well recorded.

19. In terms of Mr George's claim, in paragraph 8 and later in paragraph 19, that I began acting as a lawyer for Ngati Hine and that I have a conflict of interest, he is wrong. I am not and have never been the lawyer for Ngati Hine or for Te Kapotai. I have never been instructed as a lawyer by Ngati Hine or Te Kapotai to act on our Te Tiriti o Waitangi claims. Mr George should know that Te Kapotai first instructed my sister Season-Mary Downs, who was then at Kensington Swan in Wellington, to act in respect of our Te Kapotai Te Tiriti o Waitangi claims, Wai 1464/1546. When she moved to McCaw Lewis, McCaw Lewis were instructed to act for Te Kapotai. In terms of Ngati Hine's legal representation in 2009, Michael Doogan, now Judge Doogan, was instructed as a Barrister for Ngati Hine's Te Tiriti of Waitangi claims. Mr Doogan was later instructed to act for Ngati Hine in its withdrawal from TRAION proceeding before the Maori Land Court. Subsequently, McCaw

[2] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 8.

Lewis were instructed to act for Ngati Hine on their Te Tiriti o Waitangi claims when Mr Doogan was appointed as a Judge to the Maori Land Court. Karen Feint, a Barrister, was instructed to act for Ngati Hine in the Maori Land Court proceedings. Throughout this claims process, Te Kapotai and Ngati Hine have been legally represented by barristers and solicitors with very extensive knowledge and experience.

20. At paragraph 9, Mr George says:[3]

> *A variety of people with nebulous connection to both the Waikare community and Te Kapotai began arriving at monthly marae meetings to promote resolutions that dragged our people in a variety of directions.*

21. I consider that the first statement is offensive to those who participate in and contribute to our hapu. Mr George seems to have an issue with those who live in Waikare and those who do not attend our hui and make decisions. Who exactly are the variety of people with nebulous connection that Mr George is referring to? Who are the "vocal minority" who do not live in Waikare that he refers to in paragraph 14?[4] And who are the people that we were "shipping in" to vote at hui who do not usually turn up?

22. To be clear, it is our tikanga that our hui are open. Everyone is welcome to attend and participate in the korero. However, in terms of our Waikare Marae Trustees meetings, only the Trustees can make decisions and Mr George knows this. The meeting to which Mr George refers to was, as he knows, a Waikare Marae Trustees hui, and the resolution was therefore passed by the Trustees, not these people Mr George claims have so-called "nebulous connections". I also note that the Waikare Maori Committee hui following our Waikare Marae Trustees hui, is open to everyone, and all those at the hui endorsed the Waikare Marae Trustees resolutions but by that time Mr George had left the meeting.

[3] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 9.
[4] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 14.

23. Mr George goes on to say in paragraph 9 that the monthly marae meetings were:[5]

> *… very loud affairs, with a lot of abuse pointed in my particular direction encouraged by the chair of the Marae Trustees.*

24. I wish to clarify that our Waitangi Tribunal claims (save the booking by Electionz) are usually dealt with during the Waikare Maori Committee hui (which follows our Marae Trustees hui), and note that I am not the Chair of the Waikare Maori Committee, the Chair is Joe George. I have never encouraged people to be loud or abusive in any aspect of my personal and professional work, and I reject Mr George's comments made in that regard. Mr George, through his actions, has actually made my job as the Chair extremely difficult. It is his actions that have caused people to become frustrated, hoha and angry because he is going against the decisions we have made, and I have a difficult time trying to manage this in meetings. It is important to note that there are other reasons unrelated to our Te Tiriti o Waitangi claims that explain why our meetings are very loud affairs and why abuse is often pointed in his particular direction. Again, this is not being encouraged by me and I try my best to manage it.

25. At paragraphs 9 and 10, Mr George talks about the Electionz booking and the "breaking of tikanga",[6] and my authorisation of the media article. The decision to decline the booking was made by the Waikare Marae Trustees and it was not made lightly. As you can see from our records, kaumatua and kuia were at the hui and voted for the resolution:

> *Motion: That we decline the request for the booking on the basis that our hapu oppose Tuhoronuku and this process and include our resolution from last months meeting for your information. Send to media 5 papers, Northern News, Northern Advocate, Bay Chronical, Northland Age and Whangarei Report and facebook and letters to the Ministers, cc to Tribunal and Tuhoronuku and the Independent Returning Officer.*

[5] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 9.
[6] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 9, 10.

26. In terms of the media article and letters, the Secretary and I were simply carrying out the resolution of the meeting, as is normal practice.

27. As we know, the Tuhoronuku Election hui took place on 3 June 2014. Please refer to my earlier evidence[7] which includes the recording, transcript and attendance list.

28. Mr George goes on to say at paragraph 10:[8]

> *…This was an abusive, intimidating affair with loud interruptions and an attempt to throw a resolution on the floor to negate the election process.*

29. Mr George is correct about the wairua of this hui and this is what I tried to explain in my earlier affidavit.[9]

30. You can clearly see that our hapu is frustrated and hoha. We have been forced into the Tuhoronuku mandate process for four years against our wishes because the Crown and Tuhoronuku refuse to remove our hapu, marae and Te Tiriti o Waitangi claims. Mr George is now, because of his individual personal view, trying to force us into the Tuhoronuku IMA and negotiations process. He is doing so against the wishes of our hapu, and the behaviour Mr George is referring to in his evidence is the division, damage and prejudice that I speak of throughout my evidence which is being caused by this process.

31. I want to be clear that I did not Chair this meeting. Our kaumatua and kuia were there and they guided the hui.

32. Further, it was not an attempt to *"throw a resolution on the floor to negate the election process".* I put that resolution to the floor. I would have appreciated the space to do so freely, but as I mentioned in my evidence dated 12 November 2014,[10] and as the transcript and audio will show, Mr Munro was constantly trying to talk over me and make me stop and sit down.

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[7] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014.
[8] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 10.
[9] See reply evidence below on comments on TPK Independent Observer Reports.
[10] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014.

In spite of that, the motion was passed with only two objections in the whole hui; from Mr Kara George and Mr Joe George, the two nominees. Therefore, i korero te whare.

33. I want to mention here that the issue of declining the booking was raised by one of our kaumatua at our Waikare Maori Committee following the Tuhoronuku IMA Election Hui. We were told that it was wrong to not accept the booking, and that what we should do is invite them to the marae and then deal with the *take* with the people here. Whatever the people say at the hui is our response/position. In the case of Tuhoronuku, it was noted that they came, they bought their take, we discussed it, a resolution was passed at that meeting and that is our position.

34. In terms of paragraphs 11, 12, 13 and 14, I acknowledge Mr George and the role he has played along with others in achieving those things for our hapu and community.

35. At paragraph 14, Mr George claims that many whanau who live in Waikare are not those who oppose Tuhoronuku, and he believes many voted in the elections that were held.[11] Who are these whanau he is referring to? What proof does Mr George have? We have filed copies of submissions and attendance registers. What these show is that many whanau, kuia and kaumatua who live at Waikare do not support Tuhoronuku or Mr George representing our hapu on Tuhoronuku. Kuia, kaumatua and whanau who live in Waikare regularly attend the Marae Trustees hui, Maori Committee hui and Hapu Claims hui where these matters have been discussed over the past four years, and where resolutions have been passed to oppose Tuhoronuku. The hapu position has not changed, in spite of Mr George taking a position on the Tuhoronuku IMA.

36. I really take issue with Mr George's final comment in paragraph 14 where he says that he is able to "represent the hapu on the Tuhoronuku IMA more productively because I live in Waikare, and can appreciate what that means, while the vocal minority consists of those who don't".[12] As I said above, I consider this statement offensive to those who do not live in Waikare but

[11] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 14.
[12] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 14.

who participate in and contribute to our hapu. I am sure others would find his comments offensive too.

37. At paragraph 15 Mr George says:[13]

> *I think the MHK process is fair and transparent, allows full participation of all who want their voice to be heard and who want to participate in the negotiation and settlement of their hapu claims. There is a transparent and fair elections process outlined in the Deed of Mandate, and Willow-Jean Prime and others did their best to prevent those of Te Kapotai who wanted to participate in the Tuhoronuku IMA.*

38. The Tuhoronuku election process is inconsistent with our hapu process, and Mr George's view that the Tuhoronuku election process is transparent and fair is completely inconsistent with Te Kapotai's position and submission on the Tuhoronuku Deed of Mandate.

39. Mr George claims that I and others did our best to prevent those of Te Kapotai who wanted to participate in the Tuhoronuku IMA from doing so. What exactly did I do to try and prevent those of Te Kapotai who wanted to participate in the Tuhoronuku IMA? Who were the others that he is referring to and what did they try and do? I have never acted in a way to prevent people from participating as individuals or Ngapuhi in the Tuhoronuku processes. I have challenged people who purport to represent Te Kapotai in that process as they are not mandated by the hapu, and they do so against the wishes of our hapu. As a mandated hapu kaikorero for Te Kapotai, it is my role to inform people of the position of Te Kapotai, how the hapu has chosen to progress our claims and why Te Kapotai oppose the Tuhoronuku process. Individuals acting against the wishes of our hapu should not be able to commit us to the Tuhoronuku IMA. For the Crown to allow individuals to do this undermines our hapu rangatiratanga.

[13] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 15.

40. At paragraph 16 Mr George says:[14]

> *Willow-Jean Prime refused to have a hapu hui about Hapu Kaikorero despite being asked at Marae Trustee meetings, reiterating that this was done in 2009. However my removal and replacement by Karen Herbert was conducted at a Marae Trustees meeting, not a hapu hui.*

41. This is factually incorrect as well as misleading. It was not me who refused to have a hapu hui. It was the Waikare Maori Committee who discussed the issue and said that there was no need to have yet another hui only to confirm our same position.

42. Mr George knows full well that important discussions and decisions concerning the hapu take place at the monthly Marae and Maori Committee hui.

43. When Mr Joe George attended the Tuhoronuku information hui and claimed that I had no mandate to speak for Te Kapotai, and we heard that Mr Joe George and possibly Mr Kara George were going to be nominated for the Tuhoronuku IMA for Te Kapotai, it was decided that we should hold a hapu hui urgently to address hapu representation and Te Kapotai's position regarding Tuhoronuku. So, the hapu held a hui on 22 March 2014. Both Mr Kara George and Mr Joe George were informed about the meeting, yet they did not attend. The hui resolved to continue to oppose and withdraw from Tuhoronuku, to oppose the nominations of representatives seeking to be elected to the Tuhoronuku IMA, and to seek an urgent inquiry from the Waitangi Tribunal. Karen Herbert and I were also reconfirmed as the hapu kaikorero to Te Kapotai Te Tiriti o Waitangi claims. A report was provided to the next monthly meeting updating everyone on the hui.

44. Mr George goes on to say, at paragraph 17:[15]

> *Leading up to the Hapu Kaikorero elections, Willow-Jean Prime and others demanded that we withdraw our names by way of minutes at hui by shipping in people to vote at hui who don't turn up to our hui*

[14] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 16.
[15] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 17.

usually, going so far as trying to prevent elections from hiring the marae.

45. I, and others, have requested at our meetings that both Mr Kara George and Mr Joe George withdraw their names on a number of occasions because of our hapu opposition to Tuhoronuku. This was done by way of discussion and resolution. They both refused every time. We have not "shipped" people in to vote at hui, people are informed of the hui and those who are available and interested come. Our meetings have always been like this. Again, it is incorrect for Mr George to say that these people are not usually at our hui, implying that they are not involved in our hapu. This is offensive and divisive korero on Mr George's part. I cannot think of a single person who has attended meetings that may be classed in this way. Who exactly is Mr George referring to? If someone does choose to now participate and they have not before, is that not their right as a member of our hapu? At least these people have the courtesy and respect for our tikanga to come to the marae and hui, to hear the korero and be informed, instead of simply having a ngau tuara and hiding behind an anonymous Tuhoronuku ballot paper.

46. Again, I have discussed the events concerning the marae booking, our people did not want it, we felt that after four years we were not being listened to by Tuhoronuku and that we were being steam rolled in this process. We felt that this process was responsible for causing the deep division and problems within our hapu. Our hapu had made the decision time and time again to oppose Tuhoronuku, and now Tuhoronuku wanted to come to our marae to elect one of our own to its committee through its process. This is the reason the Marae Trustees declined the booking.[16]

47. At paragraph 18, Mr George says:[17]

Over 300 Te Kapotai voted in the MHK elections. This is evidence that Te Kapotai supports the Tuhoronuku IMA - this is contrary to the idea presented by others that Te Kapotai is unified in its opposition to the Tuhoronuku IMA.

[16] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime*, 12 November 2014, pp 71-73.
[17] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 18.

48. This is not evidence that people support the Tuhoronuku IMA. Participating in an election process cannot be interpreted as support, especially given there was no option on the form to indicate support or opposition. There was no information provided by our hapu to these people to inform them that our hapu do not support the two nominees or this election process, and we did not have access or resources to the register to send information to these people. Through this process there is no way of identifying how many in our hapu may in fact be opposed.

49. We also want to know, where are the names and voting forms to identify these people? Who verified their whakapapa? Have they attended any hapu hui? Were they informed about the hapu's opposition?

50. Furthermore, I completely reject Mr George's claim that he has a mandate from the hapu to be on Tuhoronuku given the serious flaws in the Tuhoronuku processes over the past four years, which have laid the foundation for the Tuhoronuku IMA election process to take place. You cannot simply ignore the issues over the last four years and claim that this "fresh" election process, by the very group we are opposing, substantiates a valid mandate. Again, I reiterate that our hapu process is that decisions concerning our hapu are made collectively and on the marae. At no time did this occur. There have been no hui where Mr George has been supported to represent our hapu on Tuhoronuku. In fact, all our documentation shows that our Marae Trustees hui, Waikare Maori Committee hui, Te Kapotai Hapu Claims hui and even the Tuhoronuku IMA Elections hui have clearly opposed Mr George. The flawed Tuhoronuku process does not, and should not be allowed to overturn our hapu decision making processes. For the Crown to do so directly undermines our hapu rangatiratanga.

51. At paragraph 19, Mr George says:[18]

> *Once Willow-Jean Prime began acting for Ngati Hine claims the role with the Te Kapotai claim "morphed" into a conflict of interest in trying to align both Ngati Hine and Te Kapotai into a single outcome.*

[18] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 19.

52. Again, as I mentioned above at paragraph 19, this is incorrect. I have never acted as the lawyer for Ngati Hine, and therefore there is no professional conflict of interest if that is what Mr George is implying. By virtue of my whakapapa I am Te Kapotai and I am Ngati Hine, and I support both of my hapu, this is not a conflict of interest. In addition, our legal advisors have not identified any conflict of interest issues in terms of them acting for Te Kapotai and Ngati Hine. If there were issues they would have been raised.

53. At paragraph 20, Mr George says:[19]

> *I support the Tuhoronuku IMA because it allows for strong hapu participation within a broader single settlement model. Opponents assume that hapu aspirations and involvement will not be dealt with in the Tuhoronuku IMA, but from my experience as a member of the Tuhoronuku IMA board, I know that hapu are involved and have a strong say. We can have both, and we do have both - it is not an either/or.*

54. This is a personal view that is not supported by the hapu. Our hapu position is that we oppose the Tuhoronuku structure and processes, and we oppose Tuhoronuku negotiating a single comprehensive settlement of our Te Tiriti o Waitangi claims. Further, I have given evidence on the flaws of the representation structure from a hapu perspective.[20]

55. At paragraphs 21-23, Mr George says:[21]

> *[21] As a Tuhoronuku IMA board member, and a member of Te Kapotai, I can say that Te Kapotai will have a strong voice in negotiation of our claims. I am not going to let Tuhoronuku negotiate Te Kapotai's claims without my, and my hapu's, involvement. And there is nothing to indicate that it ever would.*
>
> *[22] I do not see Tuhoronuku as being against our hapu rangatiratanga. Instead I see Tuhoronuku as enabling that rangatiratanga, and enabling us to settle our claims against the*

[19] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 20.
[20] See Wai 2490, #A7, #A11, #A78 as well as evidence filed for Wai 2429 applicants.
[21] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, paras 21-23.

Crown. The settlement of my hapu's claims is paramount, and that is why I am involved in the Tuhoronuku IMA.

[23] As Tuhoronuku IMA board members, we are here at the behest of hapu - our direction is not determined by us Tuhoronuku IMA board members personally, but by the wishes of hapu.

56. If Mr George is purporting that his involvement in Tuhoronuku now amounts to Te Kapotai being adequately represented on Tuhoronuku, he is wrong. As I have said over and over again, Mr George does not have a mandate from Te Kapotai and therefore his involvement in Tuhoronuku is not "representing" Te Kapotai.

57. Mr George and Tuhoronuku are attempting to settle our hapu claims without our consent and involvement, and that has been the issue from the very beginning as we were never satisfied with the hapu representation model that Tuhoronuku has advanced throughout this entire process. Having a "strong voice" and "involvement" in a process is very different to having rangatiratanga in a process, which is what we have been asking for. I do not accept Mr George's watered down definition of rangatiratanga. We wanted a guarantee that ultimately Te Kapotai would decide how Te Kapotai's claims would be settled, not the Tuhoronuku IMA or wider Ngapuhi. There is nothing in the Tuhoronuku Deed of Mandate which guarantees that they cannot and they will not, which is why we are opposed. Given the history, I think Mr George is being overly optimistic and egotistical. He says that the direction is not determined by the Tuhoronuku IMA, but by the wishes of hapu. Well that is only if the majority of the other hapu agree to our wishes and the majority of the Tuhoronuku IMA members also agree. The Tuhoronuku IMA members are the decision makers as voting is ultimately done at the Tuhoronuku IMA level. Mr George knows he is only one vote out of 22 on the Tuhoronuku IMA. Mr George also knows that as a hapu in this process, Te Kapotai is only one vote out of 22 in the Te Pewhairangi region, and one hapu out of 110 hapu in the Tuhoronuku IMA. Given the history, together with these odds and the lack of guarantees, Te Kapotai chose to continue to oppose Tuhoronuku and withdraw from the Deed of Mandate.

58. Mr George says his direction is determined by the wishes of hapu. Well, we have no confidence in this statement or Mr George representing us as he has forced Te Kapotai into the Tuhoronuku IMA with currently no ability to withdraw against our wishes. It is clear that Mr George is not the representative Te Kapotai want either speaking for the hapu or negotiating the settlement of our claims.

59. Mr George, at paragraphs 24 and 25 goes on to say:[22]

> *[24] Given the Crown's large natural grouping ("LNG") policy, I see that the best way forward is to participate fully in Tuhoronuku. I do not see Te Kapotai/Crown negotiations as feasible nobody sees this as a feasible option. Opponents are thinking of another LNG, and Ngati Hine wants to drag Te Kapotai into that, but Ngati Hine has been through no process to gauge whether Te Kapotai want to be a part of that other group. I object to Ngati Hine, and Willow-Jean Prime, trying to put Te Kapotai into another LNG with Ngati Hine.*
>
> *[25] It's not that Ngati Hine and Willow-Jean Prime disagree with the idea of a large natural group negotiating with the Crown. They want their own other LNG. They argue that hapu are being swamped by a larger body, and that is an abuse of hapu rangatiratanga. But they propose a new LNG - so their problem is not that hapu don't have an adequate voice, it's that they don't like this particular LNG.*

60. I do not think Mr George actually knows much about the Crown's Large Natural Grouping policy, the difference between an LNG and the Mandated Entity, or the Crown's Settlement Policy, given that he has not actually been involved in any Treaty settlements or been intimately involved in this process over the last four years. I question what knowledge and experience he actually has to make this statement. It is certainly not consistent with our legal advice, and our lawyers have extensive experience in this area. It is also not consistent with others who have more experience than Mr George, like Tukoroirangi Morgan, who facilitated a number of Te Kotahitanga hui, and

[22] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, paras 24-25.

Willie Te Aho, who Nga Hapu o Te Takutai Moana ("NHOTTM") invited to present at a wananga.

61. I refer to my evidence of the presentation given by NHOTTM on the Crown's LNG policy, and state that I have major issues with the Crown's LNG policy and the way in which it has been applied in Ngapuhi. This is particularly so given that there are multiple ways in which the Crown could have applied its policy to avoid the mess that we are in today.

62. Where Mr George says *"But they propose a new LNG - so their problem is not that hapu don't have an adequate voice, it's that they don't like this particular LNG"*. This is wrong. The whole reason our hapu have opposed Tuhoronuku (the Mandated Authority as opposed to Ngapuhi the LNG) is because hapu do not have an adequate voice. Our very long chain of correspondence is clear on this matter – it follows that our hapu do not like "this particular LNG" and the Tuhoronuku organisation wishing to be the Mandated Authority for this LNG, because it does not give our hapu an adequate voice.

63. The decision to work with NHOTTM and to seek a mandate with NHOTTM was made by our hapu. Karen and I provide updates on progress at our monthly Waikare Maori Committee meetings and wananga/claims hui. Resolutions reconfirming our support for NHOTTM were passed at our 5 March 2014 Waikare Maori Committee Hui, which Mr George was at, and also at our 22 March 2014 Hapu Claims Hui. The resolution was that we withdraw and bring and urgent claim in the Waitangi Tribunal, and that we continue to work with NHOTTM to secure our own mandate, negotiations and settlement.

64. Mr George is wrong. Te Kapotai has never said it wants to be its own LNG and negotiate and settle separately. Ngati Hine is not trying to drag anyone into a separate LNG process. I am not trying to put Te Kapotai into a LNG with Ngati Hine. I am concerned about the connections and assumptions Mr George is trying to make here concerning Ngati Hine, as if Ngati Hine has some ability to control the decision making of other hapu. It is very clear, given the dynamic on the ground and how hapu operate, that Ngati Hine has no such power, and in fact Ngati Hine has never tried to do such a thing.

65. Ngati Hine has its own processes of decision making, as does Te Kapotai. Ngati Hine has no role in Te Kapotai's decision making, and vice versa. I also want to note that Ngati Hine is not NHOTTM. NHOTTM is wider than just Ngati Hine. It includes, amongst others, our other neighbouring hapu Ngati Kuta/Patukeha and Ngati Manu. Each hapu is autonomous and speaks for themselves. They have their own hui regarding settlement. They come together, in a participatory and voluntary manner to NHOTTM hui. They debate issues and options for settlement. They return to their respective hapu for further discussion and then go back to the NHOTTM forum as they choose. This is the participatory nature of NHOTTM. No hapu is forced to engage, and this is quite possibly the most fundamental difference between NHOTTM (Te Kotahitanga o Nga Hapu Ngapuhi ("TKONHN") as well), and Tuhoronuku. Mr George may *"object to Ngati Hine, and Willow-Jean Prime, trying to put Te Kapotai into another LNG with Ngati Hine",* however, if this is what Te Kapotai chooses, then that is that. Like I said in my earlier evidence, *ma ratou ano ratou e korero, kia kaua e korero ma tetahi atu* – and to clarify, this applies to all hapu, including Ngati Hine, whether they support or object to Tuhoronuku.

66. Te Kapotai is free to decide for itself what it wants to do and it has done exactly that. Te Kapotai support Nga Hapu o Te Takutai Moana, and at no point has Te Kapotai asked that the hapu and claimants discontinue involvement with Nga Hapu o Te Takutai Moana. Until such time, we will continue to participate in this collective to advance our Te Tiriti o Waitangi claims.

67. At paragraph 26, Mr George says:[23]

> *I support the Tuhoronuku because it listened to opposition, and it changed. It changed its Deed of Mandate to accommodate concerns hapu were projecting about their lack of involvement in Tuhoronuku and its process. That shows Tuhoronuku represents the views of Ngapuhi, and it listens to those views.*

[23] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 26.

68. That is Mr George's personal view. The position of the hapu is that sufficient changes were not made to accommodate the views of Te Kapotai. The Crown did not consult with us to ascertain whether we were satisfied with the amendments. As I have said before, the Crown and Tuhoronuku unilaterally decided what changes it would and would not make to the Tuhoronuku Deed of Mandate. Our hapu had no control over the final outcomes of hapu representation, the role or process in the Deed of Mandate, and no ability to withdraw ourselves from the Deed of Mandate if we did not support it.

69. At paragraphs 27 and 28, Mr George says:[24]

> *I, and my family have been involved in Te Kapotai for a long time. I have been fully involved in our hapu claims process.*
>
> *So, I have seen the whole timeline of the Ngapuhi settlement and Te Kapotai's involvement in that. I used to oppose it because it looked like a single body was settling our claim before we had our Te Paparahi 0 Te Raki Inquiry hearings. But now I know that the Tuhoronuku IMA has the only structure to take us forward. There isn't another feasible model. And, the Tuhoronuku IMA is a good model - it's not just that there isn't an alternative. With all my experience, and the long involvement I have had in these issues, it is my opinion that Tuhoronuku is the best way forward.*

70. Again, this may be the view of Mr George but it is not the position of the hapu. There are a number of other alternatives and models available for the Crown and Ngapuhi, but like I have said, we have never had the opportunity to debate, discuss and agree upon those because the only process that has been allowed to be advanced by the Crown is Tuhoronuku. I have examples in my earlier evidence about other models. Nga Hapu o Te Takutai Moana has proposed other models. Te Kotahitanga o Nga Hapu o Ngapuhi has proposed other models. Tukoroirangi Morgan advised the Crown that other models were more appropriate. Mr George alone does not have the ability to reach the conclusions about which process our hapu is involved in or

[24] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, paras 27-28.

decide the way forward for our hapu. That is not how it operates in our hapu.

71. At paragraph 30, Mr George states:[25]

> *The Tuhoronuku IMA is the way forward, it has done the process, it is robust and transparent, and it provides for participation of all hapu.*

72. I seriously question how Mr George can honestly make this statement given his knowledge of the Tuhoronuku process and our hapu involvement since 2009, which I have covered thoroughly in my earlier evidence. Again, it is not Mr George's decision alone to make on which model is the way forward for Te Kapotai. Te Kapotai has made that decision and it is not the Tuhoronuku IMA. Mr George, the Crown and Tuhoronuku need to respect that decision.

73. At paragraph 31 Mr George asks a number of questions. I am interested to know what his answers to those questions are and what evidence he has:[26]

(a) If it's not the Tuhoronuku IMA, then what?

(b) What will be the cost to my hapu? Any further delays will prolong the addressing of the many issues we face.

(c) The division in Ngapuhi will reduce us to what?

74. I think Mr George has a rose tinted view of our history as Ngapuhi, and his suggestion that we have always worked together as Ngapuhi and dealt with our issues and celebrated our successes and achievements together, is actually a denial of our historical and contemporary reality. The Tribunal needs to be aware of this, and perhaps Mr George ought to research our Tiriti o Waitangi claims and history more.

75. Finally, there are many whanau who work tirelessly towards the positive development of our hapu and marae affairs. Mr George has done so on a number of projects as have others. However, Mr George is now attempting to represent our hapu on matters that he is not mandated to do. The simple fact is that by virtue of a very flawed process, he has been able to gain the

[25] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 30.
[26] Wai 2490, #A85, *Brief of Evidence of Kara Paerata George,* 14 November 2014, para 31.

ability to represent our hapu on these matters against the tikanga, and against the will and collective decision making of our hapu, and because of this, Te Kapotai now has serious representation issues that we are unable to address in any other forum but this Tribunal. How do we stop Mr George from representing our hapu, and others, on the Tuhoronuku model? How do we ensure our claims are not negotiated and settled by Mr George and Tuhoronuku? How do we withdraw our hapu from the Tuhoronuku Deed of Mandate? The simple answer is that without the assistance of this Tribunal, we cannot. We are being forced into this mandate, and our claims will be settled and extinguished without our mandate or consent.

76. Until such time that Te Kapotai or Ngati Hine choose, collectively, through their own processes, that they wish to pursue an alternative pathway to settlement, whether it be through Tuhoronuku or some other entity, I will continue to faithfully represent their position. At this present time, the position of both hapu is to oppose Tuhoronuku and withdraw from the Deed of Mandate.

77. In responding to the evidence of Mr George, I am saddened that it has come to this. The Crown is at fault here. It is the Crown who has jointly engineered this process with Tuhoronuku and supported it, which has put our hapu in this position today where we are opposing our own. I get really frustrated when the Crown claims that we are participating, choosing and influencing how the Tuhoronuku process goes, when in fact our hapu is not, and everything is essentially out of our control. The Crown has failed at every step to respond and address the representation issues that our hapu have raised since 2009 to this date, and look at where we are today. It is such a shame.

Briefs of Evidence of Sonny Tau, 17 November 2014 (Wai 2490, #A82) and Titewhai Harawira, 20 November 2014

78. Due to the time constraints I am unable to respond fully to the affidavits of Mr Tau and Ms Harawira. I wish to note though that Mr Tau and Ms Harawira go to great lengths throughout their evidence to rebut my evidence. They claim that the series of hui conducted by Tuhoronuku were open, fair and transparent, and that I and others were given a fair

opportunity to speak and that our concerns were responded to. Again, I reiterate, this was not the case. I refer the Tribunal to the Mandate Hui Report that Te Kapotai sent to the Minister on 29 September 2011, where we set out nine pages of our concerns regarding the hui.[27]

79. I maintain that the Crown, neither through its actions or through amendments to the Tuhoronuku Deed of Mandate, has not resolved the issues that we raised in this Mandate Hui Report. It is for the reasons set out in the Mandate Hui Report, among many others that I have discussed in my four affidavits, that our hapu have not been able to give our mandate to Tuhoronuku to settle our Te Tiriti o Waitangi claims.

80. At paragraph 8.8 of the Tuhoronuku Deed of Mandate Strategy, it identifies that all hui will be accurately minuted and audio recorded (and/or video recorded).[28] It is my view that Mr Tau should have provided the Crown with both the audio and video records of hui, and if he did not, I would have thought it would be appropriate for the Crown to request them and observe them given the seriousness of the issues that Te Kapotai raised in its Mandate Hui Report, as well as many others who corresponded with the Office of Treaty Settlements during this time.

81. I am surprised that given these issues are in contention before this Tribunal, Mr Tau has not made these audio/video recordings available to further evidence his claims, as I did when I filed the audio from the recent Tuhoronuku IMA hui held at Waikare Marae.

Brief of Evidence of Sam Napia, 14 November 2014 (Wai 2490, #A90(b))

82. As I have stated a number of times, I believe that the "Mandated Hapu Kaikorero" were never validly appointed in accordance with the Tuhoronuku Deed of Mandate Strategy. This is a serious matter which the Crown was made aware of yet ignored. Tuhoronuku have still not produced the minutes of the meeting where Sam Napia was appointed. Why not?

[27] Wai 2940, #A11, *Brief of Evidence of Willow-Jean Prime,* 23 April 2014, pp 554-562.
[28] Wai 2490, #A25, *Affidavit of Raniera Tau,* 4 June 2014, p 21.

83. In the Te Kapotai Mandate Hui Report that was sent to the Ministers on 29 September 2011, at paragraphs 21-24 it says:[29]

> *21 The minutes of key Tuhoronuku meetings have also not been forthcoming. When asked at the Mangere hui, when, where and who appointed the hapu representatives Sam Napia, Toko Tahere and Kyle Hoani, Tuhoronuku said that that information was available but at the risk of getting it wrong the minutes would be posted on the website.*
>
> *22 - Over a week later the minutes of March, April, May and July were posted on the website. We note that these minutes are inadequate in terms of content. However, the minutes that were specifically requested were the minutes of the February and June 2011 hui where the Hapu Representatives were appointed to Tuhoronuku. When asked again for the February and June 2011 minutes, Tuhoronuku said that the minutes had not yet been ratified by the hapu kaikorero who were present at that meeting and that they would be posted on the website once they had been ratified. It raises questions that if the minutes from February have not been ratified are the Hapu Representative Appointments valid. It is also concerns that basic board practices such as the ratification of minutes have not been carried out by Tuhoronuku.*
>
> *23 - We believe that these minutes have not been made available because the hui where the hapu kaikorero were appointed were not open, fair and transparent, moreover, their appointments would not withstand challenge.*
>
> *24 - We were present at the election of Hapu Representatives hui at the Mid North Motor Inn on 18 February 2011 where we tabled a letter of opposition. The motion to appoint Kyle Hoani and Toko Tahere was moved and seconded by Sonny Tay and Hone Saddler. It was unclear from the vote where there was in fact majority support.*

[29] Wai 2490, #A11, *Brief of Evidence of Willow-Jean Prime,* 23 April 2014, p 556-557.

84. Despite repeated requests, I have never been provided with those minutes and I have never received information regarding the appointment of Sam Napia to Tuhoronuku.

85. I raised these issues at the time because our hapu had serious concerns with the transparency of Tuhoronuku and how it was conducting its affairs. We believe that these appointments were invalid and that Tuhoronuku was operating ultra vires its Deed of Mandate Strategy. The Crown were notified of this and they did nothing to address these issues at the time.

86. This matter was also serious because these "representatives" had been elected to a committee (Tuhoronuku) that was to represent not only their hapu interests, but all hapu interests in settlement, including Te Kapotai. We could not comprehend how we were expected to give our mandate to this entity when we did not even know when, where and how these people were elected to represent our hapu. They had not come to our marae to seek our support for them to be elected to these roles.

87. I also raised at the hui that it was a major issue that the hapu kaikorero that were on Tuhoronuku did not understand their roles, they would often say "I represent my hapu" when in fact under the Deed of Mandate Strategy, there were to be seven hapu kaikorero to represent all hapu in Ngapuhi.

88. Our issue was, and remains, that none of these hapu kaikorero had any mandate or support from our hapu to do so. As I have said in my earlier evidence, both Te Kapotai and Ngati Hine had kaikorero for settlement matters, and if our hapu wished to be represented on Tuhoronuku we would have been. After all, at that time there were in fact four vacant positions which could have been filled if we wanted.

89. The point is that our hapu did not support Tuhoronuku because we had very serious concerns with the model and processes that were not addressed by the Crown and Tuhoronuku in a way that would allow us to change our position.

90. I make these responses because it goes to the very heart of the issues around transparency and accountability, which were serious reasons why our hapu could not support Tuhoronuku.

91. Finally, I note in the Brief of Evidence of Sam Napia that he does not explain when, where and how he was appointed to Tuhoronuku.

Affidavit of Marcia Hau, 14 November 2014

92. I understand that other Ngati Hine witnesses address the evidence put forward by those Ngati Hine who support Tuhoronuku. I respond only to the reference in the evidence of Marcia Hau at paragraph 29 where she states:[30]

> *Willow-Jean Prime criticises me refers to me as 'an Australian' (seemingly to question my credentials and ability to represent my hapū). I am Ngāpuhi. I am Ngāti Hine. I never gave up my heritage, my whakapapa or my whanau when I moved to Australia. Ngāpuhi who live outside the rohe have a crucial role to play in this settlement process, and Willow-Jean's comments diminish the importance of Ngāpuhi who live outside the rohe.*

93. I do not recall calling Mrs Hau an Australian, and I certainly would not have challenged her whakapapa or attempted to diminish her Ngati Hinetanga. The concerns I expressed at hui were how can someone who lives in Australia, who has not been involved in the Ngati Hine claims, adequately and effectively represent us in this process? How can they say that they have a mandate from their hapu to make decisions on matters concerning settlement, which are very serious and significant matters, when they have not had a local presence and do not go to the marae or attend hapu hui?

94. The fact that Mrs Hau did not have any meeting before being nominated, or even attend this particular hui, really concerned me (and many others). I have absolutely no confidence that she or anybody else can effectively represent Ngati Hine without very regular hui and communicating directly with those who you represent. The way in which Mrs Hau is acting is not consistent with the processes and tikanga we have been operating by.

[30] Wai 2490, *Affidavit of Marcia Hau,* 14 November 2014, para 29.

Brief of Evidence of Maureen Hickey, 20 November 2011 (Wai 2490, #A108)

Key points

95. At paragraph 10 Ms Hickey summarises the key points of her evidence. At 10.1, Ms Hickey says:[31]

> *This mandate process has been more extensive, and more monitored, than most – Ministers' involvement has been substantive and they are very familiar with the issues. The number of meetings and Ministerial engagement is probably unprecedented.*

96. I believe that the unprecedented engagement Ms Hickey refers to was because there have been so many issues with this mandate process. It has not been straightforward and there have been a lot of disputes.

97. At paragraph 10.2, Ms Hickey says:[32]

> *There was significant support for the Tūhoronuku mandate (76%) but there was also opposition. The Crown made genuine efforts to reconcile views and approaches…*

98. I do not agree. I have provided evidence on the mandate vote outcome and we raised our objections concerning the outcome at the time the process was conducted. We had issues with the process which lead to that vote, and we therefore determined that whatever the result of the mandate vote, it simply could not be valid. It is very similar to the issues which have arisen with the recent Tuhoronuku IMA elections. If the process is flawed, unfair and not transparent, how can the outcome possibly be valid? Furthermore, I do not believe that 76% represents significant support for the mandate, particularly when one takes into account the population, the level of opposition and the level of resourcing committed by the Crown to this process. It is my understanding that 76% is at the lower end of the spectrum in terms of mandate vote outcomes in which the Crown has granted mandate for other mandated entities. It is also my understanding that most

[31] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.1.
[32] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.2

mandates have been recognised where the outcome of the mandate vote was in the high 80 and 90 percent.

99. Moreover, I do not believe the Crown's efforts to reconcile views were genuine. The Crown had a clear preference to negotiate a single comprehensive settlement with Ngapuhi, and their view was that Te Runanga-a-Iwi o Ngapuhi/Tuhoronuku ("TRAION/Tuhoronuku") was the entity which could achieve this.

100. I have reviewed the Official Information Act ("OIA") material and found numerous references to the Crown saying that its preference was for a single comprehensive settlement with Ngapuhi. I have no doubt that there is more information on this in the documentation that the Crown has withheld from us. These statements from the Crown occur as early as 2009 and span right through to today. It is therefore no surprise that there has never been a departure by the Crown from this position and pathway to achieve a single settlement, and that Tuhoronuku was able to achieve a mandate in the face of an unprecedented level of opposition. The issue here is that the question of who holds a mandate for settlement is not supposed to be a matter for the Crown, and the Crown should not have a preference. In my view, the Crown's preference should not even be the main consideration. The Crown has a clear policy on mandating and I do not believe it has followed that policy, and because of that, the Crown has recognised the Tuhoronuku Deed of Mandate in circumstances where really it should not have.[33]

101. At paragraph 10.3, Ms Hickey says:[34]

> *Ministers were willing to delay the mandate process and put substantial resources in to facilitation.*

102. When you look at the level of opposition to the mandate and the very poor mandate vote result in 2011, the Crown needed to delay the mandate process and to do something. I believe the Crown was aware that it needed to appear "even handed", after all, the Tribunal has made many recommendations in regards to this and like I have said, I believe the Crown

[33] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, paras 36-40.
[34] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.3.

committed resources to facilitation to reduce the litigation risk and 'tick a box' so to speak. I must also say that it would be worth looking at the financials to see where the substantial resources went. I understand that a lot of money was paid to Tuhoronuku for the cost of the delay. There would not have been such substantial costs if Tuhoronuku and the Crown had not prematurely sought a mandate, and there was not such significant opposition.

103. At paragraph 10.4, Ms Hickey says:[35]

> *The Crown pursued facilitation in good faith and on an understanding that parties were willing to engage in good faith. I note that Willow-Jean Prime's brief suggests a much more fixed view of an acceptable outcome – defeating the Tūhoronuku mandate – than was expressed at the time.*

104. TKONHN were very clear from the outset about what we were seeking from the facilitation. To resolve these issues, it would necessarily require that amendments be made to the Tuhoronuku Deed of Mandate, structure and process. If the Crown interprets that as us attempting to *"defeat"* the mandate, perhaps that speaks of a fixed position of the Crown. We must remember that at that time (and even today), the process that had been carried out by Tuhoronuku and the structure upon which that process was based, was so deficient that we could not allow it to proceed in its current form , nor could we ignore the process issues. Merely tinkering with the mandate structure and terms of the mandate would not resolve the issues. I want to state that at no point in time were we told by the Crown that we could not consider substantive changes to the mandate and that we could only develop minor changes that did not substantially alter the Tuhoronuku Deed of Mandate that was voted on. The Tribunal will see from the agreed terms of reference for Te Roopu Whaiti that the scope was broad. As it transpired, the further Tuhoronuku and the Crown progressed the mandate, the more restricted we were in our options to resolve the key issues to minor changes only. Where is the good faith in that?

[35] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.4.

105. At paragraph 10.5, Ms Hickey says:[36]

> *It was (as both the Rt Hon Mr Bolger and Mr Morgan noted) a difficult environment with people often showing reluctance to move from their positions.*

106. It was a difficult environment. It was extremely frustrating. I would have to say that the Crown was also difficult and, as we have seen, very reluctant to move from its position. The Crown's preference was for a single Ngapuhi mandate for Ngapuhi negotiations, and the Crown, together with Tuhoronuku, has designed the process to ensure that outcome.

107. At paragraph 10.6, Ms Hickey says:[37]

> *Most suggestions made by Te Kotahitanga were picked up and reflected in the eventual mandate (the parties were not so far apart on structure at the end). There is the ability for the hapū voice and interests to be recognised within the structure. Some of what Kotahitanga wanted can still be given effect to by the Tūhoronuku IMA.*

108. This is the Crown's view; it is certainly not our view. If this were the case then why did TKONHN refuse to participate any further, why did NHOTTM seek to withdraw and seek its own mandate, and why were there so many submissions in opposition to the Tuhoronuku Amended Deed of Mandate? As I provided in my earlier evidence, the changes that were made were decided by the Crown and Tuhoronuku, and were not decided by TKONHN or Ngapuhi.

109. Ms Hickey is wrong where she assumes *"some of what Kotahitanga wanted can still be given effect to by the Tūhoronuku IMA"*. As we have said on numerous occasions, we have absolutely no confidence in the structure, process or people in its current form, or in the conditions that the Ministers have included. Our hapu seek to be withdrawn from the Tuhoronuku mandate.

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[36] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.5.
[37] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.6.

110. At paragraph 10.7, Ms Hickey says:[38]

> *Ministers ultimately had to make a tough decision. The length of time the process has taken, and the changes made during the process, indicate that there was no predetermination.*

111. I disagree. As Mr Pou has stated when he addressed the Tribunal during the hearing of this application, "it should not have been a tough decision for the Ministers". If Tuhoronuku had a valid mandate like it claimed, then the decision by the Ministers to recognise the Tuhoronuku Deed of Mandate would have been easy. The length of time indicates that it was in fact a very weak mandate, and the fact that changes needed to be made suggests that there was a flawed process which required fixing.

112. At paragraph 10.8, Ms Hickey says:[39]

> *Tuhoronuku must satisfy a number of conditions placed on the mandate recognition. To a large extent these relate to the need to involve and recognise distinct hapu interests.*

113. I have already provided evidence on this, and I maintain that the conditions of the mandate are very weak and can really only be considered as best practice expectations from both the Crown and Tuhoronuku, not special conditions in this case. Again, like the changes that were made to the Tuhoronuku Deed of Mandate, we had no input or say in the conditions and we have never agreed to them. Further, we have no confidence in the people and process or that the Crown is properly monitoring those conditions. We have a very recent example to illustrate this where the Crown is supposed to be monitoring "*any representation issues that arise and how they have or will be addressed"*;[40] how is it that we can raise the representation issues that we have through various letters, meetings and memoranda and submit over 1000 forms/signatures to the Crown opposing the election of representatives to Tuhoronuku, yet the IMA election process continued? Since then, the Minister has publically congratulated and endorsed the newly elected Tuhoronuku IMA trustees. I note later in my

[38] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.7.
[39] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 10.8.
[40] Wai 2490, #A12, *Affidavit of Waihoroi Shortland,* 12 May 2014, Exhibit A, p 14.

response that the Crown says that it has not even completed a review of election process, even though it promised it would. The process simply continues. Tuhoronuku has advertised for negotiators and the Crown and Tuhoronuku continue to meet.

114. We have also asked for the Crown to outline the withdrawal process, and the information provided by the Crown is inadequate. After all the years of appealing to the Crown, are we now realistically expected to just accept the Crown on its word that it will monitor whether Tuhoronuku is complying with the conditions and all of a sudden protect our interests? We have no confidence in the Crown's conditions or its monitoring of the process.

Mandate processes and decision

115. At paragraph 19, Ms Hickey says:[41]

> *Ms Prime refers to this briefing as stating that "Ngāpuhi are not ready" and questions what changed in the two months subsequent to this briefing. This is not an accurate summation. The briefing states Ngāpuhi were at the beginning of organisation for both hearings and the settlement process and speculated that they could take some time to be ready to enter negotiations. At this time, the Crown had no view on what form of settlement negotiations was best for Ngāpuhi. No decisions were made as a result of the brief. Also at this stage, the Tribunal was actively considering whether to conduct early hearings into He Whakaputanga and Te Tiriti. It held a judicial conference in September 2008 to consider the issue and in October 2008 decided to hold early hearings.*

116. I think the briefing is very clear and that my interpretation of it is accurate. The briefing to Minister Cullen in September 2008 says: "*It could therefore be some time before they are ready to enter the negotiation process, both of terms of being ready to work together in groups large enough to negotiate with and of feeling like they have sufficiently aired their grievances…officials are beginning to work on a strategy for using the Tribunal's inquiry to achieve settlement(s) with Ngapuhi by 2020 and for Crown engagement in the*

[41] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 19.

hearings as part of that strategy".[42] From this I think I was correct when I said that the Crown's view was that Ngapuhi was not ready. It is very clear that the former Labour government anticipated that multiple settlements, groupings or mandates may be required and that it was working within the parameters of achieving a settlement by 2020. I believe this would have been a far more achievable strategy and realistic timeframe for the present government, and that we have suffered a lot of prejudice because of the National Government's major departure from this advice.

117. At paragraph 20, Ms Hickey says:[43]

> *In any event, in October 2008 the Annual General Meeting of Te Rūnanga a Iwi of Ngāpuhi ("Rūnanga") directed the Rūnanga to lead Ngāpuhi into Treaty settlement discussions. Rūnanga representatives sought information about mandating processes from OTS ("the Office of Treaty Settlements") in November 2008. OTS was advised of the outcome of the Rūnanga Annual General Meeting in December 2008.*

118. Again, the Crown is wrong. This is an issue that Pita Tipene, Rowena Tana and I have spent some time attempting to clarify for this Tribunal. As I understand it, the resolution was not for TRAION to lead Ngapuhi into settlement discussions with the Crown. The Runanga's manipulation of this initial resolution was part of the very early contentions with the process. The Runanga was not even given the "mandate" to do what it did following the 2008 resolution. That resolution was corrected the following year by the resolution at the 2009 AGM, but by then TRAION/Tuhoronuku and the Crown had already progressed matters.

119. At paragraph 23, Ms Hickey says:[44]

> *Ms Prime refers to the meeting on 13 March 2009. She says this meeting showed the Crown and "TRAION/Tuhoronuku" were developing a strategy for "their" mandate, when the question had not even been put to Ngāpuhi. She also alleges "pre-determination and bias" began at this time. I cannot accept these statements. It was*

[42] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, p 3.
[43] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 20.
[44] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 23.

clearly sensible for Mr Tau to seek early engagement with the Crown on how any mandate strategy might be developed. The engagement in itself does not mean the Crown was pre-determined towards any particular model. Importantly, and as I say above, the engagement gave the Crown the chance to seek information on how the support of all Ngāpuhi would be gained and maintained, timeframes and how they would address hapū autonomy.

120. I think the nature of that early engagement, and the discussions and types of matters that were discussed between TRAION and the Crown, were unusual. The actions of Crown officials taken shortly thereafter in efforts to confirm funding was unusual. The timeframes discussed for achieving a mandate were highly presumptuous, and from these early discussions the strategy and nature of the ongoing engagement between the Crown and Tuhoronuku was set. I maintain that the early correspondence in the first few months of 2009 between the Crown and TRAION reveals a clear basis and foundation for the predetermination that ensued.

121. At paragraph 29, Ms Hickey says:[45]

I note that Ms Prime refers to the Minister's letter of April 2009, where the Minister wished Mr Tau all the best in gathering support towards a comprehensive Ngāpuhi settlement. She says this indicated "the Crown's preference and favour for Tuhoronuku" as commencing almost immediately. Again, I cannot accept these comments. There was no other group that had approached the Minister at this time seeking a pathway towards mandated negotiations for a settlement of Ngāpuhi claims. It was appropriate for the Minister to encourage the endeavours of Te Rūnanga-a-Iwi o Ngāpuhi particularly because no one else had approached the Crown.

122. I do not agree that the OTS correspondence, coupled with the discussions and commitment by the Crown to fund TRAION shortly afterwards, was appropriate. Again, I believe this is predetermination.[46] This early

[45] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 29.
[46] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 20014, paras 48-52, 37-40.

engagement set the foundation and parameters for a very tightly controlled process between the Crown and Tuhoronuku to the exclusion of others.

123. At paragraph 30, Ms Hickey says:[47]

> *Ms Prime also refers to Mr Tau's letter of clarification to OTS. Ms Prime states that this indicated that "the manipulation of information and lack of transparency had begun immediately; the hapū were lead [sic] to believe one thing and the Crown and Tūhoronuku were doing another." It is not accurate to say that an error in Crown correspondence, immediately corrected by the Rūnanga, is indicative of bad faith on the part of the Crown and Tūhoronuku.*

124. I believe I was accurate. This was not a simple error; it shows that there was a conversation and strategy going on. The Runanga and the Crown were clearly back tracking to avoid any issues arising. Both the Runanga and the Crown knew exactly what the intention was, and jointly developed and agreed the strategy to achieve that. I invite the Tribunal to look at this series of correspondence further.

125. At paragraph 32, Ms Hickey says:[48]

> *The Rūnanga reported to OTS on 9 July 2009 that within the rohe there was some opposition to the Rūnanga seeking a mandate, but elsewhere there was significant support. I understand there was strong support for Ngāpuhi entering negotiations for a Treaty settlement. I note that Te Roopu o Tūhoronuku released an article Roadshows April and May 2009 noting that a consistent message presented at all hui was "hapū representation needs to be discussed". I attach a copy of that article as exhibit "MCH(2)6".*

126. Well I ask Ms Hickey, in terms of this strong support they claim – who exactly was it from? How many people gave their support, were they individuals or were those people representative of a larger group? Can the Crown answer these questions? On what basis and information did the Crown determine that there was strong support? Did the Crown simply take

[47] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey, 20* November 2014, para 30.
[48] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 32.

TRAION/Tuhoronuku's word for it, or did it inquire further? When the Crown was alerted to Crown issues by hapu and claimants, what did it do about it? This is significant because the Crown funded this process and allowed the process to continue on the basis of this "strong support".

127. At paragraph 33, Ms Hickey says:[49]

> *Ms Prime comments on the description of support for entering negotiations at this time. She refers to an OTS filenote of 6 July 2009 where the Rūnanga had advised OTS that the first round of consultation hui were complete and notes "apparent support" for the Rūnanga.10 She also refers to my first affidavit, where I described the support as "significant" and contrasts this with the Tuhoronuku deed of mandate's description of "overwhelming" support. I do not see there being any inconsistency in these descriptions. To me, overwhelming support is both significant and apparent. I am unaware of any evidence from these hui that there was any major dissent.*

128. I maintain there is an inconsistency in the reporting of "apparent support" for the Runanga to the Crown following the information hui, and "overwhelming support" which was referred to in the Tuhoronuku Deed of Mandate Strategy;[50] a simple example of the manipulation of information to conflate and misrepresent the actual level of support that Tuhoronuku has.

129. We advised the Crown of *"major dissent"* by letter in December 2009, and that Tuhoronuku's hui and conduct had major issues:[51]

> *Te Kapotai feels that this level of communication and participation is not conducive to reaching an enduring settlement of Crown breaches of Te Tiriti o Waitangi. Te Kapotai will only mandate an organisation that commits to working together in a more meaningful, respectful and productive way…..no discussions should take place on our behalf regarding the settlement of our claim".*

[49] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 33.
[50] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime*, 12 November 2014, para 68.
[51] Wai 2490, #A11, *Affidavit of Willow-Jean Prime,* 23 April 2014, pp 531, 534.

130. Having been put on notice of issues with the first and second round of information hui, what did the Crown do? The Crown did not meet with us, they did not inquire into our issues and concerns. There were no independent observer reports from these hui because Loraine Toki cannot be considered to be independent. At the time she was working for CFRT and then she began working for the newly formed Te Roopu o Tuhoronuku. So one can only assume that the Crown just accepted Tuhoronuku's word that there was support for it to continue. Here you have a hapu objecting to being included in the process and putting the Crown on notice, in writing, requiring that the Crown and Tuhoronuku not discuss its claims and the Crown says "*I am unaware of any evidence from these hui that there was any major dissent".* Is written notice from a hapu not evidence?

131. Before I move on, I want to make the point that the Crown was active in the manipulation of information in order to conflate or misrepresent the level of support for Tuhoronuku. On 10 December 2010, in TPK advice on the Deed of Mandate Strategy, TPK advised:[52]

> *The paper looks good I have one comment:*
>
> *Para 5 in the executive summary states that the Runanga received support to move forward with negotiations. I think possibly we need to* ***soften the language a bit as there is no way to quantify support at the information hui.*** *Perhaps add in that the Runanga claimed to have received support.* [Emphasis added]

132. At paragraph 35, Ms Hickey says:[53]

> *According to the Summary of the Second Round of Road Show Hui, the debate in these hui proceeded on the assumption that there would be a single mandated entity to represent all Ngāpuhi in settlement discussions with the Crown. The debate focused on who should hold the mandate and whose interests it should serve. Responses ranged from the Rūnanga being supported to hold the mandate, to the assertion (by Ngāti Hine) that the deed of mandate*

[52] Wai 2490, #A11, *Affidavit of Willow-Jean Prime,* 23 April 2014, p 1351.
[53] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 35.

should be held by Nga Hapū o Ngāpuhi, with the Rūnanga supporting the mandated entity. Ngāti Hine also said it would support an entity that includes hapu control of the settlement process, and other conditions relating to the type of redress which might be negotiated. Several hapū were undecided as to who should hold the mandate but were keen to ensure that claimant communities received just outcomes from negotiations. Te Roopu o Tūhoronuku noted that hapū have a role to play but the negotiation process is not solely reliant on hapū; there is a wider Ngāpuhi constituent base to consider.

133. We were forced into having a very restricted discussion on the Tuhoronuku model only. It was not just Ngati Hine who expressed opposition. Who were the other hapu who expressed opposition? Who were the hapu who were undecided? Who were the hapu who were in support?

134. At paragraph 38, Ms Hickey says:[54]

Ms Prime states that the Crown's funding of Tūhoronuku created an uneven playing field, and in so doing took away the choice of hapū.12 I would note that the funding provided to the Rūnanga was retrospective (they approached the Crown for funding after the hui) and was not guaranteed to them. While the Crown had previously provided funding (as an exception to policy) to nonmandated groups this was substantially higher because of the size of Ngāpuhi and the scale of the roadshow. The Crown was aware that making a funding contribution could create a perception that it was pre-determining an outcome but it was also mindful that the roadshow would provide Ngāpuhi with information about the settlement process. In addition it was aware that the Te Roopu o Tūhoronuku may not receive a mandate from Ngāpuhi.

135. I cover the issue of Crown funding in some depth in my earlier evidence.[55] I reiterate that TRAION was the only entity with funds (it had received more than $60 million dollars' worth of fisheries assets). TRAION could commit and spend those funds with some confidence, especially knowing that it

[54] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 38.
[55] Wai 2490, #A78 *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, para 44-48.

could be reimbursed and that it did not actually have to get the mandate for that to occur. I wonder if, had there been no such funding agreements, whether the directors would have been acting responsibly, and whether the company would have met the solvency test. Furthermore, when others asked for funding the Crown declined.

Overview of mandate process

136. At paragraph 48, Ms Hickey says:[56]

> *A mandate to negotiate only gives the mandated entity the authority to negotiate a draft Deed of Settlement. All members of the claimant community must then have a say on whether the Deed of Settlement is accepted or not. Similarly, it should not be assumed that the mandated entity will, as of right, play a primary role in the administration of settlement assets. A legal entity or entities must be set up for this purpose and any post settlement governance arrangements are also subject to ratification by the claimant group.*

137. I think it is quite clear that TRAION/Tuhoronuku's intention has always been to seek a mandate, negotiate a settlement and receive the assets. I believe that this was their intention and that they knew they would have to make changes to the TRAION Trust Deed, which they sought legal advice on and perhaps even Crown advice. We are unsure. Perhaps this information is contained in the fully withheld documents that the Crown is still yet to release.

138. At paragraph 62, Ms Hickey says:[57]

> *On 30 November 2010 Te Roopu o Tūhoronuku submitted a draft mandate strategy to OTS proposing a process for seeking a mandate to negotiate the claims of all Ngāpuhi, except Ngāti Wai. I attached a copy of the mandate strategy as exhibit "MCH3" to my June affidavit.*

139. The Crown has appeared to have withheld a number of documents regarding the release of Ngati Wai from the Tuhoronuku mandate process. I would be

[56] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 48.
[57] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 62.

very interested to read this information. I do not believe that it is fair that there have been exceptions for some and not others, and that we have been cut off from having similar types of discussions with the Crown, particularly given that both Ngati Hine and Te Kapotai raised objections very early on (late 2009/early 2010) and invited the Crown to have discussions with us on the matter.[58]

140. At paragraph 69, Ms Hickey says:[59]

> *…The Minister had already indicated to several Ngāpuhi claimants that the Crown was open to supporting a parallel process and directed officials to state the Crown position in its December 2010 submission to the Tribunal on the stage two inquiry.*

141. I would agree that the Minister may have *"indicated"* that he was open to supporting a parallel hearings and negotiations process. However, details and guarantees of a parallel process were never given by the Minister. This therefore was a key issue that hapu and claimants wanted resolved through the facilitation and mediation processes. Being open to something and guaranteeing it are two very different things, and throughout the entire process hapu and claimants have never received any meaningful undertakings that the Te Paparahi o Te Raki Inquiry would be protected and would continue. I also recall reading in the advice to the Minister on whether to recognise the Deed of Mandate in 2013, that he was advised that based on the proposed timeframes, the Tribunal hearings could be brought to an end by a negotiated settlement if he recognised the mandate. So even upon recognising the Tuhoronuku Deed of Mandate in 2014, the issues of sequencing of hearing and the protection of the Stage Two Inquiry remain unresolved.

142. The Crown apparently met with some hapu, however, the Crown did not meet with us regarding the Deed of Mandate Strategy. All the Crown ever did was tell us to work with Tuhoronuku. We had advised the Crown that this was not possible and sought to be withdrawn from the mandate. On 18 February 2011, Kara George and I attended the Tuhoronuku Hapu Kaikorero

[58] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, p 903.
[59] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 69.

hui and we tabled a letter for Te Kapotai which asked that we be removed from the Tuhoronuku Deed of Mandate Strategy. On 2 March 2011, we wrote to the Crown, somewhat pleased because at that hui of 18 February 2011, Tuhoronuku expressly agreed that those hapu who tabled letters seeking to be removed from the Deed of Mandate Strategy would no longer be included.[60] Of course, this was later rejected by the Crown and Tuhoronuku. This was also the case for Ngati Hine, who was later told that Tuhoronuku had not agreed to Ngati Hine's removal from the Deed of Mandate.[61]

143. At paragraph 91, Ms Hickey speaks about the time period of early 2011 where facilitation discussions commenced saying:[62]

> *Around this time it was suggested to the Crown that a facilitation process between Te Kotahitanga and Te Roopu o Tūhoronuku could be beneficial. Both groups advocated a single Ngāpuhi settlement, promoted the importance of the Tribunal process, and saw themselves in key roles for any future Ngāpuhi settlement. Yet, at this time, positions were becoming entrenched. It seemed worth pursuing facilitation to see if issues could be resolved before the wider claimant community had the opportunity to express their views through a vote on whether or not to mandate Te Roopu o Tūhoronuku.*

144. There is constant reference by Ms Hickey to the fact that TKONHN, Ngati Hine and others wanted a "single Ngapuhi settlement". Again, I think this is a manipulation of our position which we clearly articulated to the Crown. We did and do have a willingness to try and work together through a single settlement process, but that did not mean there could only be one mandate and a single settlement with TRAION/Tuhoronuku. As I have previously mentioned, there are many other alternative models for settlement and Te Kapotai, Ngati Hine and Te Kotahitanga were always keen to consider and develop thinking on those.

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[60] Wai 2490, #A11, *Affidavit of Willow-Jean Prime,* 2 April 2014, p 542.
[61] Wai 2490, #A4, *Affidavit of Waihoroi Paraone Shortland,* 19 September 2011, pp 12, 17, para 23.
[62] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 91.

145. At paragraph 92, Ms Hickey says:[63]

> *On 3 May 2011 Rudy Taylor and Kelvin Davis suggested to the Minister that he initiate a mediation/facilitation process between Tūhoronuku and Kotahitanga with around five people on each side (see letter attached as exhibit "MCH(2)14"). They suggested the Rt Hon Jim Bolger or Matt Te Pou could be appropriate facilitators. Jason Pou had earlier suggested to me that Mr Bolger could play a role in assisting Ngāpuhi as his mana as a former Prime Minister would be respected. Our records also show that Mr Tau had suggested to the Minister fourteen months earlier, on 13 March 2010, that Mr Bolger could be the Crown's negotiator.*

146. The Crown records show that Sonny Tau suggested Mr Bolger as a negotiator a year earlier than the Crown states above; on 13 March 2009.[64] Perhaps it is just a coincidence that Mr Pou came up with Mr Bolger without discussing it with the Crown.

Facilitation between Te Roopu Whaiti and Te Kotahitanga.

147. At paragraph 102, Ms Hickey says that Tuhoronuku's position at this time (July 2011) was that "*Ongoing dialogue should be encouraged with Te Kotahitanga".*[65] My question is, but to what end? Tuhoronuku had already set the Deed of Mandate Strategy and was ready to publically advertise and commence mandate hui. So what was the point of ongoing dialogue?

148. At paragraph 103, Ms Hickey states:[66]

> *I attended the hui. Tūhoronuku made the first presentation to the hui (a copy is attached as exhibit "MCH(2)16") and indicated that it was open to making a number of concessions, including:*
>
> *a) providing space on its board for Te Kotahitanga members; and*

[63] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 92.
[64] Wai 2490, #A11, *Affidavit of Willow-Jean Prime,* 23 April 2014, p 20 (Handwritten note of meeting between OTS and Sonny Tau on p 843).
[65] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 102.
[66] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 103.

b) having all its members stand down and seek re-election following the mandate process.

149. These are not concessions. This offer had been suggested before this hui and TKONHN and the hapu were not interested. TKONHN were not seeking to represent hapu on Tuhoronuku, nor had they been asked to do so.

150. We told the Crown it was about hapu representation, not TKONHN representation. It was abundantly clear to the Crown and Tuhoronuku that TKONHN, Ngati Hine and Te Kapotai did not want to join Tuhoronuku as it was. Ngati Hine and Te Kapotai (among others) expressed on numerous occasions that they wanted to be removed from the Deed of Mandate Strategy. So how is it a concession that Tuhoronuku provide seats for us? We did not want this or ask for this. What we sought were fundamental changes to the mandate process and structure so that it would get to a point where we would be able to consider joining. This has not occurred.

151. Ms Hickeys says that it was a concession by Tuhoronuku that *"all its members stand down and seek re-election following the mandate process".* This is also not a concession. Te Kapotai and Ngati Hine had maintained that the current members of Tuhoronuku were not even validly elected in the first place, and therefore this was an issue that needed to be addressed immediately, not after the mandate process. We believed they were acting in breach of the Deed of Mandate Strategy, their terms of reference, and also that they had incomplete membership on the committee. I recall seeing a Crown document, it may have been a TPK memo and I apologise for not providing a reference here, which said that Tuhoronuku should have 30 hapu signed up to Tuhoronuku and they did not even have seven elected hapu representatives. Yet the Crown still let Tuhoronuku continue to advertise their mandate. I believe this was premature. Tuhoronuku were not ready and did not have sufficient support to commence the mandating process. I believe the "concession" or "offer" was also used because they could not fill the four empty seats.

152. At paragraph 104, Ms Hickey says:[67]

[67] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 104.

> *Te Roopu o Tūhoronuku had identified that who would control or lead the process was an issue of concern for those challenging their mandate strategy. The latter suggestion was designed to address that by providing all Ngāpuhi the opportunity to have another say on the people who would represent them. Te Roopu o Tūhoronuku also reiterated its support for Stage 2 hearings and that it would be able to separate from the Rūnanga (which was financially supporting it) if a mandate was recognised.*

153. For the Crown and Tuhoronuku to suggest that it was simply about having fresh elections, ignores all the issues we had been raising. The issues in terms of control or leading the process were about structure and processes, not just people.

154. At paragraph 113, Ms Hickey says:[68]

> *Despite the obvious tensions, I note that throughout the facilitation, both Te Roopu o Tūhoronuku and Te Kotahitanga expressed a preference for a united Ngāpuhi settlement (see paragraph 2.3 of Te Roopu o Tūhoronuku's letter to OTS dated 17 June 2011; page 3 of transcript radio interview of Mr Bolger dated 25 July 2011; page 2 of Te Kotahitanga Briefing Paper for Mr Jim Bolger dated 29 July 2011; all attached as exhibit "MCH(2)21").*

155. Yes, however I maintain that a united settlement did not necessarily mean a single settlement, one mandate, or TRAION/Tuhoronuku continuing to lead that process. As I have argued, there are numerous other options that could have been more appropriate pathways to achieving a united settlement for Ngapuhi.

156. At paragraph 118, Ms Hickey says:[69]

> *The independent observer report provided by TPK indicates the mandate hui were well attended, ran for approximately four hours with robust discussion and satisfactory opportunity given to express views. There were three key issues raised:*

[68] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 113.
[69] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 118.

118.1 leadership pulling Ngāpuhi in two directions;

118.2 hapū representation; and

118.3 a preference for stage two Waitangi Tribunal hearings.

157. I will come to this point later in my evidence, but again I reject the TPK observer reports entirely. I cannot reconcile how the TPK observer(s) can reach the conclusion that the mandate hui were fair, open and transparent, and that there was "*robust discussion and satisfactory opportunity given to express views*". Te Kapotai and Ngati Hine have provided extensive written and oral evidence to the Crown since 2009 that Tuhoronuku hui (including the mandate hui) were tightly controlled, people were only able to ask questions which they would be answered at the end. There was no chance for a reply or further questions. This is not "robust discussion". When we tried to discuss the presentation or make statements, Tuhoronuku tried to stop us. We had to be strong and try and speak anyway. It was extremely difficult. The only conclusion I can reach, is that TPK is biased and assisting the Crown. In my view, this is yet another failing of the mandate process; where a Crown mechanism was supposed to protect hapu and claimants, and it did not.

158. What people need to understand, is that by the time the mandate hui commenced, Tuhoronuku had already held three rounds of really poorly conducted hui and people were hoha by then. The Crown was not listening to them, and Tuhoronuku was not listening to them. I remember thinking at the time, how is it that we are expected to, and in fact obligated to, continue to participate in this process and attend these hui, when we do not even want to be in the process. I felt as if we were being tested time and time again to see if we would get 'hui fatigue' and just give up and stop coming, which would enable Tuhoronuku to claim there was little opposition and it could just get on with its process. I felt that way then, and I feel that way now, as I believe that the processes employed by the Crown and Tuhoronuku are strategically designed to frustrate the opposition at every step.

159. Given the nature the information and mandate hui lead by Tuhoronuku and TPKs assessment, I want to know, how bad does a hui and a process actually

have to be before TPK reports that the hui not open and fair and that they are culturally and socially detrimental, causing prejudice? Does someone actually have to get hurt?

Mandate hui vote 2011

160. At paragraph 122 Ms Hickey says:[70]

> *OTS considered Tūhoronuku ran an open and robust mandate process, suitably tailored to the size and geographic spread of Ngāpuhi's population. The 76% support fell below the range of mandate results (80.715-100% support) previously recognised by the Crown, but still indicated a significant level of support for the mandate. The process did, however, highlight unresolved issues around hapū representation, the sequencing of hearings and negotiations, and the role of the Rūnanga in any future settlement negotiations.*

161. I do not think 76% of those who voted indicated a significant level of support. I note at footnote 15 that Ms Hickey is now saying that their records show the mandate range recognised is actually between 68% and 100. Now it is getting lower and lower. I am interested to know which groups' mandates were lower than 76%, and what the particular circumstances were for approving those mandates so we can compare them to the Tuhoronuku mandate.

162. I refer the Tribunal to the evidence Te Kapotai has provided on the mandate vote.[71]

Te Roopu Whaiti

163. At paragraph 128 Ms Hickey says:[72]

> *Te Rōpū Whaiti was tasked with work-shopping solutions to three outstanding issues:*

[70] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 122.
[71] Wai 2490, #A11, *Affidavit of Willow-Jean Prime,* 23 April 2014, Te Kapotai Mandate Report, 29 September 2011, pp 560-561, paras 37-40.
[72] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 128.

128.1 sequencing of Waitangi Tribunal hearings and settlement negotiations;

128.2 hapū representation in settlement negotiations; and

128.3 the role of the Rūnanga in settlement negotiations.

164. The above paragraph is an example of the Crown modifying the actual words of the Te Roopu Whaiti Terms of Reference. I have noted throughout my evidence that the Crown frequently does this, and the changes may seem subtle, but they are actually fundamental. There were the three key issues but the kaupapa of the group must be considered. In this particular example, the Terms of Reference, which were agreed to and signed by both parties and of which the Crown has a copy, actually provide:[73]

Kauapapa: 2. To facilitate this desire, the concept of a technical group was suggested which would generate a range of settlement processes and sequences that could be put forward to Ngapuhi, hapu, whanau and claimants for consideration.

3. Te Ropu o Tuhoronuku (Tuhoronuku) and Te Kotahitanga o Nga Hapu Ngapuhi (Kotahitanga), have both indicated a preference for a united Ngapuhi settlement process and have agreed to establish a working group, Te Ropu Whaiti, comprising representatives from both parties to develop a process that enables Ngapuhi to facilitate settlement on behalf of Ngapuhi and enables claimants in Te Paparahi o Te Raki Inquiry to have their issues heard before the Waitangi Tribunal (Stage Two hearings).

165. At paragraph 134, Ms Hickey goes on to say:[74]

I note that several of the options have elements which are very similar to the eventual model that became the Tūhoronuku IMA.

166. In this instance, I think Ms Hickey is trying to make out that TKONHN got what we wanted because "*several of the options have elements which are very similar to the eventual model that became the Tūhoronuku IMA"*. It is

[73] Wai 2490, #A13, *Brief of Evidence of Pita Tipene,* 10 May 2014, p 108.
[74] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 134.

really important to note that there are options that did not become part of the eventual Tuhoronuku IMA, and Ngapuhi were never given the opportunity to consider and discuss those options. As I have said, the options that were not included in the final structure were important to us and part of the reason why I believe there were so many submissions in opposition to the Tuhoronuku Amended Deed of Mandate.

167. At paragraph 137 Ms Hickey says:[75]

> *The key reason the Te Rōpū Whaiti Report was not taken out to wider Ngāpuhi was because the parent groups did not reach an agreement to do that. It was clear at that 2 March 2013 meeting with the Minister that Te Roopu o Tūhoronuku did not support that approach.*

168. Therefore, unless Tuhoronuku agreed, the report would not be taken out to Ngapuhi. If this was going to be the case, then the Te Roopu Whaiti process was pointless. Quite frankly, why would Tuhoronuku agree? The Crown was not requiring them to, and all their previous actions show that they just do whatever they want to do and the Crown is ok with that. We did not understand that there was a possibility the report would not be taken out to Ngapuhi. TKONHN were always of the view, and we believed that was the view of the Crown and Tuhoronuku also, that we were in this process to generate a range of settlement processes and sequences that could be put forward to Ngapuhi hapu, whanau and claimants for consideration. That was the kaupapa in the Terms of Reference that I provided above [76]

169. We had hoped that we would be able to jointly agree, but that did not transpire. Under the Terms of Reference we did not have to jointly agree on the outcomes and we anticipated that we might not, which is why we included the requirement in the Terms of Reference for the group that Ngapuhi be consulted on the options that were developed; so people would finally have the ability to discuss and consider a number of options, not just the option posed by Tuhoronuku.

[75] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 137.
[76] Wai 2490, #A13, *Affidavit of Pita Tipene*, 10 May 2014, p 25.

170. In my view, Ms Hickey's statement at paragraph 137[77] demonstrates bad faith on the Crown and Tuhoronuku's part, and them attempting to weasel their way out of the Te Roopu Whaiti process. It was very frustrating, and it felt like a real waste of time and energy. I believe TKONHN put a lot more effort into the Te Roopu Whaiti process than Tuhoronuku did, and the outcome was that Tuhoronuku simply refused to take the report out to Ngapuhi for consideration and the Crown supported that.

171. At paragraph 138 Ms Hickey says:[78]

> *OTS provided advice to the Minister on the report, which included an assessment of whether taking the options presented in the report out to wider Ngāpuhi would be be useful. The advice noted the report was incomplete16 (which I understand to mean that the options presented in the report were not fully developed) and it could nullify previous work Te Roopu o Tūhoronuku had done on its deed of mandate. These reasons are documented in exhibit "MCH22" of my June affidavit and the supplementary Aide Memoire from OTS to the Minister dated 28 March 2012, provided by way of supplementary memorandum to the Tribunal on 27 June 2014.*

172. I suggest that this advice clearly shows that the Crown and Tuhoronuku were not in fact open to all options and had a more fixed view on the model for settlement, which was ultimately the Tuhoronuku mandate with perhaps some minor changes. If the Crown is saying that our fixed view was that we must defeat the Tuhoronuku Deed of Mandate, then I think this clearly shows that the Crown's fixed view was that they maintain the Tuhoronuku Deed of Mandate and the work they had done on it.

173. It was the Crown's view that the report was incomplete. Where was the discussion with us about that? Why did we not have more opportunity to do further work? The process just came to an end. As far as we were concerned, our options were complete enough to take out for consideration and discussion. At the end of the day, I thought mandating was for the hapu to determine?

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[77] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 137.
[78] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 138.

174. At paragraph 140 Ms Hickey says:[79]

> *Broadly, the Minister's feedback at these meetings was that the report appeared to reflect existing positions and the underlying message was there was not a great desire to work together. This was not consistent with the feedback provided at the mandate hui. Ngāpuhi had been extensively consulted on the Te Roopu o Tūhoronuku mandate (and that process was authentic, though there was clear feedback that the model for hapu representation was not yet satisfactory to all parties) and the Crown did not treat that lightly. The mandate hui indicated a preference for a single Ngāpuhi settlement. The Crown was not looking to re-start the mandate process. Instead it wanted both parties to see what they could do, working with a facilitator over the next few months, to build on hapū representation in the existing model.*

175. What I believe we have here is the Crown, again, demonstrating a fixed view on the purpose of facilitation. The Crown did not tell us that it was not looking to restart the mandate process; the Crown did not tell us that we could only consider minor changes. I invite this Tribunal to look at the Terms of Reference for Te Roopu Whaiti. You have the Crown here trying to restrict the three key issues even further, to there now only being a need to *"build on hapu representation in the existing model*".

176. My view is that the more Tuhoronuku was allowed to progress their mandate, the further entrenched that structure and process became, and the more restricted we were in making any real changes too it.

Deed of mandate presented to Crown

177. At paragraph 144 Ms Hickey says:[80]

> *Te Roopu o Tūhoronuku held four hui in April 2012 in the rohe to discuss hapū representation but not the role of the Rūnanga. They invited Te Kotahitanga to present at those hui which they did. Te Kotahitanga were concerned that they were not invited to co-host the*

[79] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 140.
[80] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 144.

hui and advised the Crown they would organise a round of hui to consult with hapū on options set out in the Te Whaiti report. The Minister responded that he wanted to focus discussions on the Te Roopu o Tūhoronuku structure rather than start again, which is where he considered the Te Whaiti report options led to (see 30 May aide memoire report to the Minister attached as exhibit "MCH(2)24").

178. These comments illustrate how it was only after we had done all that work in the Te Roopu Whaiti process (and I stress that it was a very significant amount of work), that the Minister tells us he is in fact not interested in starting the process again, and that he only wants us to focus on the Tuhoronuku structure. So we have effectively been strung along for a year or more in facilitation processes. We were given the impression that we were there to look at options to resolve the three key issues, when in fact what the Crown really wanted us to do was focus on the Tuhoronuku structure and not start again, or make substantive changes. That is a fixed position and I ask where is the good faith in that?

179. At paragraph 148 Ms Hickey says:[81]

Te Kotahitanga wrote to the Minister on 21 May 2012 (attached as exhibit "MCH(2)25") responding to a letter they had received on 19 May 2012. They advised that the Crown's understanding of the Te Whaiti report was inconsistent with theirs and offered clarification. They did not consider the options outlined in the report were necessarily inconsistent with the body of representation that Te Rūnanga a Iwi o Ngāpuhi had sought to obtain a mandate for. They noted officials had advised that any model of representation would need to include the same elements as Tūhoronuku for it be considered an adjustment rather than a re-design that would require a re-mandating process. They considered only the multi-lateral separate regional model would require some form of re-mandating if selected.

180. I note that this advice from Officials came later during the Te Roopu Whaiti process, not at the beginning. Whether or not a regional model would

[81] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 148.

require some form of re-mandating was actually up to the Crown to decide, and the Ministers could have decided either way. Taking the report out to Ngapuhi for consideration would have also informed the Ministers about whether some form of re-mandating might be needed and the views of Ngapuhi needed to be sought.

181. As it transpired, following our hui with hapu and TKONHN on the report, the regional approach was actually the preferred option. This demonstrates that if we had had the options before and been properly consulted in the beginning, as TRAION/Tuhoronuku was in fact supposed to do, Ngapuhi probably would have preferred and supported a completely different model. But as we found out, the Crown and Tuhoronuku were not willing to entertain this possibility at all.

Facilitation with Mr Morgan

182. At paragraph 151 Ms Hickey says:[82]

> *On 24 July 2012 Te Roopu o Tūhoronuku wrote to the Minister noting that it was now 10 months since the mandate vote and urging the Crown to advertise the Deed of Mandate without delay or to explain the reasons for not advertising it in writing attached as exhibit "MCH(2)27"). Officials had advised the Minister on 14 May 2012 (see exhibit "MCH(2)23") that Mr Tau seemed to be under pressure to progress the mandate as it had been 13 months since the mandate process was originally scheduled to being. He was likely to have to report on progress to the Rūnanga AGM (which was funding the mandate work).*

183. A key point that the Crown does not mention here is that the Crown had given Tuhoronuku some kind of an undertaking to reimburse a lot of those costs, and I recall that there was also a promissory note from CFRT. I recall Sonny Tau reporting to TRAION during Tuhoronuku hui, and to the TRAION AGM, that although the mandate had not been advertised and approved the Crown was going to pay them back whether they got it or not, and they have

[82] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 151.

the promissory note from CFRT. So the pressure Mr Tau was under was not that bad, and this should definitely not have been a reason for the Crown pushing ahead.

184. Ms Hickey goes on to talk about the Morgan facilitation process. At paragraphs 162 and 163 Ms Hickey states:[83]

> *162. I wish to make a point of clarification on a comment made by the Tribunal at paragraph [187] of its decision granting the urgency application, where the Tribunal states that Mr Morgan recommended in his report that "the mandating process should re-commence afresh".*
>
> *163. I acknowledge the Morgan report refers to the need for a new start and a fresh process but do not understand this to mean a fresh mandating process.*

185. I think this is semantics, and Ms Hickey is really clutching at straws here. My view is that Mr Morgan was essentially proposing a new structure, new deed of mandate and new elections. It was an attempt to compromise the wishes of both parties and the Crown, and what he thought the resolution should be. I believe that Mr Morgan's recommendations did actually include a fresh mandate, the question was, how then was the new entity going to get the fresh mandate? That was the detail to be worked through. The decision about whether we needed a new vote depended on whether the Crown would require it, but it did not get that far as the Crown decided to recognise the Deed of Mandate, essentially in its current form, save for a few tweaks.

186. We were led to believe by the Crown that we would not necessarily need to take it back out to the vote as long as the new model had aspects of the original Tuhoronuku model. However, later we found that we were actually quite restricted in terms of changes that could be made and that the Crown and Tuhoronuku had to agree to those, which in many cases they would not. This was similar to what happened to us in the Te Roopu Whaiti process as I discussed above.

187. At paragraph 173 Ms Hickey says:[84]

[83] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 162-163.

Each 8 October letter noted the 2011 vote in favour of the original model received a broad level of support within Ngāpuhi, but this had to be weighed against a number of valid concerns raised throughout the mandating process. Each letter set out the changes Ministers considered would adequately address issues raised in the mandate process and would allow them to advertise the deed of mandate. These included:

173.1 fresh elections being held if a mandate was recognised;

173.2 Tūhoronuku becoming a stand-alone body (financially independent from the Rūnanga and accountable directly to Ngāpuhi) once a mandate was recognised and funding was available to it; and

173.3 hapū representatives being elected on a regional basis, with a maximum of three for each region.

188. Actually, it was not Ngapuhi that decided what the model would be, it was the Crown. At paragraph 173 Ms Hickey states that *"Each letter set out the changes* ***Ministers considered*** *would adequately address issues raised…",* so clearly the Crown ultimately decided for Ngapuhi what the structure would be, and the Crown ultimately decided what changes would be required. So it is not Ngapuhi deciding what would work for Ngapuhi, it is the Crown deciding what would work for Ngapuhi.

189. References to words like "broad agreement" and "some ways" are again all little manipulations to further restrict our exploratory discussions, and are not accurate summaries of positions that we had got to. When there is no agreement on fundamental issues, "broad agreement" on smaller issues does not mean anything. It was not simply about the number of hapu representatives or whether they came through the regions, it was equally, if not more importantly about the role of the representatives.

190. I believe that the wording of correspondence from the Crown attempts to restrict the nature and scope of our discussion of the issues, and when it did

[84] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 173.

that, it limited our ability to resolve those three key issues and the many other aspects that flowed from them.

191. At paragraph 175 Ms Hickey says:[85]

> *However, some other matters around the representative structure remained unresolved. In order to finalise the necessary amendments to the Tūhoronuku deed of mandate, Ministers proposed establishing a working group (comprising representatives of Te Roopu o Tūhoronuku, Te Kotahitanga, OTS and TPK) to progress the development of accountable and transparent election processes. I attached a copy of the letter outlining this proposal as exhibit "MCH26" to my June affidavit.*
>
> 175. *Te Kotahitanga, however, decided not to participate in the working group, so this approach did not proceed. Their decision is set out in a letter of 31 October 2012, which I attached as exhibit "MCH27" of my June affidavit.*

192. This is a key point that I want to clarify. To be clear, at this point in time, many matters around the initial three key issues, which we had attempted to resolve through facilitation and Te Roopu Whaiti, remained un-resolved. The Minister confirms this where he says "*some other matters around the representative structure remained unresolved".* However, regardless of that fact, the Ministers proposed the establishment of a working group to finalise the amendments the Crown had decided would need to be made. He was stating what matters needed to be resolved thereby limiting our discussion to very specific and narrow issues, when in reality the issues of substance and importance to us had not been resolved. The Minister was saying that these are the changes that will be made; we will not be considering any further changes. End of the matter. The Minister was deciding what changes would be made, not Ngapuhi. Again, I thought mandating was for the hapu to determine?

193. By agreeing to participate in that working group to develop the detail around those particular changes the Minister wanted, we believed we would

[85] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 175.

essentially be agreeing to set aside the fundamental issues which were still to be addressed, but the Minister made it clear there would be no further changes. On that basis we declined to participate.

194. At paragraph 177 Ms Hickey says:[86]

> *As a result Ministers wrote to Te Roopu o Tūhoronuku and Te Kotahitanga on 28 November 2012. I attached as exhibit "MCH28" of my June affidavit a copy of the letter. The letter closely reviewed the process to date which had resulted in compromises and seen some progress made over the previous 15 months. It also acknowledged that engagement had been taxing, came at a significant cost to all parties and seemed to be stalling because of an unwillingness on the part of both parties to step back from entrenched positions.*

195. We wanted the Tuhoronuku process to stop while we resolved matters because, as I have said, the continuation of their process meant that the Tuhoronuku model and process became further entrenched. This had the effect of limiting the issues that we could discuss, and further refining and restricting our facilitation discussions.

196. The Crown must not forget that it was also an "unwilling" party in this. It also had an entrenched position and it did not step back from it. When you review the whole set of circumstances, at the end of the day positions were entrenched because the Crown had allowed the flawed mandate process to continue for so long. When it came to the facilitation and working group process, it was the Crown that ultimately set the facilitation parameters because at the end of the day it was only the Crown who had the power to determine the outcome of those processes and the changes that would be made to the Deed of Mandate as a result. The reason I say this is because it is ultimately the Crown's decision whether to accept the mandate or not. We initially did not know we were so restricted by the Crown. It feels like we were lured into a process and strung along in bad faith by the Crown.

197. At paragraph 178 Ms Hickey says:[87]

[86] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 177.

> *Ministers outlined that they remained of the view that the issues were not insurmountable and were capable of resolution. In light of that, they outlined the detail of proposed amendments they wanted to see made to the deed of mandate and invited parties to consider those and provide feedback on them. Ministers noted Mr Morgan's 'on the ground' facilitation role amongst the people of Ngāpuhi. Given the degree of consultation that had occurred there would have been little to be gained from further consultation. Rather the Ministers sought to advance matters by recommending that key elements of Mr Morgan's report be adopted with amendments to the representative structure.*

198. Again, this is clear evidence of the Crown deciding to continue with its process and trying to justify that it did not need to undertake any further consultation. What the Crown was proposing were the final changes that were to be made to the Deed of Mandate, it was clear that nothing further would be considered and wider discussion with Ngapuhi would not need to take place.

199. As a result of this Crown decision, there were a significant number of submissions in opposition to the Deed of Mandate that was publically advertised. This in fact shows that further consultation would have highlighted to the Crown that we were still not happy with the model, and that the changes did not go far enough. Not only did they not consult with us on the proposed final changes to the Deed of Mandate, but they also did not consult with us after we made formal submissions on the amended Deed of Mandate. The Crown just approved the Tuhoronuku Amended Deed of Mandate and advised us about it a few hours before it was going to make its announcement.

200. At paragraph 179 Ms Hickey says:[88]

> *In particular, the letter noted that the proposals put forward by Mr Morgan contemplated kuia/kaumatua positions sitting inside the five*

[87] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 178.
[88] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 179.

Ngāpuhi regions along with up to five dedicated hapū-based rangatahi positions. As set out in the Ministers' letter of 28 November 2012 the Crown did not consider it appropriate to specify the nature of hapū representation. Accordingly, the model that was ultimately voted on was as set out below.

201. I cannot understand how the Crown can logically claim that "*the Crown did not consider it appropriate to specify the nature of hapū representation*" at this point of the process. Given that hapu representation was one of the key issues, I simply cannot understand why the Crown would not think it necessary to specify the nature of those roles. The key issue of hapu representation was actually originally *"The role of hapu, whanau and claimants and how they are represented in the settlement process".*

202. Was the Crown simply expecting hapu to put their issues concerning the role of hapu to one side in order to support Tuhoronuku, and to figure out what the roles and responsibilities were in terms of settlement along the way? For the Crown to limit the issues of hapu representation to the number of representatives, and the fact that they must come through the regions, totally misses the point and is extremely unfair. As a hapu representative for Te Kapotai, I can tell you that we do not only care about the number of representatives and that they are regionally elected. We also care about exactly what those people will be doing on Tuhoronuku, how they will be accountable to their hapu, and how we can have confidence that they will be discussing, negotiating, and settling and receiving redress through open, fair and transparent processes. We also wanted to ensure that we had real mana and rangatiratanga in the process, and we had been asking for this since 2009.

203. I believe that the Crown's amendments to hapu representation, coupled with the increase of positions of hapu on the Tuhoronuku IMA with weak and vague conditions, were an attempt to appease hapu. For the reasons I have given above, I reject the evidence of present Tuhoronuku IMA members where they claim that these amendments resolved the issue of hapu representation and empowered hapu. This is not a sustainable argument

and I believe they are making these statements to safeguard their positions and claims to continue to be able to represent hapu on Tuhoronuku.

204. The Crown says "*Accordingly, the model that was ultimately voted on was as set out below".* I am not sure when this model was voted on? Perhaps the Crown could clarify this. I understand that there was no further consultation on this model as Ms Hickey's previous paragraph at 178 says:[89]

> *Given the degree of consultation that had occurred there would have been little to be gained from further consultation. Rather the Ministers sought to advance matters by recommending that key elements of Mr Morgan's report be adopted with amendments to the representative structure.*

205. The Crown simply advertised this Amended Deed of Mandate and called for submissions. The result is that 63% were opposed and that the numbers of opposition actually grew since the mandate vote was held in 2011, so I am not sure what Ms Hickey is actually saying here. When was the amended model voted on?

206. At paragraphs 182 - 186 Ms Hickey says:[90]

> *182 - Te Kotahitanga chairs, Pita Tipene and Rudy Taylor, proposed the following amendments to the draft deed of mandate in a letter dated 7 December 2012 attached as exhibit "MCH30" to my June affidavit:*
>
> *182.1 all nominees to the Independent Mandated Authority (IMA) should be vetted by the police;*
>
> *182.2 members of the IMA should be prohibited from being appointed as negotiators; and*
>
> *182.3 seeking inclusion of a mechanism for withdrawal of groups who do not wish to be included in the mandate.*

[89] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 178.
[90] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 182-186.

183 - Pita Tipene, in his role as the chair of another group, Nga Hapū o Te Takutai Moana, wrote to the Minister on 7 December 2012. Nga Hapū o Takutai Moana is a collective of Ngāti Hine and some other Ngāpuhi hapū in the Bay of Islands area. It had met on 4 December 2012 and considered the Ministers' letter of 28 November to Te Kotahitanga and Te Roopu o Tūhoronuku. Mr Tipene's letter set out a number of concerns with the Ministers' letter and supported continuing discussions between the parties.

…

185 - The Minister and the Minister of Māori Affairs wrote to both parties on 31 January 2013, noting a number of areas of agreement, and setting out additional points where further work was needed before the Crown reviewed an amended Deed and decided whether to advertise it attached as exhibit "MCH32" to my June affidavit.

186 - On 21 February 2013 Te Kotahitanga wrote to the Crown seeking further changes. I attached as exhibit "MCH33" to my June affidavit a copy of this letter. The proposed changes to the representation structure were:

186.1 removal of the seat allocated to the Rūnanga;

186.2 urban representation should be reduced in number from 4 to 3 (as each of the 5 hapū regions only has 3 representatives);

186.3 replacement of the dedicated seat for kaumātua and kuia with a kaumātua and kuia nominated by each taiwhenua/hapū region (including the urban block). These kaumātua and kuia would then form an advisory board with a membership of six kaumātua/kuia to guide the IMA; 186.4 a requirement for all nominees to undergo criminal checks; and

186.5 prohibition of members of the IMA from selecting negotiators from among themselves.

207. The point I want to make here is that when TKONHN wrote suggesting further changes and detail, we were attempting to make the best of a bad

situation. This should definitely not be interpreted as acceptance that the issues had been resolved. At this point in time, it felt like a fait accompli, we felt like we had no ability to do anything and tried to suggest any changes that could be made. It also shows that TKONHN made every effort to work with the structure and propose changes every step of the way. This supports the suggestion that we were not fixed in our position and that we continually tried to suggest changes to enhance the structure, which Tuhoronuku and the Crown continually rejected. It was at the point that we really felt like we had little ability to do anything further.

208. What I want to know is why, when the Crown was aware of the three key issues for over a year, maybe almost two, did the Crown not just say at the beginning, before we entered into all the facilitation processes, that the bottom line was the Runanga will have to continue to have representation, urban will also have to have separate representation, kaumatua and kuia will have to have separate representation, and the name will not be changed and this is not negotiable? That would have saved all of us a lot of time and energy. But instead, the Crown led us to believe that we were here to find a genuine resolution to the three issues and that we could consider a range of settlement processes and sequences to put forward to Ngapuhi for consideration.

209. On the issue of police vetting Ms Hickey at paragraph 184 says:[91]

> *184 - Te Roopu o Tūhoronuku indicated on 14 December 2012 that they would amend the deed of mandate to include a police vetting process should a dispute arise and a clause prohibiting members of the IMA from being appointed as negotiators attached as exhibit "MCH31" to my June affidavit.*

210. I must stress that the police vetting issue is a material issue. It goes to the heart of our concerns around representation, mistrust, credibility, openness, fairness, transparency, and accountability. The Crown was told that we had concerns about the current elected members and the potential for future elected representatives to not meet the criminal convictions criteria. Their

[91] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 184.

comment that they would agree to include a police vetting process ***should a dispute arise*** is wrong. Police vetting is a simple process matter that could have easily been addressed, but instead of placing the onus on those wanting to represent and require that they make a simple declaration, the Crown and Tuhoronuku required that those being represented must raise it as an issue. I believe this is best practice for other organisations and yet the Crown and Tuhoronuku would not agree to this. Why? We believe that there were nominees, and that there are current representatives that were part of the most recent elections, which would fit this criteria. Their nominations/appointments should not have been accepted as valid, but because we were not able to establish a prima facie case their nominations/appointments were simply accepted. This is a serious matter which the Crown continues to ignore.

211. At paragraphs 191 – 196 Ms Hickey says:[92]

> *191 - On 16 June 2013 Nga Hapū o Te Takutai Moana wrote to Ministers advising they were working towards seeking a mandate to negotiate the settlement of their hapū claims. I attached a copy of this letter as exhibit "MCH37" to my June affidavit.*
>
> *192 - On 19 June 2013 OTS and TPK provided the Minister and the Minister of Maori Affairs with a report seeking their agreement that the deed of mandate amendments made by Te Roopu o Tūhoronuku were sufficient to advertise and call for submissions. I attach a copy of that report as "exhibit MCH(2)37".*
>
> *193 - On 26 June 2013 Ministers advised Te Roopu o Tūhoronuku, Te Kotahitanga and Nga Hapū o Takutai Moana that they were satisfied that significant progress had been made to address the concerns raised during the mandate process in 2011 and they considered it appropriate to advertise the Te Roopu o Tūhoronuku deed of mandate and seek submissions on it. I attached a copy of these letters as exhibits "MCH38" and "MCH40" of my June affidavit.*

[92] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 191-196.

194 - These letters set out the Crown response on three issues raised by Te Kotahitanga (police vetting and criminal checks for nominees, election processes for hapū kaikōrero and a hapū withdrawal mechanism in the amended deed of mandate).

195 - Ministers also advised Ngā Hapū o Te Takutai Moana that it would not be appropriate for the Crown to hold discussions on an alternative mandate at the same time that it was advertising the amended Te Roopu o Tūhoronuku deed of mandate. Ministers considered there needed to be a fair opportunity for the amended Tūhoronuku deed of mandate to be advertised and considered.

196 - On 8 July 2013 Nga Hapū o Te Takutai Moana reaffirmed that they were likely to develop their own mandate strategy as a large natural group unless they were able to agree a collaborative approach with Te Roopu o Tūhoronuku and Kotahitanga. Officials subsequently met with Nga Hapū o Te Takutai Moana on 25 July 2013 and the Minister subsequently confirmed, by way of letter, that the Crown did not believe it appropriate to consider another mandate while it was in the process of advertising the amended Tūhoronuku deed of mandate. I attach as "exhibit MCH(2)38" an aide memoire to the Minister dated 2 August 2013, where officials briefed the Minister on the 25 meeting and then Minister's 5 August 2013 letter to Nga Hapū o Te Takutai Moana.

212. If we look at the timeline of events set out in paragraphs 191 – 196, it shows that on 16 June 2013 NHOTTM advised the Crown it wanted to seek its own mandate. Three days later, officials asked the Ministers to agree to the Amended Deed of Mandate being advertised. Seven days after that, the Ministers write to NHOTTM advising that they had agreed to advertise the Amended Deed of Mandate, sought submissions, and advised NHOTTM that it would not be appropriate for the Crown to hold discussions on an alternative mandate (see 195) while it was advertising the Amended Deed of Mandate.

213. NHOTTM had notified the Crown that it wanted to seek its own mandate prior to the Crown making the decision to advertise the Tuhoronuku

Amended Deed of Mandate. The Crown then quickly decided to advertise the mandate and then says to NHOTTM 'sorry, because we have advertised the mandate we cannot discuss this with you, as it would be bad faith to Tuhoronuku', how convenient, I suggest.

214. I believe this is actually bad faith towards NHOTTM. The Crown should have met with us, they had the opportunity to meet with us and discuss it before they agreed to advertising the Tuhoronuku Amended Deed of Mandate when they first received our notice. Instead, the Crown chose not to and quickly made the decision to advertise the Tuhoronuku Amended Deed of Mandate, so as to avoid having to discuss it with us.

215. On 8 July 2013, NHOTTM wrote back to the Minister and requested a meeting. On 25 July 2013, we met and the Crown said the same thing that it would not engage in discussions with us as it would be bad faith to Tuhoronuku.

216. NHOTTM were extremely frustrated by this response and we felt that it was unfair. However, we still made submissions as we were advised to by the Crown in the hope that the Crown would engage with our comprehensive submissions and agree to our request to have our hapu, marae and WAI claims withdrawn and to seek our own mandate.

217. The result of the submission process was that 63% of submitters were in opposition, and yet the Crown still recognised the Tuhoronuku Amended Deed of Mandate. The Crown failed to accept or acknowledge our fundamental submission that at no time throughout the entire mandate process had a mandate been given to Tuhoronuku by the hapu, particularly by those in NHOTTM. Hapu maintained that the mandate the Crown and Tuhoronuku claimed had come out of the Crown and Tuhoronuku driven process, and could not possibly be valid due to the serious flaws with that process.

Outcome of consultation processes

218. At paragraph 197 Ms Hickey says:[93]

> *As a result of the above processes the deed of mandate has been amended considerably since the commencement of the mandate process, and since the 2011 vote, to improve the representation structure, transparency and accountability of the mandated body to Ngāpuhi.*

219. This is the Crown's view not ours. We do not agree. In our view, the changes have failed to resolve the three key issues and have not resulted in a better representation structure, more transparency or more accountability. We set out our reasons for this in the submissions of NHOTTM, Te Kapotai and Ngati Hine on the Tuhoronuku Amended Deed of Mandate in August 2013.

220. What the *"changes"* and "*improvements"* to the Tuhoronuku Amended Deed of Mandate have actually allowed is an election process whereby we now have a group of elected individuals who have no actual hapu mandate. Of those individuals, many of their appointments are disputed, some are in the process of their hapu removing them, and many hapu have refused to engage in the process entirely. The hapu representation on the present Tuhoronuku IMA has created a situation where there is now a minority of the hapu in the Bay of Islands (Te Pewhairangi region) representing and making decisions on behalf of all of our hapu. That is just wrong.

221. I also refer the Tribunal to my earlier evidence[94] where I talk about the election of the Te Pewhairangi representatives on the Tuhoronuku IMA. At paragraph 277, I state that at the hui to elect the Te Pewhairangi regional representatives to the Tuhoronuku IMA "*A total of 9 people were present: 1 Te Puni Kokiri observer, 1 Te Puni Kokiri Cultural Support, 6 candidates and Warwick Lamp from Electionz".* I think it is absurd that these three elected individuals maintain in their evidence that they have a mandate to represent our hapu on the basis of this election process. There were only six people present, three of which were elected.

[93] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 197.
[94] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014.

222. At paragraph 198 Ms Hickey says:[95]

> *Ms Prime says that whatever changes were made to the process, they were never mutually agreed, the Crown and Tuhoronuku "just picked and chose and that was it" and they would pick issues that suited them and typically not the ones that would resolve our concerns. 17 I disagree. Tuhoronuku (and not the Crown) made meaningful changes to its deed for the purpose of addressing Te Kotahitanga concerns.*

223. Again, I say that the statement "*Tuhoronuku (and not the Crown) made meaningful changes to its deed for the purpose of addressing Te Kotahitanga concerns"* is the Crown's view not ours. The Crown told Tuhoronuku which changes it had to make, it was like a negotiation between the Crown and Tuhoronuku, and TKONHN was a lesser party in these negotiations. We had to rely on the Crown to advocate for our changes and the Crown failed us. The Crown's Te Tiriti duties do not cease toward all hapu, just because it is working with one group to meet the Crown's settlement agenda, or does it? If Tuhoronuku were not told by the Crown that they had to make certain changes, in almost every case it would not. Tuhoronuku for its part, really had no choice in the matter, if they did not make the changes the Crown required then there was the potential that their mandate would not be accepted, so in reality this is the Crown ultimately deciding what Ngapuhi's mandate would look like. I want everyone to remember that this was supposed to be a decision for the hapu of Ngapuhi, not the Crown or Tuhoronuku.

224. At paragraph 201 Ms Hickey says:[96]

> *When one compares the changes that Tuhoronuku made to those it did not, one has to concede that the changes were significant and addressed, in substance, a great deal that Te Kotahitanga was seeking.*

225. I do not concede. Again, that is the Crown's opinion, and of course they would say that. As I just pointed out above, there were in fact many more

[95] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 198.
[96] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 201.

suggested changes that were not incorporated into the Tuhoronuku Amended Deed of Mandate, and they were essential changes that we were seeking. The fundamental issue of not having a fully hapu led negotiation model remained unresolved.

226. At paragraph 202 Ms Hickey says:[97]

> *I note that the majority of the key recommendations in the Morgan report were ultimately implemented through changes to the Deed of Mandate.*

227. That is not accurate. The majority of Mr Morgan's recommendations were not included. The changes were not made as he had in fact recommended them, and this is material to TKONHN's position.

228. At paragraph 203 Ms Hickey says:[98]

> *Ms Prime states that she believed the Crown and Tūhoronuku were "intentionally misleading" the people about the relationship between Tūhoronuku and the Rūnanga, and that the issue had been raised with the Crown and Tūhoronuku frequently, including in Te Kapotai's report on the mandate hui. I cannot accept that the Crown or Tūhoronuku misled the claimants about the relationship between Tūhoronuku and the Rūnanga. The Crown was aware of concerns about the independence of Tūhoronuku from the Rūnanga. As set out in Table 1 above, in response to concerns about the relationship between Tūhoronuku and the Rūnanga, Tūhoronuku was made a separate legal entity existing trustees vacate their positions and fresh elections were held.*

229. For the Crown to simply say that it is separate, does not prove that it is in fact separate. As we said, by virtue of having continued representation Tuhoronuku is not separate from the Runanga. Mr Tau confirms that there is not a clear separation in his September 2014 board report:[99]

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[97] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 202.
[98] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 203.
[99] See Appendix A – TRAION Board Report 2014.

Although we have strived for clear separation between Te Runanga-a-iwi o Ngapuhi and TIMA, as the Runanga board representative, it is my duty to report to you on the activities and operations of TIMA.

Advertising deed of mandate (July- August 2014)

230. At paragraphs 204 – 209 Ms Hickey describes the Crown's assessment of the submission received on the Tuhoronuku Deed of Mandate.[100] Rowena and I have already provided evidence of our account of this process and we even raised what we perceived as issues with the submission process itself and barriers to participation in our submissions on the mandate in August 2013.

231. As I have said, the submission process was yet another flawed process within the Crown and Tuhoronuku mandate process. The Crown received an unprecedented level of submissions in opposition to the mandate and typically it has carried out an assessment so as to limit their significance and effect.

232. An unprecedented number of submissions were received in spite of the barriers the Crown placed on submitters the entire way through the submission period, which included:

(a) The unwavering position of the Crown that submissions could not be received at all after the submission date, despite valid requests having been made; and

(b) The fact that the closing date for submissions fell on a weekend, again reducing the period of time parties had to make submissions;

(c) The reluctance to provide resourcing assistance to those wishing to make submissions; and

(d) The apparent rejection of a great number of submissions that were received late.

233. I think the real issue is how much weight the Crown gave to the submissions made. In my view, the Crown's assessment of the submissions was typically

[100] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 204-209.

to limit their significance and effect. The Crown made much of the fact that it was not about how many submissions were received, it was about the substance of those submissions, and its assessment was to limit the effect of those submissions it considered "template" or pro forma. Is the Crown saying they did not give "template" or pro forma submissions much weight? I want to know if the Crown bothered to explain to people that if their submissions were "template" they would receive less weighting. A submission is a submission. A result of the submission process is that 748 more people were in opposition to the mandate than when Tuhoronuku held the vote in 2011, so the level of opposition to Tuhoronuku had actually increased and many were representative in nature. Tuhoronuku's level of support also dropped significantly.

234. When analysing the submissions, one can see that some of the submissions made opposing the mandate were representative submissions on behalf of whanau, hapu, marae, WAI claims and organisations. To conclude that only 748 more people were opposed is an overly simplistic analysis and wrong.

235. I believe that the Crown's assessment of the submission processes served to diminish the mana and value of those representative submissions, as well as the individual submissions by people who took the time to sign and send the pro forma cards.

236. At paragraph 209 Ms Hickey states *209 "The majority of submissions in opposition to the mandate raised concerns that were not new".*[101] It is like the Crown is saying "oh yes, same old same old". Because the issues are old issues does this mean that the Crown will just ignore that and continue with its process?

237. What I believe this statement shows is that while the Crown and Tuhoronuku were claiming that substantial changes had been made, and that essentially TKONHN got what it asked for, it had not and people were still dissatisfied. The fact that the submissions in opposition to the mandate raised concerns that were not new, I believe, is proof of that.

Briefing to Minister on whether to recognising the amended deed of mandate

[101] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 209.

238. At paragraph 210 Ms Hickey says:[102]

> *The decision to recognise the Tūhoronuku mandate was one Ministers gave a lot of consideration to. Officials provided a draft briefing to them on 21 November 2013 to enable discussion between them and officials on key issues. Ministers sought discussions on a number of issues before they made a decision, and further briefings, as follows (see "MCH(2)41" attached):*
>
> *210.1 Ngāpuhi: additional mandate advice (13 December 2013);*
>
> *210.2 Ngāpuhi: Decision on the amended Te Rōpu o Tūhoronuku deed of mandate (20 December 2013);*
>
> *210.3 Ngāpuhi: Conditions on Mandate (23 January 2014); and*
>
> *210.4 Ngāpuhi: Further Mandate Conditions (12 February 2014).*

239. This is the issue. The Ministers sought advice from their own Officials and were briefed only by the Office of Treaty Settlements, not us. At no point did the Ministers or their Officials seek discussions with us regarding our submissions.

Amended Deed of Mandate

240. At paragraph 217 Ms Hickey says:[103]

> *The key points in relation to communication were that the amended deed of mandate sets out that the Tūhoronuku IMA and hapū kaikōrero would communicate with Ngāpuhi and seek feedback on:*
>
> *217.1 Ngāpuhi objectives for negotiation;*
>
> *217.2 the make-up and appointment of negotiators;*
>
> *217.3 sign off on terms of negotiation, agreement in principle and initialled deed of settlement; and*

[102] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 210.
[103] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 217.

217.4 planning and development of a post-settlement governance entity.

In addition, it was expected hapū kaikōrero would play a crucial role in ensuring hapū members are regularly kept informed.

241. When one considers the above points against the Tuhoronuku IMA representative structure, I fail to see how it is that the Crown and Tuhoronuku claim that hapu have rangatiratanga in this process. It is not about being kept informed, rather it is about actual and meaningful participation in the process. It is about having actual mana and hapu rangatiratanga, and our hapu do not believe that this is protected within the Tuhoronuku Deed of Mandate and the Ministers' conditions.

Submission process

242. At paragraph 221.1 Ms Hickey says:[104]

Other issues raised (in template submissions) were:

221.1 requests for removal of individual hapū, marae and Wai claims and support for the Waikare Marae trustees opposition to the deed of mandate (180 submissions).

243. This is the first assessment I have seen by the Crown of our hapu submissions. I want to know whether the Crown is saying that our 180 submissions in opposition to the Deed of Mandate were the template submissions. What weight did they give to those submissions? Is the Crown simply counting the submissions made by our Marae and Maori Committees and hapu, as one submission/person? What weight did the Crown give to our online petition where we had over 350 people support? What weight was given to the submissions by our kuia and kaumatua? Or were theirs just considered template submissions too?

244. Similarly, the Crown notes that 516 submissions were received from Ngati Hine. I know that many of these submissions were from Ngati Hine claimants, whanau, hapu, marae, trusts and organisations and Te Runanga o

[104] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 221.1.

Ngati Hine. Therefore, the Crown's assessment that only 516 people made submissions is overly simplistic. What steps did the Crown take to ascertain the representative nature of these submissions, and what weight was given to them? Did it actually matter how many submissions were made and what issues they raised?

Comment on submissions

245. At paragraph 227.2 Ms Hickey states:[105]

> *As noted above, we consider that the Tūhoronuku deed of mandate proposes an entity to represent Ngāpuhi in settlement negotiations that is sufficiently representative of, and accountable to, the claimant community. Tūhoronuku has also followed a lengthy and robust process to gain a mandate that has involved significant consultation with Ngāpuhi members, the ballot vote in 2011 and over 18 months of facilitation with Kotahitanga to attempt to resolve concerns with the deed of mandate. The Tūhoronuku mandate process has been the largest and most intensive of any group seeking to enter settlement negotiations, which reflects the size of Ngāpuhi and the complexity of its internal dynamics.*

246. Again, this is the Crown's opinion and summary of their endorsement for the Deed of Mandate. I do not agree with the assessment, or the generalisations that it makes, and I reiterate that "lengthy" does not equal "good" or "robust". In fact it highlights that there were major issues that needed to be resolved. I maintain that the consultation was not good consultation and it was not meaningful. Furthermore, the ballot vote had very low results.

247. I also reject the statement that *"The Tūhoronuku mandate process has been the largest and most intensive of any group seeking to enter settlement negotiations, which reflects the size of Ngāpuhi and the complexity of its internal dynamics"*. The issues have not just arisen because of the "size" and "complexity" of Ngapuhi, the issues have arisen because of the structural and procedural issues with the mandate and Tuhoronuku's flawed strategy. I am also of the view, that the size and complexity of Ngapuhi was a very good

[105] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 227.2.

reason to explore and engage with hapu on the best model for settlement negotiations. Hapu autonomy was also going to be a major issue for Ngapuhi and the Crown, having seriously undermined that over the last 5 years.

248. At paragraph 227.3 Ms Hickey goes on to say:[106]

> *While the submissions process clearly demonstrates that there remains a strong body of opposition to the mandate, we consider that, on balance, Tūhoronuku continues to have the support of the majority of Ngāpuhi to negotiate a settlement offer with the Crown. In addition, Tūhoronuku has made a number of significant changes to the deed of mandate as a result of facilitation to enhance hapu representation and incorporate a fresh election process for the Tūhoronuku IMA. This process would provide the opportunity for all Ngāpuhi to have a say in who will represent them in settlement negotiations with the Crown.*

249. I cannot accept this. On balance of what exactly? On balance of a process that did not allow for a second vote, where a majority of submissions were opposed and representative submissions were dismissed? Is this the balance the Crown has used to determine support or opposition?

250. A "new" flawed election process has been used in an attempt to strengthen the Tuhoronuku mandate, instead of doing the proper thing and consulting and/or having a second vote, or accepting the result of the submission process which clearly showed that majority did not in fact support the mandate and the proposed changes.

251. At paragraph 228.1 Ms Hickey says:[107]

> *Should the mandate be recognised, Ministers should send a strong message to Tūhoronuku that it would need to take measures to ensure there is high level of participation in the election process from Ngāpuhi members (see paragraph 118 of the briefing).*

[106] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 227.3.
[107] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 228.1.

252. I want to know what exactly was that level of participation in the election process? I know that later on in Ms Hickey's affidavit she gives some detail of the level of participation, and what that assessment shows, as I have already provided, is that there is still a minority of hapu participating in, and represented on Tuhoronuku.

253. I have also not seen *a "strong message"* from the Minister to Tuhoronuku that it would need to *"take measures to ensure there is high level of participation".* The Tuhoronuku IMA election process concluded in June and we are now at the end of November and the Crown has still not completed their assessment on representation issues. If the Crown has completed that assessment, I have not seen it.

254. In fact, I do not believe that the Crown is sending any strong messages. All I see is a high level of collaboration between the Crown and Tuhoronuku to dismiss and defeat the opposition and continue to fast track their process.

255. At paragraph 228.2 Ms Hickey goes on to say:[108]

> *Another 'check' on mandate would be provided by officials assessing the results of the elections process to ensure the IMA is adequately representative of Ngāpuhi before recommending that negotiations commence (see paragraph 119).*

256. Again, this raises more questions for me. Given that there has been approximately 1000 submissions tendered by Ngati Hine opposing the process, coupled with the long series of correspondence from our hapu that raises major objections and issues of transparency and fairness concerning the Tuhoronuku IMA election process, what was the Crown's assessment of that process?

257. From what I have seen, the Minister has publically endorsed the newly elected Tuhoronuku IMA committee, yet Ms Hickey's affidavit says they have not even completed that assessment. The Minister's endorsement of the committee leads me to conclude that the Crown must consider that that

[108] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 228.2.

Tuhoronuku election process is adequately representative of Ngapuhi, and therefore it has satisfied this "additional check" on the mandate.

258. What is the status of the settlement process now? The fact that Ms Hickey states that the assessment has not been completed seems like another attempt to string us along and give us false hope that at some point the Crown will hear and act on our concerns, when it fact this is lip service.

259. At paragraph 229 Ms Hickey says:[109]

> *If Ministers were minded to recognise the mandate, officials recommended four conditions be placed on that recognition. These conditions are discussed at paragraphs 123-150 (pages 26-30).*

260. I refer to my earlier evidence and correspondence on those conditions.[110] We believe the conditions attached to the mandate are woefully inadequate. We do not accept them.

261. At paragraphs 230.1 and 230.2 Ms Hickey states:[111]

> *Officials also noted two further conditions that they considered but did not recommend:*
>
> *230.1 - requiring the involvement of other parties (such as Te Kotahitanga) in decision-making in the interim period between mandate recognition and the beginning of the IMA election process (see paragraphs 144-145);*
>
> *230.2 - requiring that the Rūnanga seat on the IMA be a non-voting seat (see paragraphs 146-150).*

262. Why did the Crown not accept those conditions?

263. At paragraphs 231 - 232 Ms Hickey says:[112]

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[109] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* November 2014, para 229.
[110] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, pp 63-64.
[111] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 230.1-230.2.
[112] Wai 2490, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 231-232.

231 - As noted above, officials also gave advice on the option of requiring Tūhoronuku to undertake a further vote on the amended deed of mandate (see paragraphs 151-155). It was noted that:

> *A second vote would provide members of the claimant community with an opportunity to receive and vote (rather than make submissions) on the most up to date information on the proposed mandated entity, including the amendments made since 2011 (such as changes to hapū representation and a fresh election process for the Tūhoronuku IMA). It would provide a current indication of support for the mandate from the claimant community giving you [ie, Ministers] more information upon which to make a decision.*

232 - Advice was also given that there were risks and implications associated with a second vote:

232.1 the mandating process had already been divisive for Ngāpuhi which would likely be reflected in another voting process;

232.2 there would likely be last efforts from both sides to swing the vote their way;

232.3 there was a risk the 'silent majority' of Ngāpuhi would not vote due to voter fatigue;

232.4 Tūhoronuku would likely react negatively to being required to undertake a further vote, possibly noting the Crown has never required such a step from any other group and that the submissions show a persistent level of opposition but not one significantly above the 2011 vote;

232.5 there would be delay;

232.6 a second vote would require considerable time and resources; and

232.7 the costs would be significant.

264. I take issue with these statements.

265. The Crown says at 232.1 *"the mandating process had already been divisive for Ngāpuhi which would likely be reflected in another voting process".* I believe that not having a second vote has been divisive.

266. The Crown says at 232.2 that *"there would likely be last efforts from both sides to swing the vote their way*". I believe we should be entitled to do this. This would have been the Crown asking us to decide, but instead it decided that it will just stop us from being able to influence voters and hear our point of view.

267. The Crown says at 232.3 that *"there was a risk the 'silent majority' of Ngāpuhi would not vote due to voter fatigue*". Who are the silent majority? What weight should non-voters be given? Is the Crown assuming that the silent majority in fact support Tuhoronuku? In my view, that would be an unfair assumption to make. Given so few voted in 2011 (less than 4% of Ngapuhi) and that a minority of people supported Tuhoronuku in the 2013, we would suggest that the submission process indicates the silent majority could in fact be opposed to Tuhoronuku.

268. The Crown says at paragraph 232.4 that "Tūhoronuku would likely react negatively to being required to undertake a further vote, possibly noting the Crown has never required such a step from any other group and that the submissions show a persistent level of opposition but not one significantly above the 2011 vote." I want to know how much weight was given to this advice/statement. Should this really have been a relevant consideration?

269. At paragraph 232.5 the Crown suggests that *"there would be delay"* from holding a second vote. That should not have been a major factor, but we know the Crown was keen to settle all claims by 2014, or as soon as possible. However, given that the Crown is apparently supportive of the Tribunal process, which still has some time to run, we actually have time for a second vote and to properly resolve the issues.

270. Finally, the Crown says at 232.6 that *"a second vote would require considerable time and resources"* and at 232.7, that "*the costs would be significant."* I believe that the cost of a second vote and potentially small

delay would have been a much smaller price to pay than the cost of recognising the mandate, considering the delay of prolonged litigation, and the ongoing internal division and disputes. I also cannot see how all of a sudden there is an issue of financial resourcing when the Crown was more than willing to reimburse Tuhoronuku an unprecedented amount of money to achieve a mandate.

Further advice – mandate conditions and addressing interests likely to arise in a Ngapuhi settlement

271. At paragraph 237 Ms Hickey goes on to say:[113]

> *The Minister was particularly interested in whether the mandate structure would provide sufficiently for hapū to be involved in negotiations. He also sought clarification that the Tūhoronuku mandating structure was sufficiently flexible that claimants who had raised issues with natural resources (such as Ngāwhā springs, Porotī springs and Lake Omāpere) directly with him would be able to participate in the design of any settlement redress.*

272. I question the Minister's interest that hapu "participate". Participating in a process and having the real ability to decide and control are two very different things.

273. At paragraph 238 Ms Hickey says:[114]

> *OTS briefed the Minister on 13 December 2013 (see exhibit "MCH(2)41" attached). It advised:*
>
> *238.1 any Ngāpuhi settlement will have to recognise different layers of interest in specific redress and in any co-governance arrangements;*
> *238.2 differing interests could be recognised in a number of ways ie. by:*
>
> *238.2.1 devolving settlement assets to hapū (either individually or to hapū clusters based on regions); or*

[113] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 237.
[114] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 238.

238.2.2 holding assets collectively and providing for specific roles for hapū or sub-groups through future iwi governance;

238.3 those are fundamentally decisions for Ngāpuhi to make and are likely to be informed by redress availability; and

238.4 it was expected that if a mandate was recognised, the newly elected trustees to the Tūhoronuku IMA would consider, and consult Ngāpuhi on, the various options as they developed their negotiation strategy.

274. I want to know how these things are achieved. What assurances or guarantees are given to hapu? Where are the memoranda of understanding? How would balance be achieved? What happens if Tuhoronuku decide to maintain one comprehensive settlement package and PSGE? Do we simply wait for the ratification process and go through this all again? We need to get it all right and locked in now.

275. That said, it was all too little, too late. Hapu were looking for assurances prior to the Ministers deciding to recognise the Tuhoronuku Deed of Mandate, not after. These matters could have been developed as part of the facilitation, for example, through a Memorandum of Understanding or Terms of Agreement between parties for the negotiations.

276. It is too late now. We do not trust the process and people, and we do not agree with the structure and Amended Deed of Mandate.

277. At paragraph 239 Ms Hickey goes on to say:[115]

In relation to mandate conditions officials advised on options for providing additional assurance to those who had expressed concern about the level of hapū representation and Rūnanga involvement that there would be strong mechanisms in place to ensure the representation structure is robust and specific interests could be catered for.

[115] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 239.

278. I address this above. Again, my question is what are the "strong mechanisms"?

279. At paragraph 241 Ms Hickey says:[116]

> *Officials noted that the newly elected Tūhoronuku IMA would have to consider and agree how it will organise for negotiations and communicate with Ngāpuhi members in more detail than is set out in the Deed of Mandate. There are a number of options for organising for negotiations including having regionally based working groups or holding hapū based discussions around the development of cultural redress packages. Those decisions are, however, fundamentally decisions for Ngapuhi (and their newly elected representatives) to make. They will, to some extent, depend on redress aspirations and availability. The Crown expected to release the Crown asset audit for Northland shortly to assist Ngapuhi consideration of that.*

280. Again, I want to reiterate that the Amended Deed of Mandate was incomplete and did not have sufficient detail for us to be able to support it. Doing these things stated above, after the Amended Deed of Mandate was signed off, is too late. These matters should have been dealt with in facilitation and prior to the Amended Deed of Mandate being submitted and publically advertised, not after. We had been asking for these issues to be resolved right from the beginning. If necessary, there should have been further consultation and another vote. Instead, the Crown would rather let this newly elected group with no mandate behind it determine these fundamental matters.

281. At paragraphs 242 – 243 Ms Hickey says:[117]

> *242 - Officials noted that one way of providing extra assurance to the claimant community would be requiring Tūhoronuku IMA to set out, in the Terms of Negotiations, how it would organise for negotiations and how it would communicate with the claimant community.*

[116] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 241.
[117] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 242-243.

243 - In terms of post settlement governance officials were aware there remained a concern that the Rūnanga would either become the PSGE for Ngāpuhi or would control the formation of any new entity. Officials noted the Tūhoronuku IMA would need to develop a new PSGE in consultation with Ngāpuhi members. This could be one pan-Ngāpuhi PSGE or a collective entity with iwi/hapū sub-entities. It could also be possible to devolve redress to iwi/hapū entities if that is sought by Ngāpuhi. Again, those are decisions for Ngāpuhi to make.

282. We had been asking for this to be included in the Amended Deed of Mandate, not later in the Terms of Negotiations. That seems to be what Mr Morgan was suggesting when he said that the PSGE needed to be talked about now, but the Crown ignored his advice.

283. At paragraph 244 Ms Hickey says:[118]

Ms Prime states that she is in no doubt that Tūhoronuku in conjunction with the Rūnanga will restructure itself to become the PSGE.19 One of the conditions on the IMA is to undertake consultation on PSGE entity options. Furthermore, the usual process requires a separate vote on the PSGE before settlement. Therefore, I cannot accept that the Rūnanga or Tūhoronuku will necessarily become the PSGE, as noted above there are a number of options, and the decision between those options will be in the hands of Ngāpuhi.

284. We have no faith in their consultation. Our evidence regarding the three rounds of "consultation" suggests that:

(a) Consultation was predetermined;

(b) There was a lack of options;

(c) It was not meaningful;

(d) It was tightly controlled, and

(e) The information was biased.

[118] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 244.

285. I get hoha when the Crown continues to claim that these matters are in the hands of Ngapuhi and that it is Ngapuhi's decision as if the Crown has nothing to do with it. We know that it is the Crown's policy, and ultimately it is the Crown's decision whether or not a settlement is finalised, and on what terms. On that basis, I have no doubt that the Crown will in fact have some say in the PSGE.

Decision to recognise the mandate

286. At paragraph 245 Ms Hickey says:[119]

> *In February 2014 the Minister and the Minister of Māori Affairs decided to recognise the amended deed of mandate put forward by Tūhoronuku IMA, subject to certain conditions. On 14 February both Ministers met with Tūhoronuku IMA and, separately, with Te Kotahitanga to convey their decision. Ministers also decided to publicly announce the decision immediately.*

287. I refer the Tribunal to the evidence of Pita Tipene and Rowena Tana regarding the meeting where the Crown informed us that the mandate would be recognised. Again, this set of circumstances showed that the Crown had a fixed position and was unwavering.

288. At paragraph 254 Ms Hickey says:[120]

> *The Minister was able to meet with both Te Rūnanga o Ngāti Hine and Tūhoronuku IMA in Whangarei on 24 April 2014. It was not possible within the time available to meet separately with Nga Hapū o Takutai Moana or Mr Taurua on that trip.*

289. The Crown should have made another trip.

290. At paragraph 261.2 Ms Hickey says:[121]

[119] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 245.
[120] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 254.
[121] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.2.

The Crown does not see its recognition of the Tūhoronuku IMA's mandate as having an impact on the Waitangi Tribunal hearings and remains committed to its active participation in those hearings.

291. I do not believe this suffices as a guarantee for claimants that the Stage Two Te Paparahi o Te Raki Inquiry will be protected. Claimants require far greater certainty regarding the preservation of the jurisdiction of the Tribunal to hear and report on our claims and our ability to seek binding recommendations, as well as funding for the inquiry to ensure we do not end up in the same position as Ngati Porou for example.

292. At paragraph 261.3 Ms Hickey states:[122]

The Tūhoronuku IMA structure provides each Ngāti Hine hapū the opportunity to have a hapū kaikōrero representative and to have one or more positions on Tūhoronuku IMA. That enables Ngāti Hine to have control, along with other Ngāpuhi, over how negotiations are structured, what redress is sought and post settlement governance arrangements. That control will not be absolute. Inevitably (and even if Ngāti Hine were in separate settlement negotiations) Ngāti Hine would have to work with the other representatives of Ngāpuhi to ensure that any settlement is fair for all.

293. I maintain that because of the way the Tuhoronuku IMA is structured, it is not even possible for Ngati Hine, let alone any other hapu, to have any real control or influence of the process. Hapu can be outvoted every time. Furthermore, there is not even the ability to decide on our hapu representatives in accordance with our own tikanga.

294. At paragraph 261.4 Ms Hickey says:[123]

There will be flexibility in the negotiations to meet varying interests potentially at hapū, pan-hapū and collective iwi level. The Crown is willing to explore options for the devolution of redress if that is what Ngāpuhi wish. To that end the Tūhoronuku IMA will undertake an early consultation process to inform and engage the claimant

[122] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.3.
[123] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.4.

community in the development of PSGE options. Ngāti Hine participation in that process would be valuable.

295. What you have under the Tuhoronuku Deed of Mandate is Ngapuhi speaking for hapu, not the other way around. Hapu interests are usurped by a Ngapuhi interest which is a fundamental shift from our tikanga. We have experienced this throughout the mandate process and in particular with the mandate vote, and we are not prepared to allow this to happen again further into negotiations.

296. At paragraph 261.5 Ms Hickey says:[124]

> *The Minister asked Te Rūnanga o Ngāti Hine why, despite Ngāti Hine's own well established commercial and negotiating competence, the Rūnanga does not have confidence that Ngāti Hine can protect and promote its interests within a single Ngāpuhi negotiation. The Minister said:*
>
> > *The content and structure of any settlement with Ngāpuhi is not pre-determined. This includes detail surrounding a post-settlement governance entity or entities and how this will relate to Ngāti Hine. It seems to me that the mana of Ngāti Hine can be appropriately respected through a settlement with all Ngāpuhi.*

297. Why? Because of the flawed structure and process that is why. This has nothing to do with our competence and everything to do with the fact that the Tuhoronuku Deed of Mandate process and structure gives us no real power. Why would we agree to join that that? In fact our competence suggests that it would seem that the mana of Ngati Hine cannot be appropriately respected through a settlement with all of Ngapuhi through the Tuhoronuku structure, and because of this, our competence also suggests that we do not accept the mandate and seek to completely withdraw from it. Our experience also has to be understood in terms of the fisheries settlement. We do not want to have the same issues here.

[124] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.5.

298. At paragraph 261.6 Ms Hickey says:[125]

> *The Minister stated he was "very concerned" that Ngāti Hine may be operating under an "overly optimistic assumption as to what can be achieved alone and outside of a single Ngāpuhi settlement".*

299. As the Minister has identified, we are competent. What we have assessed is that seeking to achieve something has got to be better than potentially achieving nothing at all. I do not think that that is too overly optimistic. Under the present model, we feel there is no guarantee that anything will be achieved for Ngati Hine.

300. At paragraph 261.8 Ms Hickey says:[126]

> *In terms of the concerns raised over the elections process, the Minister said the process was being carried out in accordance with, and as required by, Tūhoronuku's trust deed. The Minister said it was a Tūhoronuku process, not a Crown process and one that neither the Minister nor the Crown could simply stop.*

301. We have raised concerns with Tuhoronuku. However, we are not interested in Tuhoronuku or its processes. We want to withdraw. That is what we have asked the Crown and Tuhoronuku to allow us to do. One of the key reasons we have brought our issue to the Waitangi Tribunal is because Tuhoronuku and the Crown refuse to let us withdraw. They have locked us in against our will and they have now right to do that.

302. At paragraph 261.9 Ms Hickey says:[127]

> *The Minister went further to say:*
>
> *You have been advocating a boycott of the Tūhoronuku election process. At the same time, you are complaining that others within your hapū are participating in the process. I will be very reluctant to contemplate any separate settlement process for Ngāti Hine or others. In my view, in light of what I have just said, Ngāti Hine*

[125] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.6.
[126] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.8.
[127] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.9.

> *hapū would be best advised to consider the steps they would need to take, potentially with Crown support, to ensure robust representation within Tūhoronuku. I can confirm the Crown is intending to make an assessment, once complete, on the outcome of the elections.*

303. It is the Minister's choice to interpret our representation of our collective hapu position as a "boycott" of the Tuhoronuku process. This is divisive korero. Our collective position is clear; the Crown and Tuhoronuku simply refuse to respect this decision. The Minister's statement above shows that the Crown is not willing to move from its fixed position. He says *"I will be very reluctant to contemplate any separate settlement process for Ngati Hine or others"* and again urges us to participate in Tuhoronuku. The Minister promised that the Crown would make an assessment on the outcome of the elections. What has been the Crown's assessment, particularly with regard to Ngati Hine?

304. At paragraph 261.10 Ms Hickey goes on to say:[128]

> *Finally, and in terms of Te Rūnanga o Ngāti Hine's suggestion that Tūhoronuku IMA is not meeting the conditions placed on their mandate, the Minister requested further information from Te Rūnanga o Ngāti Hine as soon as possible.*

305. We provided the Minister with the resolutions which confirmed Ngati Hine's position to withdraw from the Tuhoronuku Deed of Mandate and oppose the Tuhoronuku IMA election process. We also advised the Minister that we had filed an application with the Waitangi Tribunal and that our issues would be put before the Tribunal for its consideration. The Minister has done nothing.

Election and results

306. At paragraph 272 Ms Hickey says:[129]

> *There are varying estimates of the number of hapū within Ngāpuhi. While there are 110 hapū named in the Addendum, some estimates*

[128] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 261.10.
[129] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 272.

are higher (e.g. from 2009 to 2012 Tūhoronuku IMA was able to identify up to 150 hapū). The Deed of Mandate states (at paragraph 5.1, page 14) that of these 150 hapū it is estimated at least 40 hapū are active.

307. How is it that the Crown and Tuhoronuku still do not know how many hapu there are? Exactly how many hapu should be represented in the Tuhoronuku IMA?

308. We raised this issue with the Crown in letters in 2010 and 2011 where we complained that it was a manipulation of information for the Crown and Tuhoronuku to purport in hui and in the mandate strategy that there were over 500 hapu and 1000 claims. We said that we believed Tuhoronuku was doing this to make any other kind of settlement options, where hapu would be more empowered, seem like an impossibility. How can the claimant definition be accurate when there is such a departure from the original information given to what exists now? What you have now is the Crown and Tuhoronuku reducing the number of hapu so that they are able to say there is sufficient participation, because so few hapu are actually choosing to participate in the mandate. I strongly believe that these matters needed to be determined well before the mandate was recognised, and there is no reason why this should not have taken place given that the process has been running for five years and was so well resourced.

309. Ms Hickey, at paragraph 273, then goes on to say:[130]

Of the hapū named within the Addendum 47 have nominated and elected hapū kaikōrero across the Tūhoronuku IMA regions so far.

310. This is less than 50% of the 110 named in the Amended Deed of Mandate. It is also noted elsewhere that there are only about 40 active hapu, yet here we have 47 "mandated hapu kaikorero". According to Ms Hickey's evidence, the total number of hapu kaikorero (elected in July 2014) for Te Pewhairangi is seven. Again, this is less than 50%.

311. At paragraph 274 Ms Hickey says the following:[131]

[130] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 273.

For the majority of hapū who elected hapū kaikōrero (42 of 47), there was only one nomination received, an election was not required, and that nominee was mandated as the hapū kaikōrero. More than one hapū kaikōrero nomination was received and thus elections held for the following five hapū:

(a) Ngāti Hao hapū - Hokianga Region (2 nominations);

(b) Ngāti Toro hapū - Hokianga Region (3 nominations);

(c) Te Popoto hapū - Kaikohe-Waimate-Taiamai Region (3 nominations);

(d) Te Kapotai hapū - Te Pēwhairangi Region (2 nominations); and

(e) Ngāti Hau hapū - Whangarei ki Mangākahia Region (4 nominations).

312. I refer the Tribunal to my earlier evidence where I state that both Te Kapotai nominations were opposed by our hapu, and Mr Kara George is not the mandated hapu kaikorero for Te Kapotai, despite the Crown and Tuhoronuku running an election process to undermine our hapu decision.[132]

313. At paragraph 275 (b) Ms Hickey says:[133]

(b) secondly, after their appointment, those mandated hapū kaikōrero held hui to determine which of them would represent the five regions on Tūhoronuku. Hapū kaikōrero could appoint up to three Regional hapū representatives per region.

314. As I have already discussed, this process is farcical. Six people deciding that three people will represent the Te Pewhairangi region and all the hapu within it is quite simply absurd. I refer the Tribunal to my previous evidence[134] where I have discussed this hui.

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[131] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 274.
[132] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, pp 71-75.
[133] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 275(b).
[134] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014, pp 74-75.

315. At paragraph 276 Ms Hickey says:[135]

> *As required by the Addendum, these hui were publicly notified by the IRO, nominations were made by the hapū kaikōrero present at the hui, and where there were only three nominees for a region, they were duly appointed to Tūhoronuku IMA.*

316. Where were they publically notified? I would like to see the public notices. I also want to know how hapu were informed, we received no notice to our marae and nothing through TKONHN or NHOTTM.

317. At paragraph 279 Ms Hickey says:[136]

> *Ms Prime, along with a number of other claimants, has raised concerns that hapū kaikōrero that have been elected for Te Kapotai, and subsequently elected to represent Te Pēwhairangi, without the support of hapū.21 As noted above in the Minister's response to Ngāti Hine, the hapū kaikōrero election process was carried out in accordance with, and as required by, the Tūhoronuku IMA trust deed. It was a Tūhoronuku IMA process, not a Crown process. Therefore the Crown did not have the power to intervene or stop the process. Nonetheless, hapū have the ability to change their hapū kaikōrero by commencing an election process at any time.*

318. We never agreed to this process, and let us be clear, it may have been suggested by Tuhoronuku but it was discussed, refined and developed, and ultimately approved by the Crown too. The election process was a Crown and Tuhoronuku process, not ours. Our hapu had held our hui and made our decision about hapu representation already. However, the Crown will not recognise our tikanga or our process; it will only recognise and support Tuhoronuku.

[135] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 276.
[136] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 279.

319. At paragraph 281 Ms Hickey says:[137]

> *Officials are currently undertaking the assessment of the Tūhoronuku IMA elections for the consideration of the Minister and the Minister for Maori Development. However, due to the level of resource required to prepare for this Inquiry, it has not yet been possible to finalise advice to Ministers.*

320. This is a typical and convenient response by the Crown. I have already discussed this and I have said that any "assessment" of the IMA election process by the Minister is meaningless, because he has already publically endorsed the committee and meanwhile he has allowed the process to continue. Tuhoronuku have advertised for negotiators. Soon negotiators will be announced and terms of negotiations reached, and we are expected to believe that this "assessment" will be done by the Crown and should abate our concerns.

321. At paragraph 282 Ms Hickey says:[138]

> *The Tūhoronuku Board of Trustees was publicly announced on 30 June 2014 and the Board first met on 22 August 2014. This was followed by a meeting of hapū kaikōrero on 23 August 2014. The Minister attended the hapū kaikōrero meeting in recognition of the important role that they have. Some of the key points the Minister conveyed to the hapū kaikōrero at that meeting were:*
>
> *282.1 his expectation that the redress package may need to recognise specific interests (this will not be a "one size fits all" settlement);*
>
> *282.2 that the mandate condition that the Tūhoronuku IMA develops negotiation and communication plans provides the opportunity to show how they will include the Ngāpuhi claimant community in the negotiation and design of the redress package; and*

[137] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 281.
[138] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 282.

282.3 the shared responsibility of the Crown and the Tūhoronuku IMA to continue engaging with those who object to the Tūhoronuku IMA mandate to address the issues they raise.

322. What these comments reveal is that six weeks after the election the mandate assessment was not complete. It has now been five months. I would like to know whether the assessment is now complete, and, if so, what were the Crown's findings in terms of that assessment?

Requests to be withdrawn from the mandate

323. At paragraph 287 Ms Hickey says:[139]

If such a process is followed the Crown would then need to assess the impact of any such process on the mandate recognised. The Crown recognised Ngāpuhi as a large natural group for the purposes of Treaty settlement negotiations. On that basis, Tūhoronuku sought a mandate from the Ngāpuhi claimant community as a whole, rather than on a hapū by hapū basis. The Crown has a responsibility to engage with those groups affected by any attempted withdrawal from the Tūhoronuku IMA mandate. The reason for this is that any withdrawal from the mandate will have an impact on all Ngāpuhi and if that process is not sufficiently consultative it could prompt criticism by Ngāpuhi members on the basis that it is fracturing the iwi.

324. I refer the Tribunal to the evidence of my Uncles, Erima and Te Waihoroi, where they discuss the reality of hapu autonomy in Ngapuhi and remind the Crown of its Te Tiriti obligations to hapu.

325. At paragraph 289 Ms Hickey says:[140]

If any group did withdraw Ministers would have to make a full assessment as to how to proceed with Ngāpuhi. The Crown would want to have a full view of the settlement landscape - including the likely number of large natural groups that might result from any withdrawal - for all Ngāpuhi before making any decisions. This is

[139] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 287.
[140] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 289.

unlikely to be a straightforward or quick process. Potential scenarios are canvassed in the December 2013 report to Ministers on the mandate. The key points, however, are that there will be:

289.1 timeframe implications with the associated opportunity cost to Ngāpuhi - any withdrawing group would be starting at the beginning of the mandate process (which OTS usually plans on taking 1-2 years to complete) delaying any start to negotiations and extending the time it will take for Ngāpuhi to receive redress for their well founded claims;

289.2 practical infrastructural issues - a key factor will be whether a withdrawing group has a sufficient membership database to communicate with all those it purports to represent and sufficient infrastructure to support a Treaty settlement negotiation; 289.3 significant time and resource cost added to the achievement of a settlement;

289.4 potential for the creation of greater tensions between constituent parts of Ngāpuhi in the future due to the creation of more complex overlapping claims. The extent to which negotiations occurring in parallel (if that can be achieved) can mitigate this risk is limited given parties usually want some level of confidentiality around their negotiations. Alternatively slowing down negotiations to allow others to catch up would place a considerable burden on the resources of groups in negotiations and on the maintenance of their mandate. This would raise the issue of fairness to the rest of Ngāpuhi, given a significant majority have supported the mandate and said they wanted a unified negotiation; and

289.5 the increased complexity of overlapping claims that could lead to a higher risk of litigation and consequent cost.

326. These matters are not our problem, they are the Crown's. I would also like to say that the Crown is responsible for these matters, particularly given that it has consistently failed to accept and act on our advice and concerns with the

mandate. Does the Crown realistically think that because the process is now so far entrenched (because of its own doing), that we must now pay the sacrifice for this and be forced to stay in the Deed of Mandate? That is not fair.

327. At paragraph 291 Ms Hickey says:[141]

> *The mandate process for Ngāpuhi is set out in section 9 of the Deed of Mandate (pp 25-33). This involved a voting process on the proposed mandate run by an independent company (Electionz.com Ltd) where members were informed about the process, sent voting packs, and provided with a six-week voting period. This mandate process was supported by an extensive communications strategy and programme involving media briefings and releases, and extensive advertising. It was also supported by Deed of Mandate hui with twenty hui held throughout Aotearoa and two in Australia.*

328. Is Ms Hickey saying that the mandate process for Ngapuhi, as set out in section 9 of the Deed of Mandate, is the withdrawal process we need to follow in order for our hapu to withdraw? I believe this process is not fair and is not actually a withdrawal process by which hapu can withdraw.

329. At paragraph 292 Ms Hickey states: [142]

> *It is not usual for deeds of mandate to include a specific hapū withdrawal clause (though in some cases hapū have withdrawn their mandate). Of the deeds of mandate recognised in the last four years, only Ngāti Tūwharetoa (where the mandate was obtained on a hapū by hapū basis) has included a specific hapū withdrawal clause. It is more usual for deeds of mandate to include a withdrawal of mandate clause which sets out the process to be followed for the withdrawal of mandate by the whole of the claimant community.*

330. I understand that there are in fact more examples of withdrawal provisions having been included in deeds of mandate. It would be helpful if the Crown could provide us with a series of examples of withdrawal

[141] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 291.
[142] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 292.

provisions/mechanisms and dispute resolution clauses that have been included in past deeds of mandate in order to evidence this statement.

331. Ms Hickey sets out a "typical withdrawal of mandate clause" saying:[143]

> *A typical withdrawal of mandate clause (for withdrawal of mandate by the whole of the claimant community from the mandated body) would usually include the following steps:*
>
> *293.1 A letter must be written by the claimant community representatives to the mandated entity identifying the concerns and also seeking a meeting to discuss these matters.*
>
> *293.2 If the meeting between the claimant community representatives and the mandated entity does not resolve the concerns, then the mandated entity should then discuss the matter further and decide whether the issue should be put to the wider claimant community at a series of publicly notified hui.*
>
> *293.3 The publicly notified hui should follow the same process that conferred the mandate, for example;*
>
> *293.3.1 With 21 days' notice in national and regional print media;*
>
> *293.3.2 Outlines the kaupapa of the notified hui;*
>
> *293.3.3 The background of the concerns;*
>
> *293.3.4 The parties involved;*
>
> *293.3.5 The resolution to the claimant community; and*
>
> *293.3.6 A TPK observer is invited to observe and record the proceedings.*
>
> *293.4 Once the hui has been completed and the outcome of the voting process determined then the mandated body should inform*

[143] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 293-294.

OTS by way of letter about the result and to discuss next steps for settlement negotiations.

294. *While the Tūhoronuku IMA Deed of Mandate withdrawal of mandate clause does not set out a process in detail, it does reference the mandate process in the Deed of Mandate and follows the principle that the withdrawal process should be the same as that for the conferring of the mandate.*

332. We have asked for this information on withdrawal by letter for months. I do not understand why the Crown did not previously include this information in its responses to either Ngati Hine's letters earlier this year, or to NHOTTM, and has only decided to produce it now.

Why there is not a specific hapu withdrawal process

333. At paragraph 295 Ms Hickey says:[144]

The mandate for Ngāpuhi was obtained from the claimant community as a whole rather than on a hapū by hapū basis. There is no Crown requirement for a hapū withdrawal mechanism to be included in a Deed of Mandate. In response to Te Kotahitanga seeking inclusion of a hapū withdrawal mechanism in the Ngāpuhi Deed of Mandate, Ministers stated the following in a letter dated 31 January 2013 to Mr Tau of Tūhoronuku and Mr Tipene and Mr Taylor of Te Kotahitanga:

> *Kotahitanga seek the inclusion of a mechanism for withdrawal of groups who do not wish to be included in the deed of mandate. Firstly, we wish to confirm it is not a general Crown requirement for a deed of mandate to include such a mechanism. You have indicated to us that you seek a comprehensive settlement of all Ngāpuhi claims and that is the basis upon which the deed of mandate will be assessed. The process to date has been a significant one both in terms of time and resources. A considerable amount of work has been undertaken by all parties to find an*

[144] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 295.

agreed approach and resolve concerns hapū have raised along the way.

If a mandate is recognised for a comprehensive settlement of all Ngapuhi claims, the mandate authority would be required to demonstrate throughout the negotiations process that it is maintaining that mandate. However, we consider the inclusion of a mechanism to allow certain hapu or groupings who do not wish to be included in the deed of mandate to withdraw at any stage in the process would fundamentally destabilise Netpuhi's mandate authority and settlement negotiations. We all need certainty that if we embark on a negotiation that it will be for a comprehensive settlement of all Ngapuhi claims. The settlement itself must strengthen the ties that bind the hapu of Ngapuhi.

Allowing hapu to withdraw from negotiations is contrary to these goals. For these reasons, we consider it unacceptable for a Ngipuhi deed of mandate to include a mechanism that enables withdrawal of individual hapu or groupings.

334. The Crown simply refuses to require a specific withdrawal provision and that essentially means it is almost impossible for hapu to withdraw.

335. In response to the above comments, the Minister continues to misconstrue our willingness for a comprehensive settlement to mean that we support a single mandate held by Tuhoronuku. We developed a number of settlement models that could accommodate a comprehensive settlement through the facilitation processes; however these were ignored by the Crown. The Crown also has its own models like Te Hiku, Tauranga Moana, Nga Hapu o Ngati Ranginui, and Kahungunu to name a few, but it has refused to consider them in the context of Ngapuhi. This is not fair.

336. What I believed is that the Crown knew Tuhoronuku did not have a valid mandate, and given the Crown was already on notice that hapu were seeking withdrawal, it intentionally created the provisions in the Deed of Mandate so as to force hapu into the mandate and make it virtually impossible for them to withdraw.

337. At paragraph 297 Ms Hickey says:[145]

> *Te Kotahitanga wrote to OTS seeking clarification on the 'sufficiently robust process' by which hapū/groups can withdraw from the Tūhoronuku IMA Deed of Mandate and lawyers for Ngāti Torehina ki Mataka have written to OTS requesting removal of Ngāti Torehina ki Mataka from the Tūhoronuku Deed of Mandate.*

338. My understanding is that NHOTTM and Ngati Hine also wrote in respect of the withdrawal process seeking further clarification.

339. At paragraph 298 Ms Hickey says:[146]

> *In response to the request from Te Kotahitanga, OTS wrote a letter to Mr Tipene of Te Kotahitanga on 14 March 2014 (copy attached as exhibit "MCH(2)43") stating the following:*
>
> *Page 12 of the Tūhoronuku DoM Addendum states that any process for the withdrawal of the mandate would need to be as robust as the process followed to seek the mandate. In assessing whether the claimant community, or groups within it, have withdrawn from the Tūhoronuku mandate to negotiate a settlement the Crown would need to be assured all those who are directly affected by the attempt to withdraw (e.g. the hapū in question and also the wider Ngāpuhi community) are consulted and their views sought. This would require information hui, communications using various media, facilitation with groups to address concerns raised, and voting on the mandate.*
>
> *"The Crown would then look at the process followed (in terms of whether it gave all affected people the opportunity to participate) and the level of support relative to the size of the claimant group. Ministers would then need to assess whether:*
>
> *a. to recognise the withdrawal of the hapū or group on the basis of the process undertaken;*

[145] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 297.
[146] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 298.

b. to negotiate separately with the group who has withdrawn or whether their claims will continue to be covered by the negotiations; and

c. the level of support for Tūhoronuku is sufficient to continue negotiations.

340. I do not believe that this is a sufficient response from OTS, and I believe that more detail is required. Furthermore, the process outlined is overly cumbersome and unfair given that the Crown provided significant resourcing for the Tuhoronuku mandate process, and the Crown has outright refused to provide funding for withdrawal. This is not fair.

341. At paragraph 301 Ms Hickey says:[147]

Ms Prime asserts that there is no clear withdrawal process, for hapū in particular, and the Crown has not provided guidelines on the withdrawal process. The reasons why there is no hapū specific process for withdrawal are set out above. I do not accept that the Crown has not engaged with claimant queries regarding the withdrawal process – the Crown has responded to correspondence regarding the withdrawal process and met with some claimants, the general process is set out in the amended deed of mandate.

342. I maintain that the withdrawal process is unfair and it is not clear. There are no clear guidelines to ensure a proper withdrawal process can be followed. In fact, Ms Hickey has provided a clearer outline in this evidence than what has been provided in their responses to us.

Ngati Hine Petition

343. At paragraphs 303–307 Ms Hickey comments specifically on Ngati Hine's petition against the Tuhoronuku IMA process and request to withdraw:[148]

[147] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* November 2014, para 301.

[148] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* November 2014, paras 303-307.

In a letter dated 1 September 2014 (received on 5 September) Waihoroi Shortland, Tumuhere o Te Rūnanga o Ngāti Hine, wrote to the Minister objecting to the election of hapū kaikōrero for Ngāti Hine and associated hapū; questioning the value of the conditions on the Tūhoronuku IMA mandate; criticising the recognition of the mandate; and stating that there have been no responses from Tūhoronuku IMA to enquiries lodged. Attached to the correspondence were:

303.1 546 pro forma statements opposing the nominations for the Ngāti Hine, Te Kau I Mua, and Ngāti Kopaki hapū kaikōrero;

303.2 a petition with 272 entries; and

303.3 an 'online' petition with 249 entries where the question was not noted.

…

304. The Minister responded to Mr Shortland on 13 October 2014, advising that officials had discussed his correspondence and attached submissions with the Tuhoronuku IMA and that it would be discussed at the next Tuhoronuku Board meeting. The Minister conveyed his understanding that the Tuhoronuku IMA would consider the correspondence in accordance with the processes set out in their Deed of Mandate Addendum and officials would report to him once that review was complete.

305. The Minister also reiterated his request from May 2014 for information from Mr Shortland on how, in the opinion of Ngāti Hine, Tūhoronuku IMA was failing to meet the mandate conditions.

344. I have to ask, was the series of Ngati Hine letters from February 2014 onwards, the meeting with the Crown in Whangarei, the application for urgency to this Tribunal, and the 1000 submissions Ms Hickey notes above, not sufficient notice of Ngati Hine's valid concerns that the Tuhoronuku IMA was failing to meet the conditions of the mandate? I also seriously question how the Crown reasonably expects us to participate in or await the outcome of a review process, which is largely controlled by Tuhoronuku. Again, I

believe we are being strung along while the Crown and Tuhoronuku negotiations process continues and becomes more and more entrenched.

345. At paragraph 307 Ms Hickey says:[149]

> *I accept that the Crown has an interest in both of these processes, but Mr Shortland is concerned at an "underwhelming acknowledgement" by the Crown. Although Mr Shortland wrote to the Minister, copied to Tūhoronuku IMA, the process for replacement of hapū kaikōrero and withdrawal of mandate are, in the first instance, Tūhoronuku IMA processes. Furthermore, the Tūhoronuku IMA response has requested copies of all correspondence from Ngāti Hine to Tūhoronuku IMA on the issue of withdrawal, or replacement. Tūhoronuku IMA requires this information to determine whether the steps for replacement of hapū kaikōrero have been met in accordance with the Addendum.*

346. The Crown is continually trying to force us to deal with Tuhoronuku to resolve issues. Ngati Hine has raised mandate maintenance and representation issues, which are so-called "conditions" of the Tuhoronuku mandate. What is the point of Tuhoronuku carrying out the assessment? This is a matter for the Crown. I want to know what assessment has the Crown done since we raised our objections, and what discussions has the Crown had with Tuhoronuku? What is the Crown going to do about groups that want to withdraw?

347. At paragraph 307 Ms Hickey says:

> *I accept that the Crown has an interest in both of these processes, but Mr Shortland is concerned at an "underwhelming acknowledgement" by the Crown. Although Mr Shortland wrote to the Minister, copied to Tūhoronuku IMA, the process for replacement of hapū kaikōrero and withdrawal of mandate are, in the first instance, Tūhoronuku IMA processes. Furthermore, the Tūhoronuku IMA response has requested copies of all correspondence from Ngāti Hine to Tūhoronuku IMA on the issue of withdrawal, or replacement. Tūhoronuku IMA requires*

[149] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* November 2014, para 307.

this information to determine whether the steps for replacement of hapū kaikōrero have been met in accordance with the Addendum.

348. Ngati Hine raises mandate maintenance and representation issues. Again what is the point of Tuhoronuku carrying out the assessment? This is a matter for the Crown. I want to know what assessment has the Crown done since we raised our objections.

Population figures by Ngati Hine, Te Kapotai and Ngati Manu witnesses

349. At paragraph 309 Ms Hickey says:[150]

Witnesses for Ngāti Hine, Te Kapotai and Ngāti Manu have all made statements about the size of their hapū (50,000, 10,000 and 20,000 respectively) but have not been able to provide evidence in the form of hapu registers to support the population figures provided.

350. Is the Crown, through Ms Hickey's evidence, for the first time in 4 years, telling us that we must now provide evidence of our population? The Crown knows that we do not have funds to create and maintain hapu registers like TRAION has had. The Crown also knows that TRAION was the entity that objected to and barred Ngati Hine from being added to the Census which had the effect of stopping Ngati Hine from collecting population data. So if the Crown will not take our word for it, based on our knowledge of our whakapapa and history then the Crown should provide us funding to carry out this exercise.

351. At paragraph 310 Ms Hickey says:[151]

In the absence of specific Census data it is difficult to make any firm conclusions about the size of individual hapū and the Crown has been reluctant to do so. It seems unlikely, however, that Ngāti Hine, Te Kapotai and Ngāti Manu exclusively represent 80,000 of the 125,000 people who indicated in the 2013 Census that they affiliate to Ngāpuhi. It seems likely that many of those people will also have affiliations to other Ngāpuhi hapū.

[150] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 309.
[151] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 310.

352. I do not recall Ngati Hine, Te Kapotai or Ngati Manu saying they exclusively represent 80,000 of the 125,000 people who indicated in the 2013 Census that they affiliate to Ngapuhi. Of course it is likely that many people will whakapapa to more than one hapu in Ngapuhi, in fact just as many of those 125,000 no doubt whakapapa to other tribes. If the Crown is going to involve itself in conversations of population and primary affiliation, it needs to ensure that it is even handed in its assessments and that there is some kind of fairness in its approach.

353. At paragraph 311 Ms Hickey says:[152]

> *I also note that the claimants' own population estimates have varied. In 2013 Ngā Hapū o Te Takutai Moana (which included Ngāti Hine, Te Kapotai and Ngāti Manu) advised officials that they would have a minimum combined population of approximately 30,000*

354. Ms Hickey is correct. In our presentation we stated we would have a minimum combined population of 30,000. As Ms Hickey will recall, we said we believed our population was in fact much higher than this and that this minimum figure was based on population information that we had acquired from the Crown through an OIA request. The Crown's internal memo discussed hapu populations and noted different population figures. We used the information from this memorandum to show evidence of a minimum combined population of over 30,000. We did so to show the Crown we could be considered a Large Natural Grouping and that, as this evidence shows, we are in fact larger than many of the Large Natural Groups the Crown has previously recognised.

355. I assume that what Ms Hickey is actually trying to do here is to show that our figures have been inconsistent and question our population claims in some way.

356. I do not think the Crown has engaged in enough discussion with these groups in order to reach any conclusion as to the population of these groups. I

[152] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 311.

believe this is a hasty assessment and a broad generalisation by the Crown in an attempt to down play the opposition from these significant groups.

357. In paragraph 312 Ms Hickey says:[153]

> *If, however, we take the 50,000 population figure provided by Mr Shortland it would say that around 40% of Ngāpuhi are Ngāti Hine (though many would also likely have other hapū affiliations). It would also mean that the percentage of Ngāti Hine expressing opposition to the Tūhoronuku mandate through the submissions process in 2013 was around 1%.*

358. I repeat my points made just above. This is a strange assessment by Ms Hickey, particularly if you consider that only 4% of all of Ngapuhi actually voted in support of the mandate in 2011. I would actually say that if 1% of Ngati Hine registered their opposition through a submission process that was not resourced and where individuals were required to actively make a submission, then that is quite good, and it do not look good for the Crown's claim that Tuhoronuku has a mandate for Ngati Hine.

359. At paragraph 313 Ms Hickey says:[154]

> *The Crown received 194 submissions on the Deed of Mandate Addendum from Te Kapotai in 2013 – all submissions were in opposition. In 2014 a total of 306 adult Te Kapotai individuals took part in the Tūhoronuku IMA hapū kaikōrero elections. This tends to show that by 2014 more people within Te Kapotai wished to be active in the process of determining hapu leadership on Tuhoronuku than those who, in 2013, opposed the mandate.*

360. Again, this is a ridiculous assessment to make. Is the Crown seriously saying that the Tuhoronuku IMA process trumps our hapu decision making process, and that the Tuhoronuku IMA process that is now set in place determines our hapu leadership on settlement matters? I want to know, when endorsing the IMA elections, what consideration did the Crown give to our evidence that

[153] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 312.
[154] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 313.

our hapu has opposed our forced inclusion in Tuhoronuku since 2009? What weight did the Crown give to our collective hapu submission in August 2013? What regard did the Crown have for our evidence on the Tuhoronuku IMA election hui that was held at our marae and the number of people in attendance who voted against Mr George's nomination? Is the Crown saying that I am no longer a hapu korero for Te Kapotai and that Kara George's election to the Tuhoronuku IMA displaces me? I would be grateful if the Crown could clarify these matters, because this is what one would logically infer if Ms Hickey's statements were taken to be true.

361. It appears to me that the Crown simply picks and chooses what information it will give weight to, and in almost all instances it is information that enables it to conflate the support that Tuhoronuku has and continue its process with Tuhoronuku. I believe there is a real manipulation of the information and process by the Crown occurring here to suit the Crown's agenda.

362. I refer the Tribunal to my earlier evidence[155] where I address issues concerning representation in Mr Georges affidavit.

Election Hui – TPK Observers Reports

363. At paragraphs 314-320, Ms Hickey addresses matters concerning my criticisms of the TPK Independent Observers Reports:[156]

> *Ms Prime, in her evidence of 14 November 2014, makes several comments about the TPK independent observers report, process and nature of the mandate hui, which I wish to briefly respond to below.*
>
> *315. At paragraph 220(a) of her evidence, Ms Prime noted that "There are no comments regarding the nature and wairua of this hui". The role of the Crown observer is to observe whether the hui were conducted in an open and transparent manner as outlined and described in the strategy presented by the claimant group (be it mandate or ratification or election hui). Observer reports therefore record the process through which hui were conducted and assist*

[155] See paras 40-53.
[156] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 314-320.

officials to make recommendations to Ministers as to whether all attendees were provided (in this particular case) an opportunity to meet the candidates. As part of this assessment, views opposing the hui, the election process and the mandate, were recorded. Te Puni Kōkiri does not comment on the wairua of the hui as this is subjective and observers are required to be objective.

364. I really struggle with what Ms Hickey is trying to say here. Ms Hickey is saying "*Te Puni Kōkiri does not comment on the wairua of the hui as this is subjective and observers are required to be objective"* and she is also saying "*The role of the Crown observer is to observe whether the hui were conducted in an open and transparent manner as outlined and described in the strategy presented by the claimant group"*. These are two contradictory comments. I argue that the wairua of the hui speaks directly to whether the hui was conducted in an "*open and transparent manner".* One would assume that if the wairua was bad, as I claimed it was, then one could reach the conclusion that the hui was not conducted openly and transparently.

365. Furthermore, I am seriously concerned that the Crown does not consider the wairua an important determinant in its assessment of whether a hui is open, fair and transparent. If the Maori Cultural Advisors of TPK are not commenting on this, then who is? Who is advising the Crown on the cultural and social prejudice that we claims we are suffering as a result of this mandate process?

366. In paragraph 316 Ms Hickey says:[157]

At paragraph 220(b) of her evidence, Ms Prime notes that the report refers to those in attendance as "an attendee" and claims that "this diminishes the regard had for our kuia and kaumātua and the significance that should be given to their kōrero". I understand that it is the standard practice of Te Puni Kōkiri to not record the names of attendees as observers may not always know the names of all attendees; attendees may not always introduce themselves and if they do, it can be difficult to hear and record the name correctly. In

[157] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 316.

adopting this general practice, Te Puni Kōkiri does not intend to diminish the regard had for kuia and kaumātua and the significance of their kōrero.

367. It may be standard practice, but that does not mean that it is good practice. I maintain that our tikanga is that the korero/whakaaro of our elders is given significant weight in discussions and decision making. The fact that the Crown's independent reporting process fails to respect and record this is a failing of the Crown.

368. At paragraph 317 Ms Hickey says:[158]

At paragraph 220(c) of her evidence, Ms Prime says "There is no account of our kaumātua and kuia who addressed the hui in Te Reo so I question how this was really understood". I understand that Crown observers are usually accompanied by a Cultural Adviser (and were in this case) whose primary role is to ensure observers are well informed of all discussion and views expressed in te reo Māori that are relevant to the purpose of the hui and the process conducted. Discussion and views expressed in te reo Māori that are not relevant to the purpose of the hui (which was "to provide an opportunity for iwi to meet the candidates") are not recorded.

369. Again, this comment by Ms Hickey identifies another major failure in TPK independent reporting processes. If the Tribunal reviews the transcript and audio we provided of the one hui, it will see for itself that the korero of our kuia and kaumatua in Maori during mihimihi and throughout the hui is entirely relevant to the purpose of the hui. The fact that they have not been recorded in the reports is a failure by the Crown to accurately record and report on hui. I believe that views opposing the mandate are relevant to TPK's assessment. I can directly recall throughout the mandate hui where major opposition and very serious allegations concerning transparency of process, fairness and accountability were raised in Te Reo, and I have a real concern that this has been lost on the Crown because of what Ms Hickey has said above. Further, I recall raising the issue on a number of occasions that it

[158] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 317.

appeared that the TPK observers could not speak Maori, and the statements that our people were making were lost on them. I therefore find it difficult that the Crown claims it can rely on the TPK reports to assess fairness and transparency when this is the case.

370. At paragraph 318 Ms Hickey says:[159]

> *At Paragraph 220(d) of her evidence, Ms Prime "completely rejects" the observer's comment that "the hui was conducted in an open and transparent manner". I am advised the observer was required to provide a view on whether "the hui was conducted in an open and transparent manner" which (in this case) was enabling all attendees to have an opportunity to meet the candidates, voice their views and ask questions.*

371. I provided evidence to the Tribunal in June that Mr Munro tried to stop me from passing a resolution during the Tuhoronuku IMA hui that Ms Hickey is referring to above. This is captured in the audio, so again I restate my evidence, and I continue to dispute how the TPK observer concluded that the hui was open and transparent when the Tuhoronuku staff member was trying to shut me down from speaking on my own marae. That is not giving me an opportunity to voice my concerns and views.

372. At paragraph 319 Ms Hickey says:[160]

> *At paragraph 221 of her evidence, Ms Prime concludes that: "By failing to accurately record the hui and simply claiming that the hui was open and transparent, TPK is not properly informing the Crown". However, as I have noted above, the role of the Crown observer is to observe whether the hui are conducted in the manner that is outlined and described in the strategy presented by the claimant group (be it mandate or ratification or election hui) and to assess whether each hui is conducted in a fair, open and transparent manner. Observer reports therefore assess the process through which those hui were conducted and assist officials to make recommendations to Ministers*

[159] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 318.
[160] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 319.

as to whether all attendees were provided an opportunity to meet the candidates.

373. I want to know, where does the fact that our hapu did not want Tuhoronuku, or this hui, to come to our marae factor into the Crown's consideration? Where is our room for decision making in this process? I maintain that the wairua of this hui was very bad, and that this must be a concern for the TPK advisor and the Crown. If the Crown fails to see the connection between wairua and fairness, and transparency and accountability, then again this a failure of the Crown in this mandate process.

374. At paragraph 320 Ms Hickey says:[161]

> *At paragraph 227 of her evidence, Ms Prime says that "the hui held on 24 July 2014 went for 30 minutes". To clarify the length of the hui, TPK officials advise me that candidates met and began deliberating at 3.00pm (without the facilitator and observer present) to allow the parties to attempt to reach a consensus decision. There had been no resolution reached by 3.50pm so the hui formally convened to elect the three representatives, which took 30 minutes.*

375. Ms Hickey has clarified that the TPK minute was wrong, and that the advisor informed her that the hui did not take 30 minutes, it actually took one hour and 20 minutes. This means that the hui to elect three representatives to represent all hapu in the Te Pewhairangi region on Tuhoronuku, which includes: Ngati Manu; Te Urikaraka; Te Kapotai; Ngati Pare; Ngati Kuta; Patukeha; Te Roroa; Ngati Hine and its hapu; Ngati Torehina; Ngati Rahiri; Ngati Kawa; and others who have clearly stated their opposition to Tuhoronuku will now go forth and negotiate a settlement of their claims against their wishes, was attended by six people and took one hour and 20 minutes. TPK determines that this hui, where this significant decision was made, was open, fair and transparent. A hui of this nature should be in an open forum with all hapu in attendance. The people who were part of this process, and those who have accepted these appointments to be regional representatives for the Te Pewhairangi region on the Tuhoronuku IMA,

[161] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 320.

should be ashamed of themselves knowing that they do not have a mandate to represent Te Pewhairangi and the hapu.

Funding

376. At paragraph 321 Ms Hickey says:[162]

> *The Crown was aware that provision of funding to Te Roopu o Tūhoronuku would open it to criticism but had to consider each request on its merits. Without funding no progress could have realistically been made.*

377. I would argue that TRAION was resourced enough to fund its own pre-mandate processes. The Crown's involvement and funding of the process in this early stage ensured that progress could be made toward achieving a Tuhoronuku and Crown objective. It is interesting to note that the Crown acknowledges that it must consider each request on its merits, and that without funding a group no progress could have realistically been made. So the Crown obviously did not think that the NHOTTM request had any merit, and would have been aware that without funding NHOTTM no progress could have realistically been made by them.

378. At paragraph 322 Ms Hickey says:[163]

> *The amount of funding provided to the end of election process is as follows:*

379. I note the exorbitant amount of money that was paid to "separate Tuhoronuku from the Runanga". Had the Crown properly assessed earlier evidence from the roadshows and submissions on the Deed of Mandate Strategy, they would have seen major opposition to having the Runanga involved, and they could have saved themselves a lot of money. As I have said before, there is still no clear separation.

380. At paragraph 322, Ms Hickey provides that the Crown funded Tuhoronuku over $3.5 million up until the end of the election process. I noted in my earlier affidavit that the Crown approved funding for the Tuhoronuku IMA

[162] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 321.
[163] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 322.

election process, which was to take place after the recognition of the mandate, prior to the Ministers decision to recognise the Deed of Mandate. I noted that that is a real issue that should be considered further as it concerns our allegation of predetermination.

381. At paragraph 324 Ms Hickey says:[164]

> *While these payments are, in total, substantial they reflect the large size of Ngāpuhi and the high costs incurred because of the Crown's additional requirements on Tūhoronuku to undertake distinct and prolonged processes to resolve issues that arose during the mandating process. I note that the Crown declined a number of funding requests and declined to fully re-imburse Rūnanga costs. The Rūnanga still incurred considerable cost.*

382. I want to know exactly how much of a cost the Runanga has had to incur outside of that which was funded by the Crown. I have asked for this information and have never received it. I think the hapu and beneficiaries of TRAION have a right to know just how much this shambolic and divisive process has cost our people financially. How much of our asset base has been used? I believe that this information should have been made available through TRAION reports and AGM reports. TRAION have not been open and transparent with its beneficiaries.

383. At paragraph 327 Ms Hickey says:[165]

> *A key concern expressed by Te Kotahitanga and others throughout the mandating and facilitation process was the existing connection between the Rūnanga and Te Roopu o Tūhorohuku. The Rūnanga's funding of Te Roopu o Tūhoronuku created suspicion that it was not independent and would ultimately be accountable to the Rūnanga rather than to the people of Ngāpuhi. One of the points of agreement between Te Kotahitanga and Te Roopu o Tūhoronuku was that the financial separation of Tūhoronuku IMA from the Rūnanga was desirable. The Minister and Minister of Māori Affairs indicated to Te*

[164] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 324.
[165] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 327.

> *Roopu o Tūhoronuku and Te Kotahitanga in June 2012 that the Crown would consider providing funding assistance to allow Te Roopu o Tūhoronuku to become financially and legally independent from the Rūnanga if both parties agreed a way forward on the mandate. Ministers eventually decided, however, to address the funding so the issue of financial independence would be resolved before the deed of mandate was advertised.*

384. I have already provided my view on this matter. I do not believe that this was a sufficient ground upon which to justify the level of funding that the Crown provided TRAION. Furthermore, I do not believe that the granting of funding has created a degree of separation between Tuhoronuku and TRAION since the mandate was recognised. Any separation that is claimed is quite superficial as Mr Tau, the Chairman of both trusts, has recently confirmed TRAION intends to become the PSGE for the settlement that Tuhoronuku reaches with the Crown, and is taking steps in order for this to occur.

385. At paragraph 328 Ms Hickey says:[166]

> *The Crown was aware that there were a number of potential risks in taking this approach, including that it could be perceived as "buying a mandate" and that Te Kotahitanga would view the further support as unfair. Advice to Ministers noted that it was important that the Crown assess the validity of the mandate independent of funding decisions. Ministers were aware this funding could be a 'sunk cost'. Conversely, not providing funding may have increased pressure to recognise the mandate because of the amount Ngāpuhi had invested in it.*

386. I am not convinced that the Ministers assessed the validity of the mandate independent of the funding decision, although they may attempt to give the impression that they did. I do not believe that the Ministers can, or would, set aside the fact that they had spent over $3.5 million dollars of public money on this first stage of the process.

[166] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 328.

387. At paragraph 329 Ms Hickey says:[167]

> *I note that much of the expenditure by Te Roopu o Tūhoronuku in the mandate phase was driven by the requirements to participate in additional consultation and amend its structure to meet concerns expressed by Te Kotahitanga and other Ngāpuhi groups.*

388. Again, I reiterate my earlier points. The requirement for Tuhoronuku to participate in mediation and facilitation was because its process and structure were flawed, and the mandate result from the 2011 vote coupled with ongoing major opposition meant the Crown could not reasonably grant the mandate. I believe these processes were more about mitigating litigation risk and an attempt to garner more support for the mandate in the face of very strong opposition at the time. However, what in fact occurred, is that opposition increased during these additional "consultation periods". We know the Crown largely ignored this too. We did not even get the changes we required from these processes, and the Tuhoronuku process and structure has essentially remained the same. So really, we should not be blamed for Tuhoronuku's increased funding expenditure, as I feel we have been. Given the level of funding, I do believe that this mandate has been bought.

389. At paragraphs 330.2 and 330.3, Ms Hickey says:[168]

> *Almost $20,000 for claimants to host the Whitiora marae hui costs and for travel and other costs for Te Kotahitanga members; and Around $31,000 to assist participation in the Te Roopu Whāiti process.*

390. The Crown contributed $51,000.00 to partially cover the costs of participation in these processes, compared to approximately $500,000 that was committed to Tuhoronuku for the cost of delay in engaging in the facilitation process. The majority of costs were not for the actual facilitation

[167] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 329.
[168] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 330.2-330.3.

process, they were actually for the delay to Tuhoronuku. These costs could have been avoided if the Crown had responded to our calls earlier.

391. At paragraph 331 Ms Hickey says:[169]

> *The Crown has also sought to ensure claimants have continued to be able to participate in the Paparahi o Te Raki inquiry in the absence of CFRT funding by providing $470,270 in 2013-2014 to assist Ngāpuhi to meet hosting costs, for witness payments, travel and other related costs.*

392. I believe the Crown is trying to include this amount here in an attempt to demonstrate some kind of balance between the funding for Tuhoronuku and TKONHN (who has led the coordination Waitangi Tribunal process). This is not a mandate or facilitation cost and arose from a unique set of circumstances, which was the CFRT litigation that stopped claimant funding for an extended period of time.

Parallel processes – Tribunal and likely settlement timeframes

393. At paragraphs 332.1–332.5,[170] Ms Hickey talks about the Crown's willingness to engage in a parallel process. Te Kapotai, Ngati Hine and many others have said how important the Te Paparahi o Te Raki Inquiry is to us, and I have previously mentioned that if the Crown was serious about this willingness, and really wanted to protect the rights and interests of claimants, it would have required that these matters be resolved through the facilitation and mediation processes as it was one of the key issues, and it would have provided guarantees and protections to claimants about how a parallel process would operate. I want to also reiterate here that it is not simply about airing our grievances, or having our claims heard. For our hapu, we want a full inquiry into our claims, including a report from the Waitangi with findings on fact and recommendations to remedy the prejudice that we have suffered. The fact that our Ngati Hine and Te Kapotai claims have been heard, does not mean that the process is over. We want to complete the

[169] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 331.
[170] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, paras 332.1-332.5.

inquiry with closing submissions and we want the ability/protection of seeking binding recommendations, if appropriate.

394. I take from paragraphs 332.1-332.5 that the Crown has put some thinking into what a parallel process would look like. We have also developed our thinking on this. We provided the Crown with a hearing timeline during the Te Roopu Whaiti process, and the Crown has been involved in the Stage 2 Te Paparahi o Te Raki Inquiry, so it would have had information. However, the Crown only talked generally about things like an "airing of grievances" similar to Ngati Porou, or a "special hearings process", or "fast-tracked" hearings; it did not talk to us about the continuation of the Inquiry as had been set out.

395. I take issue with what appears to be numerous assumptions by Ms Hickey that hapu and claimants would be amenable to participating in a parallel process, while the Crown and Tuhoronuku negotiate the settlement of their claims. Our hapu have, and continue to strongly object to this. We have been very clear in our correspondence that we would not support this type of parallel process.

396. What we are really talking about is the sequencing of the Waitangi Tribunal Inquiry and Settlement Negotiations. As I have said before, the Crown has not made adequate concessions that our hapu claims are well-founded, and so until such a time that they do, the Waitangi Tribunal is essential. In the meantime, we are committed to a full inquiry, not simply hearings.

397. At paragraph 334 Ms Hickey says:[171]

> *Based on usual Tribunal reporting timeframes, we would expect a settlement would be possible before the Tribunal issues its final report. In that case, the Crown would be willing to take the approach it has for a number of claimant groups including Ngāi Tuhoe, Ngāti Manawa, Ngāti Whare and Te Rarawa and explicitly preserve the Tribunal's ability to issue a report.*

398. This is the first time the Crown has said it would be willing to explicitly preserve the Tribunal's ability to issue a report. We have been asking for

[171] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 334.

guarantees about the preservation of the Waitangi Tribunal's jurisdiction in the Te Paparahi o Te Raki Inquiry for a long time. We want the Crown to guarantee this, not simply say that it is "willing to". We have told the Crown there are a number of options we could consider for reporting. We are also exploring options for discrete remedies. We also want to know about preserving the Waitangi Tribunal's jurisdiction in terms of remedies.

Conditions on Tuhoronuku IMA deed of mandate – communications and negotiations plans

399. At paragraph 339 Ms Hickey says:[172]

> *The draft engagement plan submitted by Tūhoronuku IMA is subject to further discussion between the Crown and Tūhoronuku on how Tūhoronuku IMA intends for hapū specific interests to be recognised and prioritised in negotiations with the Crown. The Crown is clear that we cannot proceed to sign Terms of Negotiation with Tūhoronuku IMA until this condition has been satisfied and will continue to work with Tūhoronuku IMA on these plans to that end. I expect that we will provide advice to Ministers in due course on whether this mandate condition has been met following further engagement with Tūhoronuku IMA on the detail of this plan. To that end, any feedback received during the Inquiry will assist in assessing this plan, framing the eventual advice and providing a negotiations and engagement model through which all Ngāpuhi, including hapū, have a voice.*

400. We have not seen this draft engagement plan. I do not think there has been one single report from the Tuhoronuku IMA back to our hapu since during the elections in June 2014. In any event, the Crown and Tuhoronuku do not have a mandate from our hapu to do this.

401. At paragraph 340 Ms Hickey says:[173]

> *The draft engagement plan demonstrates the potential for Ngāpuhi hapū to be involved in the negotiations process and to maintain their aspirations to their negotiators and, through them, to the Crown.*

[172] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 339.
[173] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 340.

402. Words like "potential" offer us no safeguards or assurances that our rights and interests will be protected. We wanted certainty and express agreement to be detailed in the Amended Deed of Mandate.

403. At paragraph 342 Ms Hickey says:[174]

> *The responsibility of trustees to meet with their representative communities (hapū, urban and kuia and kaumatua) to provide a dialogue to ensure that Tūhoronuku not only keeps them up-to-date with the progress of negotiations, but also listens to the claimant community.*

404. Holding a meeting to simply give us an update and hear what we think does not amount to anything meaningful. Given our experience, I am not confident that the Tuhoronuku IMA Trustees will actually listen to the claimant community. We have not been listened to so far. According to our marae/hapu processes every month, we receive reports on various matters and we have the ability to make resolutions to determine the direction we take. Those resolutions are then acted upon and we are able to use those for accountability. Our "representatives" for Te Kapotai and Ngati Hine (including Ngati Kopaki and Te Kau I Mua) have simply ignored those resolutions. We have no confidence in this process.

405. At paragraph 343.2 Ms Hickey says:[175]

> *The site visits and regional hui for hapū are able to communicate their priorities for settlement directly to the Crown.*

406. Again, these are some of the mechanical parts of the process, but there is no guarantee that our "priorities" for settlement will be acted upon. If we are not satisfied, we do not have the option of not accepting particular redress offers, or choosing not to settle at all, because we can ultimately be outvoted by the others and by a vote of Ngapuhi as a whole. There should be clear mechanisms in the Amended Deed of Mandate for how we would deal with such issues, but there are not.

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[174] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 342.
[175] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 343.2.

407. At paragraph 345 Ms Hickey says:[176]

> *The proposed consultation following major aspects of the negotiations phase is a chance for hapū to ensure that their previous involvement throughout the negotiations process has been accurately reflected in settlement outcomes and, importantly, to be involved in the decision-making of how redress which has been prioritised by them will be held and managed post-settlement.*

408. In terms of this statement, where is the decision making power for hapu in the Tuhoronuku Amended Deed of Mandate?

The Te Hiku Settlement Model

409. At paragraph 351 Ms Hickey says:[177]

> *The Te Hiku iwi environment was quite different, at that stage, to that of Ngāpuhi. There were five established iwi who already had existing representative entities, clear understandings of who each of their claimant communities would represent and beneficiary registers that gave them the ability to communicate with (and seek the views of) those they sought to represent. This made iwi level mandating possible for Te Hiku iwi.*

410. This is the Crown's assessment and the Crown stating what it believes is best for us. We did not have the opportunity to engage with the Crown or Ngapuhi on these settlement models. What the Crown has done throughout its evidence in this inquiry is cherry pick examples from around the country that show that what they are doing is best for us. That is both insulting to us and those iwi whose models are being paraded as beacons of success. Do we know why Waikato decided to negotiate and settle their Raupatu and Awa claims as one? There may have been very good tikanga reasons why that was so. Will Waikato-Tainui want to settle the balance of their claims as one? We know that Waikato groups, Ngati Haua and Ngati Kahukura-Koroki got their own settlements, and that perhaps other hapu who are part of the

[176] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 345.
[177] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 351.

Raupatu and Awa settlements want to now do their own thing and move away from the one settlement model.

411. At paragraph 353 Ms Hickey says:[178]

> *Te Rarawa mandated and entered negotiations in 2002. The Crown withdrew recognition of the Ngāti Kuri mandate that year. Ngāti Kahu had their mandate recognised in 2003 on a conditional basis (because two of their 13 hapū were standing aside). They entered negotiations but withdrew in 2006 and sought remedies through the Waitangi Tribunal. They re-engaged and the Crown made them a redress offer in 2008.*

412. Mandates can be fickle. If a group cannot maintain their mandate then they should not have one. It is that simple. However, in our case, the Crown has taken direct action to ensure Tuhoronuku can maintain its mandate by refusing to let hapu withdraw from the mandate.

413. At paragraph 359 Ms Hickey says:[179]

> *The result is that four of the five iwi will conclude settlements in 2015, seven years after the Te Hiku Forum was initiated to facilitate a collective approach to settlement and 14 years after the first two iwi gained mandates to negotiate. That will be 21 years after the Muriwhenua hearings concluded. I am sure that none of the iwi aspired to that timeframe at the outset. I acknowledge other factors (including a gap between Crown and iwi redress expectations) have also contributed to that timeframe but the key lesson from this experience is that progress was only made when the iwi concerned came together. Significant redress opportunities such as the Conservation Korowai and social accord were only achieved through the collective participation of all iwi.*

414. The point I want to make here is that the reason why the united approach was successful is because there where clear incentives and benefits to it, but I believe a key factor of its success is that each group had real power in the

[178] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 353.
[179] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 359.

process. Their individual autonomy was recognised and respected. Their ongoing participation was voluntary, i.e. the other groups had no ability to bind them and everybody had something to gain or lose. This is not the case with Tuhoronuku as it is currently structured. The Deed of Mandate does not provide for this type of "united approach"; what it provides for is a single approach.

415. At paragraph 360 Ms Hickey says:[180]

> *In a real sense, the Tūhoronuku IMA is akin to the Te Hiku Forum. It is a representative mechanism that draws all hapū together in one effective space. That approach is consistent with the mandate vote - which did show considerable support for Ngāpuhi to progress together rather than in a fractured manner. It preserves the ability of Ngāpuhi hapū kaikōrero and other representatives to work together and make decisions about the future. As the Minister has conveyed, they will have an array of options open to them both in terms of how they want to organise for negotiations and for settlement.*

416. Ms Hickeys says "*In a real sense, the Tūhoronuku IMA is akin to the Te Hiku Forum*." I believe this is a major exaggeration and misleading. As I said above, the structures are very different, with separate mandates and separate settlements to be received under each mandate. Under the Te Hiku Forum each mandated group had ultimate decision making power and they were all on a much more even playing field. This is not the case with the Tuhoronuku IMA.

417. At paragraph 361 Ms Hickey says:[181]

> *The very kinds of inter-group discussion that occurred between the five Te Hiku iwi can efficiently occur through the Tūhoronuku IMA. A key advantage that the Tūhoronuku IMA has over the Te Hiku Forum, and one that cannot be underestimated, is the notion that the hapū of Ngāpuhi are "in it together". They are not entrenched in separate negotiating spheres bargaining at arms length with other groups and*

[180] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 360.
[181] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 361.

> *the Crown. Bear in mind that while the Te Hiku Forum helped solve many issues it ultimately was not able to hold together. One of the iwi (Ngāti Kahu) did not reach settlement.*

418. Again, this is misleading as the Te Hiku model and the Tuhoronuku IMA model are not even remotely similar.

419. I find Ms Hickey's comments patronising and paternalistic, "*A key advantage that the Tūhoronuku IMA has over the Te Hiku Forum, and one that cannot be underestimated, is the notion that the hapū of Ngāpuhi are "in it together".* The Crown also needs to stop forcing our hapu to be "in it together" whether we like it or not with essentially no ability to withdraw, because it suits the Crown and Tuhoronuku's settlement objectives.

420. At paragraph 362 Ms Hickey says:[182]

> *The Te Hiku example does not really speak to the idea of regionally based hapū groups forming. I would have some caution that there would be a real risk, in requiring groups to form to suit a regionally based approach, that timeframes would differ and groups would not move sufficiently in parallel to allow collective negotiation involving all hapū.*

421. I disagree with Ms Hickey. I believe that a regionally based model would be more appropriate and more effective in achieving a comprehensive settlement than the current model that is being pursued. We had identified this option years ago, and for Ms Hickey to now say the timeframes would differ too much is really convenient. I would also argue that a lot of work has already been done through the Waitangi Tribunal process to form regions which could work in negotiations. There are many other benefits too, like the fact that a lot of the technical research and evidence in the Waitangi Tribunal also lends itself to these regions, as well as specific research and evidence for the hapu within. The other point is that many hapu like ours supported this model.

422. At paragraph 365 Ms Hickey says:[183]

[182] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 362.

> *The Crown's approach to settling with Ngāpuhi was built on support for a single settlement model and the wide recognition that Ngāpuhi is a large natural group, which at that time was advocated for widely through those groups now opposed to the Tūhoronuku IMA. The desire for a single Ngāpuhi settlement was not unique to Te Roopu o Tūhoronuku. I reiterate that throughout the mandating process Te Kotahitanga and Te Rūnanga o Ngāti Hine both acknowledged a single, unified Ngāpuhi settlement was preferable as described in this brief of evidence. Engagement with Te Roopu o Tūhoronuku was because it approached the Crown and the single settlement model was, to the best of our understanding, supported by other groups within Ngāpuhi.*

423. Again I reiterate that there was not significant support for a single settlement led by TRAION/Tuhoronuku. There is an array of options as to how a comprehensive settlement for Ngapuhi could be achieved through a united approach. The Crown's constant inference that because there was desire for a single settlement there is support for a single mandate with TRAION/Tuhoronuku, is simply wrong.

424. The issue is that Ngapuhi was only ever given one line of information and one option to vote on, and this one option is strongly opposed. The Crown, in funding the early consultation process, should have ensured that a more balanced range of options was presented for Ngapuhi to consider. It did not do this and that is a failure on the part of the Crown.

425. At paragraph 366 Ms Hickey says:[184]

> *The views of individual hapū were largely unknown by the Crown at this early stage. However I do not consider that this is an issue as the mandate process is led by the claimant group, not the Crown, and it would be highly unusual for the Crown to actively approach hapū to seek their views during pre-mandating conversations with an established iwi Rūnanga or entity. Once opposing views of hapū or hapū groupings became apparent, the Crown actively sought*

[183] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 365.
[184] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 366.

engagement with those groups and in good faith pursued facilitation to reach a satisfactory resolution. Efforts on behalf of the Crown to mediate and understand the views of hapū continue in 2014.[185]

426. I do not agree. I believe that it is a major issue that the views of individual hapu were largely unknown by the Crown at this early stage, because in fact the Crown was aware of major issues in the early stages but chose to do nothing about them. The fact that the Crown did not come and meet with Te Kapotai when we put it on notice in 2009 of the serious concerns we had with the Tuhoronuku mandate process, is an issue. We gave the Crown every opportunity to hear our views and learn more about our hapu aspirations for settlement. It directed us to work with Tuhoronuku and that was the end of the matter.

427. At paragraph 367 Ms Hickey says:[186]

Not only was Te Roopu o Tūhoronuku the only organisation seeking to engage with the Crown in 2009, but it was also the only organisation that had the organisational structure and leadership to enable a pan-Ngāpuhi discussion. For example, while I recognise that Te Rūnanga o Ngāti Hine is very well organised with a deep history, it has never aspired to be a Ngāpuhi wide Runanga – it exists to serve Ngāti Hine. Te Kotahitanga was established in 2009 for the specific purpose of organising participation in the Paparahi o Te Raki inquiry. There simply were not, and perhaps there are still not, any other organisations that could lead a negotiation on behalf of all Ngāpuhi wherever they may live.

428. Like TKONHN, Tuhoronuku was only created in 2009; one can hardly say it had a well-established organisational structure. Furthermore, Tuhoronuku was set up to consult with Ngapuhi, not engage with the Crown in developing a settlement strategy that sought a mandate to achieve a single settlement.

[185] Contrast to Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 23, where Ms Hickey discusses how engagement gave the Crown the chance to assess how they would address hapu autonomy.
[186] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 367.

429. Ms Hickey's statement that *"There simply were not, and perhaps there are still not, any other organisations that could lead a negotiation on behalf of all Ngāpuhi wherever they may live"* is again very patronising, paternalistic and insulting view. It indicates that the Crown had picked a favourite as it clearly believed TRAION/Tuhoronuku was the only viable organisation anyway.

430. Ms Hickey's statement that *"For example, while I recognise that Te Rūnanga o Ngāti Hine is very well organised with a deep history, it has never aspired to be a Ngāpuhi wide Runanga – it exists to serve Ngāti Hine"* clearly shows that the Crown does not understand. Ngati Hine have no desire to represent Ngapuhi, because it would be a serious breach of tikanga and would undermine the rangatiratanga of other hapu if it purported to represent Ngapuhi. The reverse is also true, as we have said.

431. At paragraph 368 Ms Hickey says:[187]

> *While the initial steps for an entity to lead Ngāpuhi in settlement negotiations came from the Rūnanga, the membership of the Ngāpuhi Design Group of high profile individuals associated with other groups within Ngāpuhi, such as Pat Hohepa and Titewhai Harawira, suggested Ngāpuhi-wide support for a collective approach.*

432. I am not sure how the Crown makes a connection as if this lends some weight towards support for Tuhoronuku here. The Tribunal needs to look carefully at the timeframes, and the circumstances at the time, to see that it is a real stretch to try and make this connection. By the time TKONHN formed, the Ngapuhi Design Group had essentially disbanded and TKONHN were left to carry on with the planning, preparation and coordination of the Te Paparahi o Te Raki Inquiry.

433. In addition, the Crown must be careful in using names like 'Patu Hohepa' who was a member of the Ngapuhi Design Group but has always been a central member of TKONHN and is now an applicant and witness in this proceeding. One must look at who the members of the Ngapuhi Design Group were that stayed with the Tribunal process and those who went over to Tuhoronuku.

[187] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 368.

434. At paragraph 369 Ms Hickey says:[188]

> *The Crown took comfort from the fact that Te Roopu o Tūhoronuku were open-minded as to what entity would be seeking the mandate – that was one of the things being consulted on at that time. Although Te Roopu o Tūhoronuku emerged as an entity with appropriate organisational capacity to seek a mandate from Ngāpuhi, the involvement of a range of views from within Ngāpuhi at its genesis was understood as support for moving to settlement negotiations.*

435. *"The Crown took comfort from the fact that Te Roopu o Tūhoronuku were open-minded as to what entity would be seeking the mandate"* – I have not seen any evidence to support the view that there was open-mindedness on the part of Tuhoronuku, or the Crown for that matter. Tuhoronuku made out that it was so, and the Crown simply agreed. TRAION/Tuhoronuku did not emerge as an appropriate entity, rather this is what Ngapuhi were told, and Ngapuhi were never given any other real options or proper information to discuss and make decisions.

436. At paragraph 370 Ms Hickey says:[189]

> *At this time Te Roopu o Tūhoronuku were leading a conversation about the pathway to settlement – as noted, the Crown considered they had the mandate to do so given the wide involvement of various groups and individuals in the Ngāpuhi Design Group. It is not that "Tūhoronuku were ready and willing to settle when others were less so" but that the Crown understood that Ngāpuhi were ready to enter discussions on reaching settlement. The Crown was responsive to this direction.*

437. Again, I believe the Crown is deliberately interpreting the circumstances during this time to justify its engagement with Tuhoronuku.

438. At paragraph 371 Ms Hickey says:[190]

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[188] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 369.
[189] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 370.
[190] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 371.

It is important to clarify that the Crown was not, by December 2010, in a process with Te Roopu o Tūhoronuku. Rather, Te Roopu o Tūhoronuku was in a process with those it was seeking a mandate from. That process of hearing from Ngāpuhi included, through three rounds of information hui (in particular round three), informing the claimant community about the mandate strategy and model proposed. For example, at the June-August 2010 hui, documentation was provided at that hui with opportunity for discussion and clarification.

439. I think this is misleading and contradictory. We now have the Crown trying to step back and divorce itself from the early 2009 and 2010 mandate period, as if it was Tuhoronuku alone driving the process. A review of the OIA material clearly shows that the Crown was heavily involved from very early on in driving its one settlement model. Early discussions between Tuhoronuku and the Crown were of a strategic nature - promises, commitments and undertakings were made on both sides and many matters, which should have been considered as advanced negotiation matters, were discussed before they should have been. The Crown has been intimately involved in the pre-mandate/mandate process from start to finish.

440. At paragraph 372.3 Ms Hickey says:[191]

…Third, the Crown provided some funding for pre-mandate consultation…

441. It was not "some funding", it was a lot of funding. In fact, it was funding to an unprecedented level, which, I suggest, was outside the scope of the Crown's policy.

442. At paragraph 374.4 Ms Hickey says:[192]

…Fourth, the Crown met and corresponded with hapū and other groups within Ngāpuhi with regards to the settlement process throughout pre-mandating and mandating phases from 2008 to 2014. Despite not being in an official process with Te Roopu o

[191] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 372.3.
[192] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 374.4.

Tūhoronuku at this time the Crown would engage with and meet hapū representatives (such as Ngāti Hine) and other Ngāpuhi groups (such as Te Kotahitanga) to openly discuss Te Roopu o Tūhoronuku and any concerns that those groups may have had. Some of this consultation is set out in paragraphs.

443. The Crown met with some hapu, not all. It did not meet with Te Kapotai. The Crown met and it may have listened, but it never actually acted on the requests of Ngati Hine.

444. At paragraph 373 Ms Hickey says:[193]

The Crown did not actively disseminate information to Ngāpuhi hapū during the pre-mandating conversations with Te Roopu o Tūhoronuku. The Crown was, however, prepared to (and did) engage with groups within Ngāpuhi throughout this process as outlined above. Once a Tūhoronuku mandate strategy was approved by Ministers and the mandate strategy was publicly advertised and feedback sought, following the earlier recommendations made by the Tribunal in the East Coast Settlement report.

445. I maintain that the Crown's communication and engagement with hapu, particularly those in opposition, was woefully inadequate. There were a few template letters, and at all times the Crown simply told us how it was and expected us to work in with Tuhoronuku saying that the Crown does not involve itself in internal disputes. Well, these were not internal disputes, they were disputes, tensions and representation issues arising from a Crown driven and funded process. The Crown cannot reasonably say that they have no role. They have a role, they have a Te Tiriti obligation. Given our experience as Ngati Hine with TRAION/Tuhoronuku (which the Crown is well aware of), we just cannot resolve disputes with them, through their processes or through tikanga. The only way to resolve our issues has been to make an application to the Court/Tribunal. It is so frustrating, divisive time and resource consuming and costly.

446. At paragraph 374 Ms Hickey says:[194]

[193] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 373.

> *The Crown did not have any such plan, but Tuhoronuku did: its mandate strategy. The mandating process is a process run by the group seeking the mandate and not by the Crown. As I note above, in this case the Crown sought submissions on Tuhoronuku's mandate strategy. The strategy set out the process for seeking the mandate, which included a section entitled "Process of Debate, Discussion & Voting on Resolutions". The strategy also contained a dispute resolution process.*

447. The Crown may have sought submissions, but what did it actually do with those submissions, and were the concerns of submitters actually addressed? We made submissions and outlined our concerns with the mandate strategy. What steps did the Crown take to ascertain whether or not the concerns of submitters were satisfied?

448. At paragraph 375 Ms Hickey says:[195]

> *In addition, once the Crown became aware of the opposition to the Te Roopu o Tūhoronuku process, emerging from TPK hui reports, Te Roopu o Tūhoronuku hui reports and direct correspondence, the Crown actively encouraged a process of facilitation. Consultation on the Te Roopu o Tūhoronuku mandate strategy and the submissions received on this formed part of the focus for the facilitation with Te Kotahitanga throughout 2011.*

449. I refer the Tribunal to my earlier evidence on the nature of this facilitation and mediation.[196]

450. At paragraph 378 Ms Hickey says:[197]

> *Until June 2013 no other group within Ngāpuhi had sought a mandate to represent Ngāpuhi or the hapū of Ngāpuhi in negotiations with the Crown. It is incorrect to view the Crown's limited and case-by-case funding support (largely in response to*

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[194] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 374.
[195] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 375.
[196] Wai 2490, #A78, *Brief of Evidence of Willow-Jean Prime,* 12 November 2014.
[197] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 378.

specific requests) of the mandating process as excluding alternative mandate strategies by any other group within Ngāpuhi.

451. That is because we were trying to achieve changes to the structure and process through the mediation and facilitation processes and were fully committed to those processes. We thought these processes would bring the necessary changes that we required. It was not until the Crown and Tuhoronuku closed the door on those options and refused to make the changes that we believed were necessary to resolve the key issues, that we then regrouped with NHOTTM and resolved to seek our own mandate for settlement negotiations. So I think the Crown has failed to recognise these fundamental points here in an effort to justify its engagement with Tuhoronuku.

452. At paragraph 379 Ms Hickey says:[198]

> *Much of the funding provided by the Crown to support mandating by Te Roopu o Tūhoronuku was provided in response to specific Crown directions. As such, not funding these processes may have exposed the Crown to accusations that it was acting in bad faith towards Te Roopu o Tūhoronuku and Ngāpuhi.*

453. I can only assume here that the Crown is saying that it was actually directing Tuhoronuku to do certain things, and because of this, it had to pay Tuhoronuku in order to mitigate potential litigation risk from Tuhoronuku. This contradicts many of Ms Hickey's earlier statements, where she has attempted to say that the Crown was not really involved in the mandate process as we claim, and that it left Ngapuhi to it.

454. At paragraph 380 Ms Hickey says:[199]

> *Where other groups within Ngāpuhi were involved in facilitation to reach resolution regarding the settlement process, the Crown provided funding to enable the participation of those groups. While the funding provided to Te Roopu o Tūhoronuku is higher, on balance it is important to view this in the context of Te Roopu o Tūhoronuku*

[198] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 379.
[199] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 380.

running an extensive mandating and communication process beyond consultation with groups inside the iwi.

455. There was no balance or fairness in the funding of groups to participate. TKONHN wanted to hold more extensive consultation as well, but the Crown would not fund us to do so. It was a constant challenge to get any funding from the Crown, and we note that TKONHN members are not paid a daily meeting fee like the Tuhoronuku members were. Tuhoronuku were also able to claim for their staff, and for their communications etc. It would be interesting to see a breakdown of the real costs for each group, but of course we do not really have this information because many of the Tuhoronuku expenses were invoiced and paid under the cost of "delay" etc.

456. At paragraph 381 Ms Hickey says:[200]

> *The Crown's funding was and is not limited to funding for Te Roopu o Tūhoronuku, facilitation processes or the Tūhoronuku IMA. The Crown provided considerable funding for the Paparahi o Te Raki inquiry during a period of uncertainty in relation to CFRT funding whilst supporting Ngāpuhi during the mandating process. This dual funding demonstrates good faith by the Crown in engaging with historical claims and settlement with Ngāpuhi. It is of vital importance that Stage Two of the inquiry was not compromised by Ngāpuhi preparing for negotiations.*

457. As I said earlier, the Crown's funding of claimants groups and the Tribunal process are really quite separate matters, and the Crown should not make out that it shows even-handedness here. Also, there were some real issues with the provision of Crown funding to the Stage Two hearings, and there was considerable stress placed on claimants who were preparing for hearings as funding was often delayed and limited. What about NHOTTM's application for pre-mandate funding of $50,000 that the Crown simply declined to consider?

[200] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 381.

458. At paragraph 382 Ms Hickey says:[201]

> *Throughout the Te Roopu o Tūhoronuku mandating process Ngāpuhi was understood by the Crown as hapū-centric and any future settlement would provide for hapū rangatiratanga.*

459. I would like the Crown to explain what its understanding of hapu rangatiratanga is.

460. At paragraph 383 Ms Hickey says:[202]

> *Many of the Crown's proposals for changes to the mandate strategy and mandate, as well as the Crown focus in consultation has been on ensuring that the negotiations structure is sufficiently representative of hapū and are able to take account of hapū interests and hapū rangatiratanga. The Tūhoronuku IMA mandate has evolved through the mandating process to better provide a vehicle for hapū rangatiratanga and interests and the ongoing recognition of the mandate by the Crown is dependent on a number of conditions relating to the ability of hapū to remain at the centre of the process. When Ministers recognised the mandate in February 2014, the very first mandate condition affirms this: to develop detailed communication and negotiation plans that recognise specific hapū interests.9*

461. I disagree with this, and that is why I am interested in discerning exactly what the Crown understands 'hapu rangatiratanga' to mean. Helpfully, in 2010, Ngati Hine and Te Kapotai provided evidence to the Wai 1040 Waitangi Tribunal on the nature of rangatiratanga and the meaning and effect of He Whakaputanga me Te Tiriti o Waitangi. On 14 November 2014, the Waitangi Tribunal released its report on He Whakaputanga me Te Tiriti o Waitangi,[203] and upheld our claims concerning rangatiratanga. The Tribunal made the following statements in regards to rangatiratanga:

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[201] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 382.
[202] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 383.

[203] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014.

…Differences in opinion among the claimants are not surprising. The northern rangatira did not speak with one voice on the subject in February 1840 and we should not realistically expect hapū representatives to do otherwise today. It is clear that the rangatira considered their options at Waitangi on the basis of the experiences and priorities of their own hapū.[204]

…Though hapū were autonomous, kinship ties with other hapū created mutual obligations. Related hapū had long traditions of meeting regularly and acting together as circumstances demanded.[205]

…At times they shared resources, worked together in communal gardens, and formed alliances to fight alongside each other against people who were unrelated or more distantly related. To some of the claimants, it was this combination of hapū authority and autonomy, close kinship ties, and the ability to act in concert with others where that served hapū interests, that defined the Bay of Islands and Hokianga system of political authority.[206]

…Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories. Rather, they agreed to share power and authority with the Governor…. Those who have made the assumption that the rangatira ceded sovereignty in February 1840 have largely ignored the Māori understanding. Erima Henare put it that the enduring notion of Māori ceding their sovereignty 'is a manipulation of the past'.[207]

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[204] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014, Chapter 10.4.2.
[205] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014, Chapter 10.2.
[206] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014, Chapter 10.2.
[207] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014, Chapter 10.4.4.

> *…Having sought and received assurances that they would retain their independence and chiefly authority, and that they and the Governor would be equals, many rangatira were prepared to welcome this new British authority. They did not regard kāwanatanga as undermining their own status or authority. Rather, the treaty was a means of protecting, or even enhancing, their rangatiratanga as contact with Europeans increased.*[208]

462. I believe that the Tribunal must accept these recent Tribunal findings. The Crown must also take note of them and understand and respect the reality of the cultural framework that is operating within Ngapuhi and change its course and approach toward settlement.

463. At paragraph 385 Ms Hickey says:[209]

> *Ms Tuwhare notes that her hapū Te Popoto is currently preparing a hapū negotiation plan to contribute to the wider Tūhoronuku negotiation strategy. She also notes that Te Popoto is able to engage directly with neighbouring hapū and their whanaunga on overlapping and shared interests and is supported in doing so. Finally, Ms Tuwhare notes that she is confident her hapū can and will meet directly with the appointed Tūhoronuku negotiators and believes this reflects hapū autonomy in this process.*

464. This may be so for Te Popoto, but that is for Te Popoto to comment on. Te Kapotai and Ngati Hine have very different understandings and positions, and I hope that this is not an attempt by Ms Hickey to create a standardised view amongst hapu because of the late agreement of a particular hapu/individual to join Tuhoronuku.

465. At paragraph 386 Ms Hickey says:[210]

> *I refer to Te Popoto with particular regard to the Crown's argument in the June judicial conference that it would be pre-emptive of the Tribunal to grant urgency given the then current status of preparing*

[208] Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry,* 14 November 2014, Chapter 10.5.
[209] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 385.
[210] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 386.

for negotiations– the presumption seems to be on the part of the claimants that the mechanisms within the Tūhoronuku mandate are insufficient to protect the ability of hapū to exercise rangatiratanga or to be involved in negotiations. I consider that Ms Tuwhare and Te Popoto provide evidence of where these mechanisms can work when hapū engage with them.

466. I reiterate my earlier comments about there being no guarantees, no certainty, no proper process where there may be disputes, and no real option to withdraw if we are unhappy. This is not rangatiratanga.

467. At paragraph 387 Ms Hickey says:[211]

Patricia Tauroa (paragraphs 20-22, Wai 2341, A029) provides a fulsome description in her brief of evidence of the process followed within her hapū. While Ms Tauroa objects to Tūhoronuku through her brief of evidence she is also the elected hapū kaikōrero for Ngāti Pou. Her brief of evidence argues that the hapū kaikōrero election is not compliant with tikanga – yet the process outlined in her brief of evidence is a tikanga based process to nominate her for the position of hapū kaikōrero. I recognise that this is undertaken reluctantly. I also note that it was through facilitation with Te Kotahitanga that Te Kotahitanga requested the inclusion of the nomination and election process for hapu kaikorero.

468. This is wrong. TKONHN considered that there could be some merit in a different election process, as was being suggested, but we actually had more detailed ideas on it which we never got to discuss and were not included in the eventual changes. I note that the new process was rejected by TKONHN at our hapu hui. I believe many of the submissions on the Amended Deed of Mandate commented on this process, which indicated a lack of support.

[211] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 387.

469. At paragraph 389 Ms Hickey says:[212]

> *There is undeniably a huge responsibility placed on hapū kaikōrero within the Tūhoronuku IMA structure because hapū are central to Ngāpuhi identity. I agree with the remainder of Ms Tauroa statement: the key challenge for Tūhoronuku is to bring the role of hapū and hapū kaikōrero to life within its structure. The beginnings of this work is demonstrated through the draft engagement plan and the initial steps taken by Ms Tuwhare on behalf of her hapū.*

470. This may be the view of Ms Tauroa and Ms Tuwhare. However, our hapu have had different experiences, and we are not prepared to take the risk of joining Tuhoronuku and figuring it out as we go, nor should we be expected to. We are being forced into this process against our will and against our wishes.

471. At paragraph 392 Ms Hickey says:[213]

> *Through much of the mandating process opponents to the Tūhoronuku mandate strategy were willing to engage on the strategy itself and amending this to where they thought it might better represent Ngāpuhi interests and provide for Ngāpuhi tikanga. An alternative mandate strategy was not proposed at any stage, except for the Ngā Hapū o Takutai Moana proposal in 2013.*

472. In my view, the Crown is picking out words to support its position. There may not have been an alternative mandate strategy proposed, but again, that is because we were engaged in facilitation processes that we were led to believe would resolve the issues. We were led to believe that all options were open for discussion (later we found out that this was not the case). With that in mind, we did not need to develop an alternative strategy.

473. When those processes failed, we attempted, through NHOTTM, to develop and present a strategy but the Crown shut the door on us. You only have to look at how quickly the Crown moved to publically advertise the Tuhoronuku

[212] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 389.
[213] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 392.

Deed of Mandate after NHOTTM signalled its intention to seek a mandate, to see how quickly the Crown can act when it wanted to stop something from progressing.

474. At paragraph 393 Ms Hickey says:[214]

> *I have been involved in the mandating process for Ngāpuhi since its inception. As I reflect back, I acknowledge this has been a particularly difficult process. The Crown was keen to see where the mandating process would get to but was open to the possibility Ngāpuhi may not give Tūhoronuku a mandate. The Crown has responded to issues as they arose. In my opinion, the process the Crown has followed has been fair and robust and the settlement model proposed has the capacity to provide for hapū interests in settlement negotiations.*

475. I know this is Ms Hickey's opinion, but I simply cannot agree.

Concluding remarks

476. While I have responded to the statements made by the Crown, I want to finish by noting that having to do this is yet another example of the Crown drawing our hapu into the Tuhoronuku mandate process against our collective will.

477. The Crown concedes nothing, and it admits no fault at any point of the process. Because of this, I have had to respond to all of the process issues concerning fairness, transparency, and accountability as they are fundamentally important.

478. The essential point to note is that the Crown and Tuhoronuku do not have a mandate or the consent or agreement from Te Kapotai or Ngati Hine to settle our Te Tiriti o Waitangi claims. Any action taken by the Crown and Tuhoronuku toward reaching a single settlement for Ngapuhi is an action which undermines the mana and rangatiratanga of our hapu.

[214] Wai 2490, #A108, *Brief of Evidence of Maureen Hickey,* 20 November 2014, para 393.

479. Any settlement that is reached under the current Tuhoronuku structure and process will not be enduring. For this reason, we will continue to oppose the Crown and Tuhoronuku negotiation process.

480. We had hoped the settlement process might restore our relationship with the Crown, however, that is again on hold.

481. The Crown is causing our hapu immediate and irreversible prejudice.

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Willow-Jean Prime
27 November 2014