

THE
MANIAPOTO MANDATE
INQUIRY REPORT

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WAI 2858

WAITANGI TRIBUNAL REPORT 2020



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiriti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Nanaia Mahuta
Minister for Māori Development
The Honourable Andrew Little
Minister for Treaty of Waitangi Negotiations
The Honourable Kelvin Davis
Minister for Māori Crown Relations: Te Arawhiti
Parliament Buildings
WELLINGTON

10 December 2019

*Waerea te rangi e tū nei,
waerea te papa whenua e takoto nei,
waerea te whakaaro poka noa ki tahaki,
tukua atu te whakatau a Te Rōpū Whakamana i te Tiriti o Waitangi
kia puta ki te taha tika
ki te ao mārama,
hei whakamihi mā ētahi,
hei taunu mā ētahi.
He oi.*

Please find enclosed the report on the Maniapoto mandate inquiry. This is the outcome of an urgent inquiry conducted into the Crown's recognition of the Maniapoto Māori Trust Board's mandate to negotiate the Ngāti Maniapoto settlement.

We received 10 claims made on behalf of a range of individuals, whānau, hapū, and hapū collectives. The central issue in this inquiry was whether the Crown's recognition of the trust board's mandate was fair, reasonable, and made in good faith. The claims raised significant concerns about the process by which the mandate was recognised and questioned whether the deed of mandate adequately provided for hapū rangatiratanga.

In addressing these claims, the report largely focuses on the Crown's

Level 7, 141 The Terrace, Wellington, New Zealand. Postal: DX SX11237
Fujitsu Tower, 141 The Terrace, Te Whanganui-ā-Tara, Aotearoa. Pouaka Poutāpeta: DX SX11237
Phone/Waea: 04 914 3000 Fax/Waea Whakaahua: 04 914 3001
Email/E-mēra: information@waitangitribunal.govt.nz Web/Ipurangi: www.waitangitribunal.govt.nz



actions between 2013 and 2016. During this period, the Crown engaged in negotiations with Te Kawau Mārō, the entity that was seeking a Crown-recognised mandate for Ngāti Maniapoto settlement negotiations prior to the trust board. This engagement continued until the Crown implemented the 'Broadening the Reach' strategy in September 2016, at which point it decided to cease working with Te Kawau Mārō, instead offering the trust board an opportunity to participate in a 'bespoke', truncated mandating process.

We find that the Crown's recognition of the trust board's mandate was reasonable given the trust board's level of support, infrastructure, and extensive involvement in previous settlements. It was also reasonable due to the lengthy discussions, conducted in good faith, with Te Kawau Mārō for over 20 months.

However, we find that aspects of the Crown's process in recognising the trust board's mandate were not fair nor undertaken in good faith. In particular, the Crown's implementation of 'Broadening the Reach' prioritised its political objectives to complete settlements in a shorter timeframe over its Treaty relationship with Ngāti Maniapoto. The Crown failed to carry out genuine engagement with the claimants or to sufficiently inform itself of the levels of opposition to the trust board's mandate due to a lack of a second submissions round. It also failed to protect the whanaungatanga between the claimants and the trust board from the point at which 'Broadening the Reach' became an active strategy. Therefore, the Crown breached the principles of partnership and equal treatment and failed in its duties of active protection and whanaungatanga.

We also find that the Crown's position in relation to the exclusion of Ngāti Apakura from, and their subsequent proposed re-inclusion into, the trust board's deed of mandate has not been fair and reasonable. The Crown's inconsistent actions have left the claimants' remaining non-Waikato-Tainui raupatu and non-raupatu claims in limbo, with no clear pathway forward to settle them. Therefore, the Crown breached the principle of reciprocity and its duties of active protection and whanaungatanga.

We find that the trust board's deed of mandate, as it currently stands, is largely adequate because it appropriately provides for hapū rangatiratanga in a practical and flexible way consistent with the tikanga of Ngāti Maniapoto. We determine that, provided that the Crown provides distinct recognition to certain hapū in the claimant definition and amends aspects of the withdrawal mechanism, the deed of mandate is fit for the purpose of negotiation.

We conclude that the claimants have suffered prejudice through damaged whanaungatanga with the trust board in respect of the impact of 'Broadening the Reach' and that the Ngāti Apakura claimants have had

their tino rangatiratanga disregarded due to the Crown's fluctuating position regarding their inclusion in the deed of mandate. All the claimants have suffered prejudice because of the Crown's removal of expected avenues and mechanisms to express dissent in the settlement process, as well as the lack of a Crown policy or strategy for engaging with groups that do not fit neatly into the large natural grouping rubric.

While we do not condone the Crown's actions in certain aspects of the Ngāti Maniapoto mandating process, we consider that there are appropriate, practical recommendations that will remedy or mitigate the claimants' prejudice.

We have recommended that:

- ▶ the Crown provide distinct recognition in the claimant definition for Ngāti Paretāpoto, Ngāti Paia, Ngāti Paretekawa, and Ngāti Apakura;
- ▶ the Crown disregard its qualification in the claimant definition that Ngāti Apakura claims are recognised only insofar as they are based on Ngāti Maniapoto whakapapa and instead endeavour to settle all outstanding non-Waikato-Tainui raupatu and non-raupatu Ngāti Apakura claims in this settlement;
- ▶ the Crown give serious consideration to the possibility of Te Ihingārangi combining in any prospective post-settlement governance entity with Ngāti Rereahu;
- ▶ should the outstanding non-Waikato-Tainui raupatu and non-raupatu Ngāti Apakura claims be included in this settlement, the Crown adjust the resourcing for negotiations and the quantum for settlement;
- ▶ the Crown clarify point 3 of the removal or amendment of mandate process, particularly the wording of '[a] quorum of 350 Maniapoto members';
- ▶ the Crown communicate to all parties to the trust board's mandate the nature of the funding available to them should they wish to proceed with the removal or amendment of mandate process; and
- ▶ the Crown prioritise its Treaty relationship with Ngāti Maniapoto by having an active regard to its duty of whanaungatanga.

In making these recommendations, we have weighed the possible prejudice to those Ngāti Maniapoto individuals, whānau, and hapū that presently support the trust board's mandate and want the current negotiations to continue. This support is considerable and, as such, we are content for the negotiations to proceed. We acknowledge that our recommendations may delay the negotiations but, as they are designed to enhance relationships between the claimants, the trust board, and the Crown, we do not think such a delay should be harmful.

We believe that, in implementing these recommendations, the Crown will both realise its settlement policy objective of achieving a robust, durable, and fair settlement and restore its Treaty relationship with Ngāti Maniapoto.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Sarah Reeves'.

Judge Sarah Reeves
Presiding Officer

ABBREVIATIONS

app	appendix
CA	Court of Appeal
ch	chapter
cl	clause
doc	document
ed	edition, editor
ltd	limited
memo	memorandum
n	note
no	number
NZLR	<i>New Zealand Law Reports</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
PDF	portable document format
pt	part
ROI	record of inquiry
RMC	regional management committee
s, ss	section, sections (of an Act of Parliament)
v	and
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 2858 record of inquiry, a select index to which is reproduced in appendix III. A full copy of the index is available on request from the Waitangi Tribunal.

ACKNOWLEDGEMENTS

The Tribunal would like to thank all staff involved for their support and assistance with the report, most especially Catriona Britton, Dr Daniel Morrow, Barnaby Melville, Jane Latchem, and Dominic Hurley.

Also, those staff assisting with the inquiry and hearings, particularly Hinetaapora Moko-Mead, David Lewis, Eleanor Rainford, Brianna Boxall, Rebekah Fistonich, Keana Wild, Te Rangiapia Wehipeihana, Destinee Wikitoa, Malesana Ti'eti'e, Kimberley Matau, and Marsella Hippolite.

We would also like to acknowledge the skills of contractors Conrad Noema, Paiheke McGarvey, and Alan Doyle.

CHAPTER 1

INTRODUCTION

1.1 WHAT IS AT ISSUE?

The Maniapoto mandate inquiry (Wai 2858) is an urgent inquiry concerning the Crown's recognition of a mandate to negotiate a settlement of the Treaty claims of Ngāti Maniapoto. The Maniapoto Māori Trust Board currently holds this mandate.¹ The overarching issue in this urgent inquiry is whether the Crown breached the Treaty in recognising the mandate of the trust board to negotiate the Ngāti Maniapoto settlement with the Crown. The claims made to the Waitangi Tribunal under urgency raised significant concerns about the process by which the mandate was recognised and also questioned whether the deed of mandate adequately provides for the rangatiratanga of the hapū and claimants to determine how they settle their claims.

On 23 September 2016, the Crown endorsed the trust board's draft mandate strategy, which was then put to a vote during October and November 2016 using the Ngāti Maniapoto tribal register. A majority of eligible voters supported the mandate. After receiving the vote results, assessing the submissions, and meeting with opposing submitters, the Crown formally recognised the trust board's mandate on 14 December 2016.²

The claims we considered in this inquiry alleged that the Crown's actions, in particular the implementation of the 'Broadening the Reach' strategy, and the insufficient opportunities to voice opposition prevented the claimants from asserting their tino rangatiratanga. Another central theme of opposition to the trust board's mandate was that its deed of mandate did not make appropriate accommodation for hapū rangatiratanga, in contrast to the structure and approach of the entity originally established to seek the mandate, Te Kawau Mārō. Furthermore, some claimants took specific issue with either the absence or the inclusion of their whānau, hapū, and Te Rohe Pōtae historical claims in the claimant definition set out in the trust board's deed of mandate.

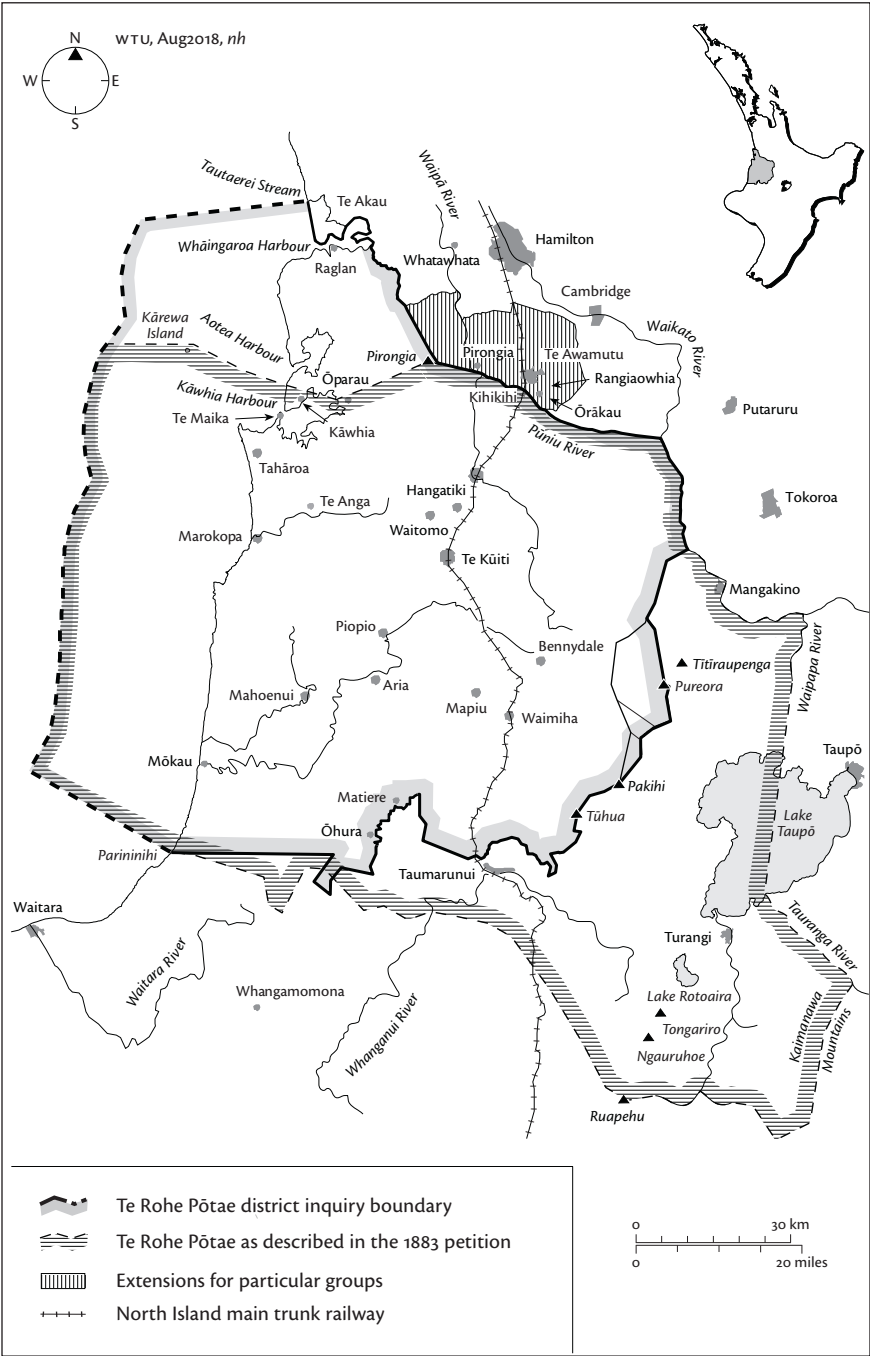
1.2 TE IWI O MANIAPOTO

The Crown's strong preference is to negotiate settlements with what the Crown defines as large natural groupings of iwi interests.³ In August 2012, the Crown

1. A glossary of technical terms can be found in appendix 1.

2. Document A56, pp 39, 41–42, 46

3. Ibid, p 56



The boundary of the Te Rohe Pōtae district inquiry, as shown in *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. We use it here to show the area that Ngāti Maniapoto typically occupy.

recognised Ngāti Maniapoto as a 'large natural group' for the purpose of settlement negotiation. The trust board's current, recognised deed of mandate includes a claimant definition, which names the founding tūpuna of this group, lists the hapū included in the mandate, and describes the 'area of interest' within which they exercised customary rights.⁴

The Ngāti Maniapoto area of interest, or rohe, in the deed of mandate covers most of the Te Rohe Pōtae (Wai 898) inquiry district, within which claims were heard from multiple iwi and hapū. This stretches from Whāingaroa Harbour south to northern Taranaki and inland to the Waikato River and Taumarunui.⁵

Ngāti Maniapoto emerged as an iwi following the landing of the *Tainui* waka. From that period, hapū now associated with Ngāti Maniapoto intermingled in the territory running from Mōkau in the south to Kāwhia and other parts in the north, and with other *Tainui*-descended groups (now more commonly associated with Waikato-Tainui) and Ngāti Raukawa to the east. They also shared spheres of influence with non-*Tainui*-descended groups in the south-east, such as Ngāti Tūwharetoa.⁶ Prior to 1840, Māori in the region had developed a dynamic society governed by whakapapa and tikanga.

While Maniapoto is recognised as the eponymous ancestor of Ngāti Maniapoto in the deed of mandate, some Te Rohe Pōtae iwi and hapū, including claimants in this inquiry, trace their descent from Maniapoto's father, Rereahu; his older brother, Te Ihingārangi; and Te Io Wananga, 'widely considered a child of Rereahu', a younger sibling of Maniapoto.⁷ Others, such as Ngāti Apakura, share historical interests and relationships in the rohe, stemming primarily from displacement arising from war and raupatu in the nineteenth century. The claimant definition section of the trust board's deed of mandate thus defines the Ngāti Maniapoto large natural grouping for the purpose of settlement negotiations as the wider collective encapsulated in the 1904 Te Kawenata o Ngāti Maniapoto and the associated Te Nehenehenui document. The latter, according to the deed of mandate, describes a process by which 'Maniapoto, the ancestor, became the mana, and his name the tribal appellation for the descendants of his father Rereahu'.⁸ The claimant definition lists 54 hapū and iwi as included within the large natural grouping.

Census data provides a good indicator of the Ngāti Maniapoto population today. According to the 2013 census, 35,358 people identify as being of Ngāti Maniapoto descent, with fewer than 10 per cent of this population residing within the Ngāti Maniapoto rohe.⁹ The trust board, established as a body corporate in 1988 under the Maniapoto Maori Trust Board Act 1988 and the Maori Trust Boards Act 1955,

4. Document A5(a), pp 3–7

5. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version, Parts I and II* (Wellington: Waitangi Tribunal, 2018), p xxxi

6. Ibid, pp 1–2

7. Document A5(a), p 3

8. Ibid

9. Document A5, pp [3], [15]–[16]

1.2.1

has an administrative function to use its financial resources to promote health, socio-economic welfare, education, and vocational training for the iwi.¹⁰ Chapter 4 of this report discusses the structure of the trust board.

1.2.1 Relevant events of the Te Rohe Pōtae district inquiry

The Te Rohe Pōtae district inquiry is key to understanding the background to this mandating inquiry. The claims of Ngāti Maniapoto are central to one of the last major district inquiries to be heard by the Waitangi Tribunal. The Tribunal confirmed a district inquiry in the King Country following a judicial conference at Te Tokanganui-ā-Noho Marae in Te Kūiti on 2 and 3 October 2006.¹¹ On 21 April 2007, the then chairperson of the Waitangi Tribunal, Chief Judge Joseph Williams, appointed Judge David Ambler the presiding officer of the inquiry. Dr Robyn Anderson, John Baird, Dr Aroha Harris, and Professor Tā Hirini Moko Mead were appointed inquiry panel members on 23 December 2009.¹² Dr Anderson subsequently recused herself, and Professor Pou Temara was appointed to the panel on 22 February 2012.¹³ Following Judge Ambler's passing in 2017, Deputy Chief Judge Caren Fox became the presiding officer.¹⁴

Between March and June 2010, the Tribunal heard evidence focusing on oral traditions at Ngā Kōrero Tuku Iho hui in locations throughout Te Rohe Pōtae. Beginning in late 2012, the Tribunal held a further 17 weeks of hearings, which concluded in Wellington in early 2015.¹⁵

All the claimants and most of the interested parties in this urgent inquiry advanced claims in the district inquiry on behalf of themselves, as well as named hapū, whānau, or tūpuna. These included raupatu claims brought on behalf of Ngāti Apakura, represented in this urgent inquiry under the Ngāti Apakura claim (Wai 2596). Two claimant groups also brought raupatu claims in the district inquiry on behalf of Ngāti Paretekawa. These claims are represented in the urgent inquiry under Maniapoto ki te Raki (Wai 2598) and Ngāti Paretekawa (Wai 2620).¹⁶ The trust board helped coordinate Treaty claims for the Te Rohe Pōtae district inquiry (this role is discussed in chapter 3). Negotiations with the Crown concerning a mandate strategy for Ngāti Maniapoto began while the district inquiry was still in hearing.

10. Document A56(a), p1015; Maori Trust Boards Act 1955, s24

11. Waitangi Tribunal, *Te Mana Whatu Ahuru*, p 2

12. Chief Judge Joseph Williams, memorandum appointing Judge David Ambler presiding officer of Te Rohe Pōtae Tribunal, 21 April 2007 (Wai 898 RO1, memo 2.5.14); Chief Judge Wilson Isaac, memorandum appointing Professor Sir Hirini Mead, John Baird, Dr Aroha Harris, and Dr Robyn Anderson members of Te Rohe Pōtae Tribunal, 23 December 2009 (Wai 898 RO1, memo 2.5.50)

13. Waitangi Tribunal, *Te Mana Whatu Ahuru*, p 7

14. Chief Judge Wilson Isaac, memorandum appointing Deputy Chief Judge Caren Fox new presiding officer of Te Rohe Pōtae Tribunal, 24 November 2017 (Wai 898 RO1, memo 2.7.10)

15. Waitangi Tribunal, *Te Mana Whatu Ahuru*, pp 8–9

16. Memorandum 2.5.21

1.2.2 *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*

Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims addresses 277 claims received by the Waitangi Tribunal. The pre-publication version of the report is being released in stages. In September 2018, the Tribunal released parts I and II, which covered nineteenth-century issues, including the tribal landscape, old land claims, war and raupatu, Te Ōhākī Tapu, the construction of the North Island main trunk railway, and the establishment of the Native Land Court. Part III was released in June 2019 and covered twentieth-century land issues.

The Te Rohe Pōtae Tribunal found many of the claims covered in these parts of the report to be well founded. It concluded that numerous Crown actions and omissions in Te Rohe Pōtae breached the principles of the Treaty of Waitangi as well as promises to give practical effect to them during the 1883–85 Te Ōhākī Tapu negotiations regarding the extension of the North Island main trunk railway through the district.

The Tribunal recommended that the Crown take steps to provide Te Rohe Pōtae Māori the ability to exercise their tino rangatiratanga and mana whakahaere (the practical exercise of authority in accordance with the principles of autonomy and self-determination) within their rohe.¹⁷ It also recommended that any settlement legislation the parties negotiate give ‘practical effect to Te Ōhākī Tapu and provide for the practical exercise of mana whakahaere.’ The Tribunal noted that settlement legislation should also impose a positive obligation on the Crown and all agencies acting under Crown authority to recognise and provide for those rights.¹⁸ Negotiations, the Tribunal recommended, should address the varying forms of authority existing among Māori groups of Te Rohe Pōtae, particularly hapū and iwi, and seek to strike an appropriate balance between them.¹⁹

1.3 KEY EVENTS IN THE INQUIRY PROCESS

1.3.1 Background to this urgent inquiry

This section contains a brief recap of the events in the Ngāti Maniapoto mandating process that led to this urgent inquiry. Chapter 3 will examine this process in depth.

In July 2013, while the Te Rohe Pōtae district inquiry was in hearing, the trust board and Wai claimant representatives formed a steering group to prepare and implement a Crown-recognised mandate strategy for Ngāti Maniapoto. In late 2014, Te Kawau Mārō was formally established to seek the mandate to negotiate a settlement of claims for the Ngāti Maniapoto large natural grouping. We understand that Te Kawau Mārō derived its name from the pepeha that exemplifies the Ngāti Maniapoto philosophy of resilience: ‘Kia mau tonu ki tēnā; kia mau ki te

17. Waitangi Tribunal, *Te Mana Whatu Ahuru*, p xli

18. Ibid, pp xli–xlii

19. Ibid, p xli

1.3.2

kawau mārō. Whanake ake! Whanake ake!’²⁰ For roughly 20 months, Te Kawau Mārō worked with the Office of Treaty Settlements (OTS) towards mandate recognition. During this time, the trust board provided financial and administrative support to Te Kawau Mārō through a service-level agreement and was represented on its board. By late 2015, negotiations between Te Kawau Mārō and OTS had reached an impasse. In January 2016, the trust board withdrew from Te Kawau Mārō, noting concerns with its representative model, progress toward settlement, and financial arrangements.²¹ A period of attempted reconciliation followed over several months, but the two groups failed to reach an agreement. The trust board left Te Kawau Mārō for a second and final time in August 2016.

In September 2016, OTS informed Te Kawau Mārō that, without the support of the trust board, it would no longer work with it to achieve a mandate. OTS subsequently entered into direct discussions with the trust board, offering Ngāti Maniapoto priority status for negotiations under the Crown’s ‘bold goals’ pillar of the ‘Broadening the Reach’ strategy, which was intended to enable an accelerated, ‘bespoke’ mandating process. Following a tribal register vote, where the majority voted in favour of the trust board’s proposed mandate, and a simultaneous submissions process (discussed further in chapter 3), the Crown recognised the trust board’s mandate on 14 December 2016.

1.3.2 Basis for this urgent inquiry

Between 2 February and 14 August 2017, the Tribunal received nine applications for an urgent inquiry into the Crown’s recognition of the trust board’s mandate (these are listed in section 1.4.1). Deputy Chairperson Judge Patrick Savage granted these applications on 16 November 2018, and the claims were consolidated into a common record of inquiry: the Maniapoto mandate inquiry (Wai 2858).²²

In his decision granting an urgent inquiry, Judge Savage noted that the settlement process was considerably advanced and that the Crown and the trust board showed no signs of pausing and reconsidering in the face of apparently significant opposition. He observed:

The very fact that a settlement is proposed in these circumstances signals that the Crown accepts that it has been in breach of the principles of article 2 of the Treaty. The guarantee there was ki nga rangatira, ki nga hapu, ki nga tangata katoa. When the Crown, as it must, gives support to an organisation as the vehicle for settlement it goes without saying that it must ensure that those who received the guarantee in 1840 have consented to and do support the process.²³

20. This is a well-known Ngāti Maniapoto pepeha attributed to the ancestor Maniapoto that translates to ‘Stick to that, the straight-flying Cormorant!’: Wai 898 RO1, doc A110, p18.

21. Document A56(a), pp1025–1027

22. Memorandum 2.5.22, p4; memo 2.5.1, p1

23. Memorandum 2.5.22, p30

Having sought submissions from the claimants on the level of support they were able to demonstrate from the hapū they claimed to represent, Judge Savage was satisfied that there was ‘very probably substantial and sustained opposition by a good number of people to the settlement as proposed’.²⁴

On 25 January 2019, the chairperson of the Tribunal, Chief Judge Wilson Isaac, appointed Deputy Chief Judge Caren Fox the presiding officer of the urgent inquiry. Dr Aroha Harris and Professor Pou Temara were appointed at the same time as members of the panel. Judge Fox subsequently recused herself from the inquiry and, on 12 February 2019, Judge Sarah Reeves was appointed the presiding officer.²⁵

On 18 March 2019, the Tribunal received a statement of claim from Pani Sinclair Paora-Chamberlin on behalf of Ngāti Wharekōkōwai. Judge Reeves subsequently granted leave for this claim to join the inquiry.²⁶

1.3.3 Events since the urgent inquiry was granted

Judge Reeves convened a judicial conference on 8 March 2019 in Hamilton at Te Wānanga o Aotearoa’s Mangakotukutuku campus. Its purpose was to confirm the scope of the inquiry, statement of issues, timetabling, and hearing venues and dates, and to receive an update on the progress and timeframes for the settlement negotiations between the trust board and the Crown.²⁷

At the judicial conference, Judge Reeves proposed mediation as an option between the claimants and the trust board. On 29 March 2019, the trust board and the Crown jointly agreed to pause substantive negotiations for a two-month period to facilitate any mediation and to review any progress following the pause, keeping an ‘open mind’ as to whether the pause would continue past the start of July.²⁸ On 18 April 2019, Judge Reeves appointed Judge Michael Doogan and Kevin Prime as facilitators, pursuant to clause 9A of schedule 2 to the Treaty of Waitangi Act 1975, over the mediation between the 10 claimants and the trust board.²⁹ This mediation occurred over 2 and 3 May 2019 but was unable to achieve agreement on the outstanding issues.

Hearings for the urgent inquiry were held in Hamilton at the Narrows Landing from 10 to 12 July and 17 to 19 July 2019. Closing submissions were heard in Wellington at the Waitangi Tribunal’s offices on 19 and 20 September 2019.

The Crown informed the Tribunal on 18 September 2019, the day before the hearing of closing submissions, that the Minister for Treaty of Waitangi Negotiations, Andrew Little, had authorised the Crown to resume negotiations

24. Ibid

25. Memorandum 2.5.26

26. Memorandum 2.5.33, p 1

27. Memorandum 2.5.28, p 2

28. Memorandum 3.1.120, p 2; memo 3.1.157, p 1

29. Memorandum 2.5.34, pp 2–3



The Maniapoto mandate inquiry panel at the July 2019 hearings in Hamilton.
From left: Professor Pou Temara, Judge Sarah Reeves, and Dr Aroha Harris.

with the trust board. The reasons given included ‘encouraging discussions with a number of urgency claimants’, as well as noting that some of the claimants’ issues about the proposed redress could be resolved only through negotiations.³⁰

1.4 PARTIES TO THIS INQUIRY

1.4.1 The claimants

Ten claimant groups participated in this inquiry. The allegations made, both shared and specific, are discussed in detail in chapters 3 and 4.

The claims and named claimants are listed below:

- ▶ The Maniapoto mandate (Ngāti Apakura) claim (Wai 2596), brought by Jenny Charman and Stephen Laing on behalf of themselves, Te Rauparaha Taheke Fenton Whānau, Ngāti Apakura, and the Apakura Rūnanga Trust.
- ▶ The Maniapoto mandate (Te Rohe o Tuhua) claim (Wai 2597), brought by Thomas Leslie Te Nuinga Tuwhangai, Wayne Anthony Houppapa, Tame Te Nuinga Tuwhangai, Abra Matenga, Terry Turu, Rangi Tahuri Te Ruruku, Pauline Kay Stafford, Hone Titari Turu, Mere McGhee, Hoane Titahi John Wi, Raymond Tawhaki Wi, Donna Tuwhangai, Evelyn Kereopa, Greg Keenan, and Les Howe on behalf of Maniapoto ki te Rohe o Tuhua.
- ▶ The Maniapoto mandate (Maniapoto ki te Raki) claim (Wai 2598), brought by Harold Te Pikikotuku Maniapoto, Roy Matenga Haar, Tame Tuwhangai,

30. Memorandum 3.2.30, p 1

Thomas Te Whiwhi Maniapoto, Dana Erina Maniapoto, Maria Pare Raukawa Maniapoto, Joana Johnston, Winston Te Winiata Maniapoto, Sonya Kararaina Parangi, Rovina Te Kawenata Maniapoto-Anderson, and Jack Tahana on behalf of the Maniapoto ki te Raki collective.

- The Maniapoto mandate (Ngāti Paretāpoto) claim (Wai 2611), brought by Hardie Peni on behalf of Ngāti Paretāpoto and the Māori people of the Mai Rangitoto ki Tuhua Tribal Trust and Wai 729.
- The Maniapoto mandate (Te Ihingārangi) claim (Wai 2614), brought by Jack Te Reti on behalf of Te Ihingārangi.
- The Maniapoto mandate (Robert Te Huia and others) claim (Wai 2620), brought by Robert Te Huia, Jock Roa, Samuel Roa, Raymond Wokau, Kaawhia Te Muraahi, Maehe Muraahi (deceased), Lee Ann Head, Reu Te Huia (deceased), Napa Otimi, Dave Patea, Rangimamae Johnson (deceased) Harriet Chase, Pania Roa, Mei McGuire, and Kelly Johnson on behalf of Ngāti Paretekawa; Ngāti Paia; Te Muraahi Niketi; Taurangamowaho Te Kohika; Pareumuroa Te Kohika; Patea Taanirau; the collective Muraahi, Mokau, Waho, and Patea Whānau of Ngāti Rahurahu, Ngāti Paretekawa, Ngāti Ngutu, and Ngāti Manga descent; Ngāti Te Rahurahu; and the descendants of Rewi Manga.
- The Maniapoto mandate (Ngāti Paia) claim (Wai 2621), brought by Gordon Thomson, John Thomson, and June Elliot on behalf of themselves and Ngāti Paia.
- The Maniapoto mandate (Ngāti Ngawaero) claim (Wai 2656), brought by Rawiri Bidois and George Searancke on behalf of themselves and Ngāti Ngawaero.
- The Maniapoto mandate (Tūhoro whānau) claim (Wai 2663), brought by Janie Tūhoro and Joseph Tūhoro on behalf of the Tūhoro whānau.
- The Maniapoto mandate (Ngāti Wharekōkōwai) claim (Wai 2879), brought by Pani Sinclair Paora-Chamberlin on behalf of Ngāti Wharekōkōwai.

1.4.2 The Crown

The Crown argued that its decision to recognise the trust board's mandate was consistent with the tikanga of Ngāti Maniapoto and its associated groups and was therefore fair and reasonable in the circumstances. It argued that it worked with the 'right people' and provided similar support to 'each iteration of the [Ngāti] Maniapoto mandating process'.³¹ Hapū rangatiratanga, it submitted, was appropriately and actively protected within the trust board's structure and arrangements.

1.4.3 Interested parties

Five interested parties participated in the inquiry:

- The Maniapoto Māori Trust Board. The trust board presented evidence, made submissions, and cross-examined witnesses.³²

31. Submission 3.3.31, p 3

32. Memorandum 2.7.3, p 2

1.5

- ▶ Noeline Tanya Rangitaiapo Potts on behalf of Te Karu o Te Ngira and Ngāti Pahere (Wai 1480). Ms Potts was granted leave to present evidence and make submissions on various matters (including mandate approval where the Crown was aware that the trust board did not properly adhere to its mandate strategy) and to cross-examine witnesses.³³
- ▶ Morehu McDonald on behalf of himself and Ngā Uri o Ingoa, Ngā Uri o te Whareiti Harauria/Rapata me te Tupuna, Ngā Uri o Ngāti Ngutu, and Ngāti Paretekawa (Wai 1523). Mr McDonald was granted a watching brief in order that he could monitor the evidence and submissions filed to ensure his claims and settlement interests were protected.³⁴
- ▶ Karoha Moke on behalf of Ngāti Te Wehi (Wai 2135). Ms Moke was granted leave to present evidence, make submissions relevant to the Tribunal's statement of issues, and cross-examine witnesses.³⁵
- ▶ Amohia and Albert McQueen on behalf of themselves, their whānau, the hapū of Ngāti Ngutu, and the descendants of Io Matua Kore and Te Wherowhero Tāwhiao of Waikato Maniapoto (Wai 2118). The McQueens were granted leave to present evidence, make submissions, and cross-examine witnesses.³⁶

1.5 ISSUES FOR DETERMINATION

At the judicial conference in March 2019, Judge Reeves directed counsel to file memoranda on an agreed statement of issues. Upon consideration of counsels' memoranda, the Tribunal released its statement of issues on 1 April 2019.³⁷ The Tribunal's issues for determination, which will be addressed in this report, are as follows:

1. Was the Crown's recognition of the Maniapoto Māori Trust Board's mandate fair, reasonable, and made in good faith? In particular:
 - (a) Were the Crown's actions in ceasing to work with Te Kawau Mārō to develop a mandate strategy, to working solely with the trust board to develop a mandate strategy and deed of mandate, fair and reasonable?
 - (b) What role did the Crown's 'Broadening the Reach' strategy play in the decision to offer the trust board the opportunity to engage in priority negotiations with the Crown via an accelerated, 'bespoke' mandating process?
 - (c) Did the Crown sufficiently inform itself of the levels of support for, and opposition to, the trust board's mandate prior to its recognition, including claimant and hapū support and opposition?
 - (d) Was there sufficient support to warrant the mandate's recognition?

33. Memorandum 2.5.32, p 2

34. Ibid

35. Ibid

36. Memorandum 2.5.42, p 3

37. Memorandum 2.5.30, p 2; statement of issues 1.4.1

2. Was it reasonable for the Crown to rely on the trust board's register for the purpose of the mandate and the October 2016 vote?
3. In considering whether to recognise the trust board's mandate, was the Crown required to consider if the mandate left a path for distinct hapū and whānau interests to be accommodated, potentially by a separate settlement or settlements?
4. Is the Crown's decision to continue to recognise the trust board's mandate fair and reasonable, in light of *Te Mana Whatu Ahuru*?
5. Is the Crown's decision to continue to recognise the trust board's mandate fair and reasonable, in light of continued opposition?
6. Does the trust board's deed of mandate appropriately provide for hapū rangatiratanga?
7. Is it appropriate that Ngāti Paretāpoto, Te Ihingārangi, Ngāti Paia, Ngāti Paretekawa, Ngāti Wharekōkōwai, and the Tūhoro whānau be included in the trust board's mandate?³⁸
8. Is it appropriate for claims to be included in the mandate without the consent of the claimants?
9. Has the Crown's position in relation to the exclusion of Ngāti Apakura from, and their subsequent proposed re-inclusion in, the trust board's deed of mandate been fair and reasonable?³⁹
10. Are the remedies available under the deed of mandate, particularly the amendment and withdrawal mechanism, fair, workable, reasonable, and reflective of hapū rangatiratanga?
11. To what extent, if any, do the Crown's policies, practices, acts, or omissions in relation to the above breach *Te Tiriti o Waitangi* and its principles?
12. Have any of the claimants been prejudiced by any such breaches? If so, what, if any, practical recommendations should the Tribunal make?

1.6 THE STRUCTURE OF THIS REPORT

The issues for determination set out in the previous section ultimately turn on the question of whether the Crown breached the Treaty in its recognition of the trust board as the mandated entity of the Ngāti Maniapoto large natural grouping for Treaty settlement negotiation. Therefore, our next chapter sets out the Treaty principles relevant to the Crown's mandating responsibilities. Following this, we introduce the standards by which we will assess the Crown's actions and omissions in terms of our jurisdiction to make findings of breaches of Treaty principles.

Chapter 3 focuses on the Crown's recognition of the trust board's mandate. We

38. This question has been adapted from the original Tribunal statement of issues to accommodate the claim from Ngāti Wharekōkōwai, which was included in the inquiry after the statement of issues had been confirmed.

39. This question has been adapted from the original Tribunal statement of issues to account for the change in circumstances regarding Ngāti Apakura and its subsequent re-inclusion in the trust board's deed of mandate.

set out the key events and present our analysis of the Crown's actions in this process, including the impact of 'Broadening the Reach'. We discuss early interactions between the Crown, the trust board, and Te Kawau Mārō; the breakdown in the relationship between Te Kawau Mārō and the trust board; the Crown's decisions to cease working with Te Kawau Mārō and to offer the trust board an opportunity to seek the mandate as part of the 'Broadening the Reach' strategy; and the Crown's evaluation of opposition to and support for the mandate prior to recognition. The chapter ends by analysing the Crown's recognition of the trust board's mandate in light of the continued opposition.

Chapter 4 contains our analysis of the trust board's deed of mandate. First, we discuss the broadly made allegation that the mandate failed to provide appropriately for hapū rangatiratanga. We then proceed to address the claims we have received about the inclusion of iwi, hapū, and whānau in the deed of mandate's claimant definition, as well as the available remedies under the deed of mandate.

Finally, in chapter 5 we make our findings and recommendations.

CHAPTER 2

TREATY PRINCIPLES AND STANDARDS

In this chapter, we briefly set out the Waitangi Tribunal's jurisdiction to hear the claims, as well as the Treaty principles and standards in this inquiry. Previous Tribunal inquiries and reports, particularly those concerning mandating issues in recent years, have guided us in determining what Treaty principles and standards are relevant. We acknowledge that every previous Tribunal report on mandating issues covers unique circumstances and evidence. Similarly, we will examine how the principles and standards we identify apply to the circumstances of this inquiry. Having identified the relevant Treaty principles and standards to apply, we will use them to assist us in analysing the Crown's actions in the Ngāti Maniapoto mandating process.

2.1 JURISDICTION

Section 6 of the Treaty of Waitangi Act 1975 provides that any Māori may make a claim to the Tribunal that they have been, or are likely to be, prejudicially affected by any legislation, policy, act, or omission made by the Crown after 6 February 1840.¹ A claim is considered well founded if there is a breach and associated prejudice to the claimant. Because the claims submitted in this inquiry are not historical in nature, instead relating to contemporary Crown actions, the Tribunal has jurisdiction to inquire into them.²

If, having taken in 'all the circumstances of the case', the Tribunal finds a claim to be well founded, it may recommend certain actions for the Crown to undertake.³ These may include compensating for or removing prejudice or preventing others from being similarly affected in the future. These recommendations can be general or specific in nature.

The preamble to the Treaty of Waitangi Act explains the Tribunal's purpose: to make recommendations on claims regarding the practical application of Treaty principles and to determine the Treaty's meaning and effect and whether certain matters are inconsistent with the principles. In inquiries of this nature, the practical application of the Treaty is essential to ensuring that the Crown and parties can restore Treaty relationships and achieve a durable and robust settlement of Treaty claims.

1. Treaty of Waitangi Act 1975, s 6(1)

2. Ibid, s 6AA(1)

3. Ibid, s 6(3)

2.2 PRINCIPLES OF PARTNERSHIP AND RECIPROCITY

We follow previous Tribunal reporting in confirming that the principle of partnership between kāwanatanga and tino rangatiratanga is at the centre of the Treaty relationship between Māori and the Crown.⁴ We note a previous Court of Appeal decision also confirming the importance of the Treaty partnership, characterised by an obligation for both parties to act reasonably and in good faith.⁵ In terms of Treaty settlements, the Treaty principle of partnership is also fundamentally linked to the ultimate aim of the settlement of Treaty claims, which is to restore the Treaty relationship between the Crown and Māori.⁶ In negotiating Treaty settlements and restoring the Treaty relationship, Māori, as a Treaty partner, have the right to organise themselves as they choose, including deciding how or through what organisations they express their tino rangatiratanga.⁷ The Crown must be adaptable and willing to work with the structures that Māori prefer in each settlement process, including those that accommodate iwi, hapū, whānau, or other modes of organisation.⁸

Regarding the principle of reciprocity, in *The Te Arawa Mandate Report: Te Wahanga Tuarua*, the Tribunal said that reciprocity requires a ‘careful, fair, and practical response’ to iwi and hapū preferences in the way in which they may choose to exercise their tino rangatiratanga in the settlement process.⁹ The Tribunal also considered that the Crown ‘should not pursue its nationwide Treaty settlement targets at the expense of some of its Treaty partners.’¹⁰

Partnership encompasses four further Crown duties: active protection, informed decision-making, hapū rangatiratanga, and whanaungatanga. We discuss each of these as they relate to mandate inquiries in the following sections.

2.2.1 Active protection

The principles of partnership and reciprocity are inherently connected to article 2 of the Treaty and tino rangatiratanga. Tino rangatiratanga has been defined as ‘full authority’ and grants the mana ‘not only to possess what one owns but, and we emphasise this, to manage and control it in accordance with the preferences of the owner.’¹¹ In obtaining kāwanatanga when signing the Treaty, the Crown also

4. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report* (Wellington: Legislation Direct, 2017), p 26; Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report* (Wellington: Legislation Direct, 2015), p 23; Waitangi Tribunal, *The Te Arawa Mandate Report* (Wellington: Legislation Direct, 2004), p 94

5. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA), 664, 682

6. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 23; Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005), pp 71–72

7. Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington: Legislation Direct, 1998), p 25; Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wellington: Legislation Direct, 2019), p 28

8. Waitangi Tribunal, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington: Legislation Direct, 2001), pp 64–65; Waitangi Tribunal, *Hauora*, p 28

9. Waitangi Tribunal, *Te Arawa Mandate Report*, p 71

10. *Ibid*, p 72

11. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim*, 2nd ed (Wellington: Brooker and Friend Ltd, 1991), pp 188–189

acquired a duty to actively protect the tino rangatiratanga of Māori. Similarly, the Crown's duty to act reasonably and in good faith 'is not merely passive but extends to active protection'.¹² The Crown has a duty to protect and enhance 'the Maori customary principle of social, political and economic organisation, or the right of any or all Maori to identify with the communities and support the leaders of their choice, in accordance with Maori custom'.¹³

In the *Turanga Tangata Turanga Whenua* report, the Tribunal explained the importance of the Crown using its kāwanatanga powers to foster autonomy as 'it is the single most important building block upon which to re-establish positive relations between the Crown and Maori'.¹⁴ In mandating inquiries, the duty of active protection necessitates a process of genuine engagement with the claimants in accordance with their tikanga.¹⁵

The Te Arawa Mandate Report emphasised the importance of ensuring that support for a mandate is determined in a tikanga-compliant manner:

the role of the Crown should be to scrutinise actively every stage of the mandating process. The Crown should require the correction of errors and the proper application of tikanga throughout the mandating process, rather than wait until the receipt of submissions to make its assessment.¹⁶

The Ngāpuhi Mandate Inquiry Report reaffirmed that tino rangatiratanga is the foundation of Māori political and social organisation, as well as Māori decision-making. In the context of mandating leaders negotiating Treaty settlements, which, 'above all, concern hapū', it is hapū that must be empowered to choose according to their tikanga.¹⁷ The Crown must also protect those who choose to stand outside the mandated entity, provided they have hapū support and do not undermine the right of others to proceed to settlement under their chosen leadership.¹⁸ The *Te Whanau o Waipareira Report* characterised rangatiratanga as a reciprocal relationship of trust between leaders and individuals in Māori communities.¹⁹

In addition to Treaty principles, the Tribunal sometimes develops standards for measuring Crown actions and omissions in certain situations. *The Ngāpuhi Mandate Inquiry Report* set out minimum standards that the Crown must take heed of when fulfilling its duty of active protection during the mandating process. The Tribunal determined that the Crown must:

12. *New Zealand Maori Council v Attorney-General*, p 664

13. Waitangi Tribunal, *Te Whanau o Waipareira Report*, p 215; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 4; Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 23

14. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, pp 738–739

15. Waitangi Tribunal, *The Whakatōhea Mandate Inquiry Report* (Wellington: Legislation Direct, 2018), p 23

16. Waitangi Tribunal, *Te Arawa Mandate Report*, p 111

17. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, pp 23–24

18. *Ibid*, p 24

19. Waitangi Tribunal, *Te Whanau o Waipareira Report*, p 25

2.2.2

- ▶ ensure that it is dealing with the right Māori group or groups, having regard to the circumstances specific to that claimant community so as to protect its intratribal relationships;
- ▶ practically and flexibly apply the large natural groups policy according to the rangatiratanga and tikanga of affected groups;
- ▶ allow for an appropriate weighing of interests of groups in any recognised mandated entity, one that takes into account factors, including the number and size of hapū, the strength of affected hapū, and the size and location of the population;
- ▶ recognise that the structure of the mandated entity must allow for hapū interests to be tested and heard; and
- ▶ on the basis of this assessment, actively protect the rangatiratanga and tikanga of those hapū that are opposed to their claims being negotiated by the mandated entity, and weigh this protection of hapū with that of non-hapū interests in the modern context.²⁰

We believe the same standards are relevant to the inquiry before us, and we therefore apply them, taking into account the specific circumstances of Ngāti Maniapoto.

The duty of active protection is linked to informed decision-making, the details of which are discussed in the next section.

2.2.2 Informed decision-making

The Court of Appeal has observed that partnership in the Treaty context means there is an onus on the Crown, ‘when acting within its sphere to make an informed decision’, to be sufficiently informed ‘as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty’.²¹

In conjunction with the Crown being sufficiently informed in decision-making, it must consider the way in which Māori make decisions, especially in mandating cases. In *Ka Tika ā Muri*, *Ka Tika ā Mua*, the Crown itself stated:

Many of the grievances of the past relate to agreements made between Māori and the Crown, where the Crown dealt with people who did not have the authority to make agreements on behalf of the affected community. . . .

Mandated representatives need to demonstrate that they represent the claimant group, and the claimant group needs to feel assured that the representatives legitimately gained the right to represent them.²²

As such, it is clear that, to make informed decisions in supporting a mandate,

20. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 31

21. *New Zealand Maori Council v Attorney-General*, p 683

22. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna/Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 4th ed (Wellington: Office of Treaty Settlements, 2018), p 39

the Crown must carry out a thorough assessment of how mandating representatives obtained authority to represent claimants and whether this decision-making accorded with the tikanga of the iwi.

Informed decision-making is also connected to hapū rangatiratanga, which we discuss next.

2.2.3 Hapū rangatiratanga

Each previous mandate inquiry contains evidence of circumstances and tikanga particular to the iwi and hapū concerned, and active protection of the tino rangatiratanga of hapū continues to be a central issue in mandating inquiries. Despite similarities in how tikanga is practised across Aotearoa New Zealand, how it governs the conduct and identities of individuals, hapū, and iwi can vary.²³

In *The Ngātiwai Mandate Inquiry Report*, the Tribunal raised the issue of ‘how the Crown can best balance its preference to settle with “large natural groups” – often but not always iwi – with the Treaty rights of hapū’.²⁴ In *The Te Arawa Settlement Process Reports*, the Tribunal explained that hapū have the right to determine whether they consented to, and continued to support, a mandate.²⁵

Hapū rangatiratanga is also connected to whanaungatanga, a key component of tikanga that governs tribal relations, which we discuss in the next section.

2.2.4 Whanaungatanga

Whanaungatanga is an essential pillar of tikanga. Tā Hirini Moko Mead has described whanaungatanga as not only embracing whakapapa but also concentrating on the intricacies of relationships, both individual and collective.²⁶

The Crown has a fundamental duty to understand the tikanga of tribal groups and to assist in maintaining and helping to restore relationships among tribal groups participating in a settlement process.²⁷ *The Ngāti Awa Settlement Cross-Claims Report* explained that, if the Crown faces deteriorating tribal relationships during the settlement process, it ‘cannot be passive’:

It must exercise an ‘honest broker’ role as best it can to effect reconciliation, and to build bridges wherever and whenever the opportunity arises. Officials must be constantly vigilant to ensure that the cost of settlement in the form of damage to tribal relations is kept to the absolute minimum.²⁸

23. Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia Publishers, 2003), p 8

24. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report*, p 27

25. Waitangi Tribunal, *The Te Arawa Settlement Process Reports* (Wellington: Legislation Direct, 2007), pp 189, 191

26. Mead, *Tikanga Māori*, p 28

27. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report*, p 26; Waitangi Tribunal, *The Te Arawa Settlement Process Reports*, pp 36–37; Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, pp 23–24

28. Waitangi Tribunal, *The Ngāti Awa Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2002), p 88

The Tāmaki Makaurau Settlement Process Report elaborated that whanaungatanga is ‘deeply embedded in the maintenance of rangatiratanga’ and that the ability of rangatira and Māori groups to maintain these relationships is integral to their tino rangatiratanga.²⁹ As such, the Crown must maintain or preserve amicable relationships between iwi and hapū or restore these relationships if they are damaged by the settlement process. The Crown has a duty to protect whanaungatanga under article 2 of the Treaty, which is closely connected to its duty to actively protect rangatiratanga.

2.3 PRINCIPLE OF EQUAL TREATMENT

The principle of equal treatment requires the Crown to act fairly and impartially towards Māori, including by treating Māori hapū and iwi fairly in relation to each other.³⁰ As the *Te Arawa Mandate Report: Te Wahanga Tuarua* noted, this does not necessarily mean ‘treating all groups exactly the same, where they have different populations, interests, leadership structures, and preferences.’³¹ Just as the Crown has a duty to foster whanaungatanga among hapū and iwi, in treating groups fairly and equally it must do all that it can to avoid creating or exacerbating divisions and damaging relationships.

However, the principle of equal treatment contains two further practical duties that are intrinsically linked: the duty to act fairly and impartially towards Māori and the duty to preserve amicable tribal relations. Regarding the former, the Tribunal commented in the *Maori Development Corporation Report* that the Crown’s guarantee of tino rangatiratanga to all iwi also contains another guarantee – that the Crown will not act in such a way as to allow one iwi an unfair advantage over another. There is ‘continuing vitality of Maori tribal organisation and identification’ and tribal rivalry remains ‘healthy and dynamic.’³² Should the Crown fail in this duty, it runs the risk of creating or worsening divisions between groups. This is when the Crown’s ‘honest broker’ role comes into play: it should be proactive in ensuring that arriving at settlements does not come at the cost of deteriorating already fragile relationships within and between iwi.³³

29. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 6

30. Waitangi Tribunal, *Report on the Crown’s Foreshore and Seabed Policy* (Wellington: Legislation Direct, 2004), p 133

31. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 73

32. Waitangi Tribunal, *Maori Development Corporation Report*, 2nd ed (Wellington: GP Publications, 1996), pp 31–32

33. Waitangi Tribunal, *The Ngati Awa Settlement Cross-Claims Report*, pp 87–88

CHAPTER 3

THE MANDATING PROCESS

In the previous chapter, we set out the Treaty principles and standards we consider relevant to the circumstances of this inquiry in order to measure the Crown's conduct during the mandating process. In this chapter, we examine in detail the Crown's mandating process for the Ngāti Maniapoto Treaty settlement negotiations, in particular whether the Crown's actions during the crucial phases of mandate strategy development, negotiation, and ratification complied with these Treaty principles and standards. This mandating process culminated in the Crown's recognition of the Maniapoto Māori Trust Board's deed of mandate on 14 December 2016.

3.1 THE CROWN'S ACTIONS IN THE MANDATING PROCESS, 2006–16

3.1.1 The positions of the parties

The claimants argued that the Crown failed to uphold hapū rangatiratanga in its application of the large natural grouping policy in the Ngāti Maniapoto mandating process.¹ The claimants alleged that the Crown instead conducted an expedited and ultimately 'faulty process' because it wanted to tick another Māori group off its 'to be settled' list.²

Claimant counsel submitted that a 'sharp discrepancy' existed between the Crown's treatment of Te Kawau Mārō and its subsequent interactions with the trust board and that the Crown had evidently 'picked its winner' in the trust board from early 2016.³ The Crown was well aware of the discord between Te Kawau Mārō and the trust board. Counsel argued that, in ceasing to work with Te Kawau Mārō, the Crown had disregarded the tikanga of those hapū that had chosen to support it.⁴ The Crown had a 'closed mind' approaching the Ngāti Maniapoto settlement and failed to entertain the possibility of distinct pathways, as shown in its unwillingness to meet with 'key dissenting groups'.⁵

Furthermore, counsel argued that the Crown's actions in the mandating process had undermined the mana and rangatiratanga of whānau, hapū, and marae. A constant 'shifting of goal posts' frustrated Te Kawau Mārō representatives as they

1. Submission 3.3.17, p 13

2. Ibid, p 14

3. Submission 3.3.23, pp 8–9

4. Ibid, p 9

5. Ibid, p 16

3.1.1

tried to meet the Crown's demands.⁶ Further, the claimants alleged that the Crown continued to misrepresent Te Kawau Mārō as representing only 'Wai claimants', whereas the trust board was seen to represent 'the whole of [Ngāti] Maniapoto'. This misrepresentation, the claimants alleged, put Te Kawau Mārō on 'the back foot'.⁷

Counsel additionally argued that the Crown needed to be 'extremely wary' when it acted in a manner favouring purportedly 'Pakeha-friendly institutions' – like the trust board – over tikanga-based institutions. The trust board, counsel submitted, was not created for the purpose of negotiating Treaty settlements, whereas Te Kawau Mārō was.⁸ The Crown was subsequently unduly influenced, counsel alleged, by the perspectives of a generation of younger tribal leaders whose ascendancy was confirmed by the board's July 2015 trustee elections.⁹ As such, the Crown needed to operate with more flexibility and to take additional time and effort to engage with tikanga- and hapū-based organisations and methodologies. Te Kawau Mārō, the claimants asserted, was one such institution.¹⁰

A common claimant position in this inquiry was that the Crown's claims regarding Te Kawau Mārō's representation were a pretext for the Crown terminating its relationship with Te Kawau Mārō. The claimants alleged that the issue of representation in Te Kawau Mārō's mandate was raised very late in the mandating process, yet it became 'the single major issue that the Crown used to inhibit and seize the hapū and claimant community mana motuhake in this current mandate process'.¹¹ Further, counsel said that the Crown had failed to respect the claimants' right to choose who should represent them in the mandating process and that the claimants 'should not have to face the risk of being excluded or have an entity forced upon them to represent their interests'.¹² Counsel submitted that the process for appointing representatives to Te Kawau Mārō was in accordance with their tikanga. The Crown had never raised an issue with the outcome of Te Kawau Mārō's hui appointing representatives prior to September 2015. Counsel argued that it was thus unreasonable and unjustified for the Crown to have raised this as an issue so late in the piece.¹³

Counsel for the Te Ihingārangi claimants (Wai 2614) specifically submitted that the Crown was aware that Ngāti Rereahu had decided their own path regarding their settlement negotiations and outcomes. It was also aware of the processes that the Te Maru o Rereahu Trust (the Rereahu trust) had undertaken to represent the interests of its people and that it had the necessary support to do that.¹⁴ Counsel argued that the Crown was 'acting manipulatively and with duplicity at worst and

6. Submission 3.3.22, pp 24, 28

7. Ibid, p 18

8. Ibid, pp 11, 18

9. Ibid, pp 20–21

10. Ibid, p 11

11. Submission 3.3.25, pp 13–14

12. Ibid, p 17

13. Ibid, pp 20–21

14. Submission 3.3.30, p 17

at best inconsistently' in offering a separate post-settlement governance entity for Ngāti Rereahu and being willing to endorse Te Kawau Mārō's mandate (with its allowance for multiple post-settlement governance entities) but then reneging on this offer.¹⁵ In doing so, the Crown used this as an excuse to cease working with Te Kawau Mārō and turn its attention to helping the trust board achieve 'a quick and dirty mandate which stamped the Crown's authority over any potential decision by the claimant community for more than one post-settlement governance entity or settlement'.¹⁶

Finally, the claimants argued that reports provided to OTS by facilitator Peter Douglas were biased and that he had a conflict of interest.¹⁷ In the view of the claimants, the Crown's description of the roles of Mr Douglas and fellow facilitator Ken Mair as 'impartial or independent' was 'laughable' given Mr Douglas's past position as chief executive officer of Te Ohu Kaimoana, his mother's past role as chair of the trust board, and Mr Mair's past role as chairman of Wai Māori Trust reporting to Mr Douglas.¹⁸ Furthermore, the Crown failed to require proper reporting of the facilitation process.¹⁹

Crown counsel submitted that the Crown was justified in terminating its relationship with Te Kawau Mārō because it had given Te Kawau Mārō some 20 months to obtain Crown endorsement, in comparison to the standard timeframe of three months from notification of strategy to endorsement.²⁰ However, the Crown emphasised that it did not arrive at this decision lightly.²¹ It argued that it had given Te Kawau Mārō and the trust board sufficient space to work out a resolution to their differences but that a resolution was ultimately not forthcoming.²² Further, those who did not support the trust board as the proposed mandated entity had had multiple opportunities to voice their concerns and to influence members prior to the final vote taking place.²³

The Crown maintained that it exercised its 'honest broker' role by encouraging reconciliation and by attempting to build bridges between the trust board, Te Kawau Mārō, and other groups 'wherever and whenever the opportunity arose'. It argued that it did this by taking active steps to understand the relationships and preserve tribal relations and by acting in a fair and impartial manner.²⁴ Furthermore, counsel submitted, the Crown was well informed as to the Ngāti Maniapoto 'landscape', having dealt with the trust board and Te Kawau Mārō over some time, as well as with claimant clusters in the Te Rohe Pōtae district inquiry.²⁵

15. Ibid, p 37

16. Ibid, p 37

17. Submission 3.3.17, pp 23–25

18. Submission 3.3.24, pp 29–30

19. Submission 3.3.26, p 49

20. Submission 3.3.31, p 26

21. Ibid, p 30

22. Ibid, p 25

23. Ibid, p 27

24. Ibid, p 31

25. Ibid, p 32

3.1.2

Following the breakdown of Te Kawau Mārō and the trust board's relationship, the Crown denied that it was opportunistic in agreeing with the trust board to progress a fresh mandate strategy.²⁶

The Crown argued that it did not need to consider if the trust board's mandate left a path for distinct hapū and whānau interests, potentially by post-settlement governance entities, because that would be premature. It explained that post-settlement governance arrangements within a settling group were 'for that group to determine through the process rather than in advance of it'. The Crown further stated that post-settlement governance was 'typically developed by and within the settling group alongside negotiations and voted on by all eligible adult members of the settling group by a separate vote at the same time as the proposed settlement is put forward for ratification'.²⁷

The Crown argued that there were 'limited indicators of any real problem' in regard to post-settlement governance at that stage and that 'a path to accommodate distinct interests', such as those of Ngāti Rereahu and Ngāti Apakura, was already part of the negotiations.²⁸

Regarding the facilitators, the Crown submitted that both Te Kawau Mārō and the trust board were 'fully aware' of Mr Douglas's relationships with Ngāti Maniapoto and that both consented to him playing this role nonetheless.²⁹ It further argued that concerns regarding the nature of Mr Douglas's reports did not go to the management of a conflict of interest but were an attempt to undermine the unfavourable assessments that he had made of parties' conduct during the hui he facilitated.³⁰

As an interested party in this inquiry, the trust board argued that the Crown's actions in ceasing to work with Te Kawau Mārō were fair and reasonable for the following reasons: Te Kawau Mārō had not resolved the issues identified by the Crown; discussions between Te Kawau Mārō and the trust board on the issue of representation had broken down; and large parts of Ngāti Maniapoto either had not given their support to Te Kawau Mārō or had withdrawn it entirely. It was reasonable, counsel for the trust board submitted, that the Crown had assessed the trust board as a 'potentially appropriately representative entity', given its history of representing Ngāti Maniapoto interests in negotiations for over 30 years.³¹ A brief part of this history is discussed in the next section, followed by the Tribunal's analysis of the major events in the mandating process between 2013 and 2016.

3.1.2 The trust board and its role in Treaty settlements, 2006–12

The Maniapoto Māori Trust Board was established in 1988 under section 4 of the Maniapoto Māori Trust Board Act 1988. It is composed of 15 trustee positions: six are generally elected by registered tribal members, seven are appointed by regional

26. Submission 3.3.31, p 36

27. Ibid, p 43

28. Ibid

29. Ibid, p 25

30. Ibid

31. Submission 3.3.27, p 12

management committees (the members of which are appointed by marae committees), and two are appointed by Kingi Tuheitia and the Maniapoto Kaumātua Kaunihera.³² We discuss the purpose and structure of the trust board further in section 4.1.2.

The trust board has achieved popular support and Crown-recognised mandates in previous Treaty settlements. In 2006, it achieved mandated iwi organisation status and became the trustee for Maniapoto commercial fisheries under the Maori Fisheries Act 2004. It also achieved the mandate, encompassing all marae and hapū of Ngāti Maniapoto, in the Ngā Wai o Maniapoto settlement, which resulted in co-governance arrangements under the Nga Wai o Maniapoto (Waipa River) Act 2012.³³

In 2006, the Maniapoto Treaty Claims Interim Steering Committee was formed. Its membership consisted of seven representatives from 'Wai claimant cluster groups' and seven from the trust board.³⁴ The committee developed a plan to progress Treaty claims to settlement in a unified way, as inspired by the Ngāti Maniapoto pepeha, 'Kia mau tonu ki tēnā; kia mau ki te kawau mārō. Whanake ake! Whanake ake!'³⁵

Besides working towards the Waipā River arrangements up until 2012, the trust board was also focused on Ngāti Maniapoto's participation in the Waitangi Tribunal's Te Rohe Pōtae district inquiry, including the Ngā Kōrero Tuku Iho hui, and other hearings from 2012 to 2015.

In June 2011, a Maniapoto hui-a-iwi decided that the trust board would lead Ngāti Maniapoto in developing a mandate strategy for facilitating the settlement of their claims and interests in takutai moana by February the following year. The trust board subsequently established He Anga Whakamua, a working group tasked with running workshops for Ngāti Maniapoto to discuss how to progress towards a Treaty settlement and establish a new post-settlement tribal entity.³⁶

He Anga Whakamua drafted a mandate strategy proposing an entity that would progress the Ngāti Maniapoto settlement. This entity comprised four trust board members, four representatives from the Maniapoto claimant clusters (Maniapoto ki te Raki, Maniapoto ki te Tonga, Maniapoto Central Region, and the Te Hauauru Claims Collective), and one independent chairperson, who would be appointed by the eight representatives. The trust board consulted the iwi and sought feedback on the draft at several hui from February to April 2012.³⁷

In August 2012, the Crown recognised Ngāti Maniapoto as a large natural grouping for the purpose of Treaty settlement negotiations.³⁸ Two months later, the trust board applied for Crown recognition as the representative entity for Ngāti Maniapoto in a Government share-offer process that provided iwi and

32. Document A56, p11

33. Ibid

34. Document A56(a), p193

35. Document A56, p10

36. Ibid, pp 11–12

37. Document A5, p [6]

38. Document A56(a), p33

3.1.3

large natural groupings yet to settle historical Treaty claims an opportunity to buy shares in companies such as Genesis Power, Meridian Energy, Mighty River Power, and Solid Energy.³⁹ However, the trust board did not progress this due to the increasing focus on the Te Rohe Pōtae district inquiry.⁴⁰

3.1.3 The Maniapoto Mandate Strategy Steering Group and the establishment of Te Kawau Mārō

Progress towards achieving a mandate to settle Ngāti Maniapoto's historical claims accelerated rapidly in 2013. In July of that year, the trust board and Wai claimant representatives formed the Maniapoto Mandate Strategy Steering Group, whose purpose was to prepare and implement a Crown-recognised 'Maniapoto Mandate Strategy'.⁴¹ The steering group initially comprised 14 representatives, including two trust board members, two representatives from the trust board's Kaumātua Kaunihera o Maniapoto, and two representatives from each of the four claimant clusters (Maniapoto Central Region, Maniapoto ki te Tonga, Maniapoto ki te Raki, and the Te Hauauru Claims Collective).⁴² Two Rereahu trust representatives, as well as any other representatives approved by the steering group, could also be appointed to the steering group, but hapū were not directly represented. Harold Maniapoto was appointed chairperson.⁴³

In July, the newly formed steering group met with Crown officials at Te Kūiti and sought advice on several aspects of OTS's policy. Following the meeting, officials clarified OTS's 'strong preference that historical claims of a particular hapū or iwi be negotiated and settled as part of a single comprehensive and final settlement'.⁴⁴ Ngāti Maniapoto would also need to take into account that:

- ▶ the representative entity would have to be aware of and comply with Crown policy requirements to operate through a legal entity and an eventual post-settlement governance entity;
- ▶ accountability for members would need to be robust; and
- ▶ the entity should be capable of accommodating diverse representation.⁴⁵

On 19 November 2013, the steering group submitted a draft mandate strategy to the Minister for Treaty of Waitangi Negotiations, Christopher Finlayson. The trust board assured OTS of its 'full support' for the draft strategy. By this stage, a fifth claimant cluster – Maniapoto ki te Rohe o Tuhua – had joined those already on the steering group.⁴⁶

39. Document A56(a), p109

40. Document A56, p12

41. Document A56(a), p77

42. According to Emily Owen, the Wai claimant clusters came from the Wai claims regions established in 2007 as part of a Ngāti Maniapoto Treaty implementation plan created in preparation for the Te Rohe Pōtae district inquiry. Wai claimants formed clusters that were grouped into regional forums. Representatives from the forums and the trust board formed the Ngāti Maniapoto Claims Coordination Committee to coordinate the approach to the district inquiry: doc A56, p12n.

43. Document A56(a), p77; doc A56, pp12–13

44. Document A56(a), p144

45. Ibid, p143

46. Ibid, pp148, 149

In the introduction to the draft strategy, the steering group recognised its responsibility as twofold: to work within ‘the constraints of the Crown’s processes and requirements’ and to meet the aspirations of the Ngāti Maniapoto large natural grouping.⁴⁷ The strategy identified a set of principles to guide the steering group. Of particular note was the principle of ‘Integrity’, which was comprised of the sub-principles ‘Tikanga’ and ‘Rangatiratanga’, the latter of which concerns marae-, hapū-, and iwi-based leadership. Also included under the ‘Unity’ principle was ‘Kotahitanga’, which focused on being unified on an agreed method of working together.⁴⁸ The strategy also outlined the establishment of a new entity, Te Kawau Mārō, which it hoped would seek a Crown-recognised mandate. Te Kawau Mārō would be comprised of up to 16 members: two each from the trust board and the Kaumātua Kaunihera o Maniapoto, two from each of the five regional Wai claimant clusters, and two from Ngāti Rereahu.⁴⁹

Ngāti Rereahu had repeatedly emphasised their wish to have a separate settlement. OTS offered facilitation between the Rereahu trust, the representative body of Ngāti Rereahu, and the strategy steering group so that they could come to an agreement over the mandate. The steering group emphasised the importance of having a single entity, one that allowed for all interests of the Ngāti Maniapoto large natural grouping to be suitably represented.⁵⁰

Over several months in 2014, OTS worked with the steering group on the issues with the proposed entity’s representative structure, its accountability, its legal status, and its management of funding. On 26 September, in several meetings with the Rereahu trust, the steering group, Ngāti Apakura, and others, OTS stressed that there would be only one comprehensive settlement for the Ngāti Maniapoto large natural grouping.⁵¹

The steering group formally established Te Kawau Mārō as a non-legal entity in October 2014 and proposed a draft mandate to OTS. Te Kawau Mārō representatives were appointed on a regional haukāinga population basis.⁵² Under this approach, only key members or leaders of each hapū were required to attend hui to convey their hapū claimants’ support or otherwise for regional mandate representation and to report back to their hapū.⁵³ One Ngāti Rereahu representative was appointed to Te Kawau Mārō, leaving one seat unfilled, despite, in early 2014, the Rereahu trust having voted against participating in the transition from the steering group to Te Kawau Mārō and electing representatives to Te Kawau Mārō.⁵⁴ The Rereahu trust disputed the steering group’s process by which the sole Ngāti Rereahu representative was appointed, as it wanted to hold Rereahu hui-a-iwi to

47. Ibid, p153

48. Ibid

49. Document A56, p13

50. Document A56(a), pp 310, 353, 355, 371, 811–824, 890; doc A56, p14

51. Document A56, p14

52. Document A46, p[18]; doc A56(a), p370

53. Document A10, pp 6–7

54. Document A56(a), p371

3.1.4

elect representatives.⁵⁵ In October, the Maniapoto Central Region also indicated its intention to withdraw from Te Kawau Mārō because it had ‘issues with representation and process.’⁵⁶ The following month, it reaffirmed its withdrawal. It had not elected any representatives to Te Kawau Mārō.⁵⁷ Instead, it intended to join the Rereahu trust in attempting to negotiate a separate settlement under a partnership called Te Nehenehenui Collective.⁵⁸

The trust board funded mandate discussions from 2013 until 30 May 2014.⁵⁹ On 1 April 2015, it entered into a service-level agreement with Te Kawau Mārō, providing it with administrative support as well as project and financial management services.⁶⁰

3.1.4 Revisions to Te Kawau Mārō’s draft mandate strategy and responses to it

On 15 December 2014, Te Kawau Mārō submitted a revised draft mandate strategy to OTS, which identified ‘a number of issues and risks’ that had emerged during the development of the strategy. The five key ones were:

- ▶ likely opposition from the Rereahu trust and Maniapoto Central Region to being included in the Ngāti Maniapoto large natural grouping;
- ▶ possible objections from Ngāti Apakura and Ngāti Hikairo regarding the inclusion of their claims in the strategy;
- ▶ a potential lack of clarity for hapū about how they were represented on Te Kawau Mārō;
- ▶ the need to further develop the mandate withdrawal mechanism in light of recent comments by the Waitangi Tribunal on the Crown mandating process; and
- ▶ OTS’s requirement that the mandated body be established as a legal entity.⁶¹

OTS noted particular concerns that it had with Te Kawau Mārō’s structure, specifically the lack of explanation of how the nine regional and district bodies represented hapū and what it saw as an ‘unusual’ degree of influence exerted on the entity by Wai claimants.⁶² When Crown officials had raised the representation issue previously, Te Kawau Mārō had responded by adding a statement to the draft strategy clarifying that ‘the entire [Ngāti] Maniapoto claimant community, including all hapū, marae and Wai claimants, will be represented by the [Te Kawau Mārō] members.’⁶³ However, Crown officials still remained unclear as to ‘exactly how hapū and marae were to be represented, on balance’. Notwithstanding its

55. Document A56(a), pp 353, 371

56. Ibid, pp 359–362, 372

57. Document A61, p [8]

58. Document A56, p 15; doc A56(a), p 359

59. Document A5, p [8]

60. Ibid

61. Document A56(a), pp 370–371

62. Ibid, p 372

63. Ibid; doc A56, p 16

Date	Event
8 February 2015	Te Kawau Mārō receives 288 submissions on its deed of mandate (284 opposed; four in support)
1 May 2015	Te Kawau Mārō responds to a proposal from the Rereahu trust for its own post-settlement governance entity ('a strong collective face is required for the negotiations with the Crown')
10 June 2015	Te Kawau Mārō confirms to the Office of Treaty Settlements its position of 'striving for te kotahitanga'
17 June 2015	Te Kawau Mārō writes to the Office of Treaty Settlements listing proposed amendments to its draft mandate strategy
21 July 2015	The trust board advises the Governor-General of its newly elected trustees
28 August 2015	The trust board writes to Te Kawau Mārō asking it to pause its mandating hui while it carries out its aspirations hui
9 September 2015	Te Kawau Mārō produces the final version of its mandate
October–November 2015	Te Kawau Mārō and the Office of Treaty Settlements communicate about finalising aspects of the mandate
11 December 2015	The trust board meets with Minister Finlayson and discusses mandate and settlement matters around representation on Te Kawau Mārō

Table 3.1: Brief chronology of key events in the mandating process during 2015

reservations, on 17 December 2014 the Crown endorsed the strategy for notification and invited views, submissions, and inquiries from tribal members.⁶⁴

When submissions closed on 8 February 2015, a total of 288 responses had been received. Of this number, 284 opposed the mandate strategy and four supported it. However, of the opposing submissions, 250 were template submissions by beneficiaries of the Rereahu trust (whose opposition to the proposed mandate was well known in the district and to OTS). Later that month, OTS met with Te Kawau Mārō to discuss the submissions. Crown officials considered that the issues raised, such as separate Ngāti Rereahu negotiations, were 'relatively contained', and they anticipated that the Crown and Te Kawau Mārō could work through them quite quickly.⁶⁵ In May, Te Kawau Mārō notified the Rereahu trust that its submissions (in particular those regarding separate negotiations, post-settlement governance entities, and settlement pathways for Ngāti Rereahu) were 'at odds with our overall principles, especially Te Kotahitanga'.⁶⁶ According to Emily Owen, settlement development manager at OTS from March 2015 to March 2017, Minister Finlayson had also indicated around this time that he was prepared to contemplate a separate post-settlement governance entity for Ngāti Rereahu in the Ngāti

64. Document A56, p16

65. Document A56(a), p 834

66. Ibid, p 875

Maniapoto negotiations but not separate negotiations. However, Te Kawau Mārō informed OTS that it was against this approach being prescribed at the outset, and it continued to emphasise the need for unity. Te Kawau Mārō would, however, consider post-settlement governance entities during negotiations.⁶⁷

Over the next seven months, OTS and Te Kawau Mārō met and corresponded on numerous occasions to finalise the mandate strategy. OTS still wanted Te Kawau Mārō to become a legal entity and to resolve the claimant definition issue regarding Ngāti Apakura and Ngāti Hikairo (the former will be discussed in further detail in section 4.2.7).⁶⁸ On 9 September 2015, Te Kawau Mārō agreed to formalise its legal status on recognition of the mandate, remove the two groups from the list of hapū in the claimant definition, and amend the text in the mandate and withdrawal clauses to comply, at least partly, with OTS's expectations.⁶⁹

Meanwhile, the trust board had held its elections in July 2015 and invited Te Kawau Mārō to participate in 10 hui around Te Rohe Pōtae later in the year in an effort to engage with Ngāti Maniapoto about the Treaty settlement process and its aspirations for the iwi.⁷⁰ Further developments during this time also included Maniapoto ki te Tonga withdrawing their support from Te Kawau Mārō's mandate because they had concerns about Te Kawau Mārō's structure.⁷¹

Following the revision of Te Kawau Mārō's draft mandate, in October 2015 Crown officials increased their insistence that, before the Crown could endorse it, several issues needed to be resolved: Ngāti Apakura's representation on Te Kawau Mārō (discussed in more detail in section 4.2.7); the limited number of people who participated in the 2014 hui to appoint Te Kawau Mārō representatives; and the accountability of Te Kawau Mārō's representatives, who were appointed for an indefinite term. While apparently not previously of concern, the issue of accountability and clear terms of appointment later gained prominence following the release of *The Ngāpuhi Mandate Inquiry Report*, which stated that the Crown needed to scrutinise mandating and representation issues carefully.⁷² OTS considered three-year appointment terms to be consistent with other mandated bodies and an annual review of representative appointments to be sufficient. In November 2015, Te Kawau Mārō agreed to the annual review process, the details of which were yet to be determined.

Regarding the limited number of people who participated in hui to appoint Te Kawau Mārō representatives, OTS expressed concern with the total turnout of 242 voters.⁷³ Like the terms of appointment for Te Kawau Mārō representatives, this figure appeared more concerning to OTS following the release of *The Ngāpuhi*

67. Document A56, p18

68. Ibid

69. Ibid, p19

70. Document A61, p[6]

71. Ibid, p[8]

72. Document A56, p20

73. Document A7(a), pp 55–56. The Maniapoto ki te Raki claimants argued that 302 people voted, but we were not provided with any primary documentation disclosing this particular figure: submission 3.3.25, p 20.

*Mandate Inquiry Report.*⁷⁴ On 21 January 2016, OTS advised Te Kāwau Māro that it would not recognise its mandate, nor provide it with over \$150,000 in Crown funding, unless its concerns regarding the process for the election of, and the terms for, representatives were addressed.⁷⁵

Meanwhile, by late 2015, the trust board began to have its own reservations about Te Kāwau's Māro's structure and attitude toward the mandating process. These reservations included, but were not limited to:

- ▶ internal disputes about Te Kāwau Māro becoming a legal entity;
- ▶ the sheer number of representatives on Te Kāwau Māro, which resulted in decision-making being difficult;
- ▶ disagreement about Te Kāwau's Māro's composition and how different groups should be represented; and
- ▶ a lack of sufficient support for Te Kāwau Māro from the Ngāti Maniapoto people.⁷⁶

According to the trust board's deputy chairperson, Keith Ikin, the trust board was concerned that Te Kāwau Māro was preparing to push forward the mandating process without systematically addressing the Crown's requirements and its own perceived shortcomings, which created 'a very real risk to [Ngāti] Maniapoto's opportunity to progress and achieve a Treaty settlement.'⁷⁷ Furthermore, a significant amount of time and tribal resources would have gone to waste on a doomed mandating process. Janise Eketone, the chief executive of the trust board in 2016, also stated that Te Kāwau Māro was not honouring payments due to the trust board under its service-level agreement.⁷⁸ Harold Maniapoto understood that Te Kāwau Māro, the trust board's representatives, and senior staff of the trust board had reached an agreement that Te Kāwau Māro could defer payments to the trust board because of 'cash flow issues'.⁷⁹

On 24 January 2016, the trust board held a strategic planning hui, where it identified several risks to the Ngāti Maniapoto settlement should Te Kāwau Māro proceed to seek support from Ngāti Maniapoto for a mandate without Crown endorsement. These risks included:

- ▶ Ngāti Maniapoto finding it difficult to engage in formal settlement negotiations with the Crown;
- ▶ tribal funds expended from 2011 to 2015 to support mandate strategy development not being reimbursed; and
- ▶ Crown funding of \$100,000 for the deed of mandate, expected for the reimbursement of tribal funds used in mandating activities, not being received.⁸⁰

The trust board discovered that Te Kāwau Māro was also seeking \$150,000 of bridging finance from the trust board to offset arrears owed to the trust board

74. Document A56, pp 20–21

75. Document A5(a), pp 186–188

76. Document A61, p [6]

77. Ibid, p [7]

78. Document A5(a), pp 183–184

79. Document A46, p [18]

80. Document A61, pp [7]–[8]

3.1.4

Date	Event
21 January 2016	The Office of Treaty Settlements writes to Te Kawau Mārō about outstanding concerns regarding accountability, representation, and taurahere seats (which had observer status) for Ngāti Apakura
24 January 2016	The trust board has a strategic planning hui and identifies several risks to the Ngāti Maniapoto settlement should Te Kawau Mārō seek a mandate from Ngāti Maniapoto without Crown recognition
25 January 2016	Te Kawau Mārō meets without the trust board's representatives and resolves to seek the mandate without Crown endorsement
25 January 2016	The trust board meets and resolves to withdraw its support from Te Kawau Mārō
27 January 2016	The trust board notifies Te Kawau Mārō of its resolutions
29 January 2016	Te Kawau Mārō writes to the Office of Treaty Settlements with proposals to address its concerns
3 February 2016	The trust board informs the Office of Treaty Settlements of its resolutions
5 February 2016	The Office of Treaty Settlements writes separately to the trust board and Te Kawau Mārō encouraging them to reach an agreement, and it informs Te Kawau Mārō that its proposals to address the Office of Treaty Settlements' concerns are inadequate

Table 3.2: Brief chronology of key events in the mandating process in early 2016

under the service-level agreement, as well as an extension to that agreement (without incurring further costs under the existing contract) to December 2016 or whenever the deed of mandate was achieved.⁸¹

On 25 January 2016, Te Kawau Mārō resolved to embark on hui for mandating, albeit without a formal Crown endorsement of its strategy. OTS had said in a letter to Te Kawau Mārō only four days earlier that the issues of Ngāti Apakura representation and the annual review process were 'critical', because they went to 'the heart of accountability' to the Ngāti Maniapoto large natural grouping. OTS therefore strongly advised Te Kawau Mārō of its need to reach agreement with the Crown before embarking on mandate hui in February.⁸² Te Kawau Mārō wrote to OTS four days later responding to its concerns by agreeing to provide Ngāti Apakura representation with taurahere seats, equivalent to 'an affected party observer'; undertaking hui at the beginning of each year to review Te Kawau Mārō's representatives; and advising that Te Kawau Mārō would give 'due consideration to requests for further representation' when it was required and the need arose.⁸³

On 25 January, the same day as Te Kawau Mārō's hui, the trust board, on receipt of Te Kawau Mārō's earlier resolutions, resolved to:

81. Document A5, p [10]

82. Document A56, p 22

83. Document A46(a), pp 60–61

- withdraw its members from Te Kawau Mārō;
- take a lead in progressing the settlement itself;
- work to include all Ngāti Maniapoto in Treaty settlements; and
- withdraw from the service-level agreement and seek payment from Te Kawau Mārō for outstanding invoices.⁸⁴

The trust board wrote to Te Kawau Mārō informing it of this decision on 27 January 2016.⁸⁵ On 5 February, OTS informed Te Kawau Mārō that its proposed solutions, as identified in Te Kawau Mārō's 29 January letter, were inadequate in satisfying its concerns. Then, on 9 February 2016, OTS and the trust board held a teleconference during which Crown officials informed the trust board that, if it wished to take the lead in progressing the settlement, it would meet the technical requirements of OTS's policy regarding accountability and broad representation.⁸⁶ Mr Maniapoto said that the trust board's withdrawal from Te Kawau Mārō was 'extremely alarming' and that he believed OTS and the trust board were 'meeting periodically . . . over the December 2015 to February 2016 period', which prevented the trust board and Te Kawau Mārō finding a way to move forward together.⁸⁷ On 12 February, Te Kawau Mārō received a letter from the Crown Forestry Rental Trust advising it that it would no longer be able to maintain approved client status due to the trust board's withdrawal.⁸⁸

3.1.5 Negotiations to reconcile Te Kawau Mārō and the trust board

OTS encouraged Te Kawau Mārō and the trust board to work through their differences between March and August 2016, as indicated in its letter to the trust board on 5 February.⁸⁹ On 2 March, Crown officials advised Minister Finlayson that relations between Te Kawau Mārō and the trust board were delicate and it was vital to give Ngāti Maniapoto space to work out its differences.⁹⁰

In a teleconference with OTS on 11 March, Te Kawau Mārō disagreed with the trust board's proposed amended structure for Te Kawau Mārō (supported by OTS), which provided for roughly equal representation of Te Kawau Mārō and trust board members. Furthermore, Te Kawau Mārō advised the Crown officials that it had amended its draft mandate to allow for the ability to have multiple settlements or post-settlement governance entities, a clear departure from its earlier position of maintaining unity and kotahitanga, as well as OTS's policy regarding 'comprehensive' settlements.⁹¹ On 14 March, OTS emphasised to Te Kawau Mārō and the trust board that it would not endorse any mandate strategy that:

- involved more than one negotiation;
- involved multiple post-settlement governance entities;

84. Document A5, pp [10]–[11]

85. Document A56, p 23

86. Ibid, pp 24, 26

87. Document A46, p [17]

88. Document A1, paras 66, 79

89. Document A5(a), p 198

90. Document A56, p 27

91. Ibid, pp 27–28

3.1.5

Date	Event
March–August 2016	Crown facilitators Peter Douglas and Ken Mair attend six of the 14 hui between the trust board and Te Kawau Mārō
6 May 2016	The Office of Treaty Settlements declines a meeting with Te Kawau Mārō and instead it puts emphasis on coming to an agreement with the trust board around representation
13 June 2016	Maniapoto ki te Raki writes to Minister Finlayson with concerns about the Office of Treaty Settlements' treatment of the group and lack of support and engagement
3 July 2016	The trust board and Te Kawau Mārō agree to a 'first xv' structure for Te Kawau Mārō
5 August 2016	Te Kawau Mārō informs the trust board that it is committed to its current mandate strategy but is prepared to increase the number of trust board representatives from two to five
27 August 2016	Te Kawau Mārō and its supporters vote down the trust board's mandate proposal

Table 3.3: Brief chronology of key events in the mandating process from March to August 2016

- ▶ did not provide for at least three-yearly elections for trustees;
- ▶ did not meet the Crown's requirements for accountability; and
- ▶ did not provide for a legal entity or trust to be established to hold the mandate and all associated responsibilities.⁹²

Between March and August 2016, over 14 hui took place between Te Kawau Mārō and the trust board. Mr Ikin characterised the discussions as 'fractured' and as having 'progressed slowly'.⁹³ Mr Maniapoto said that, from 2014 until mid-2016, the progress was slow because 'the Crown had certain demands that we needed to meet and boxes that we needed to fit into'.⁹⁴ Relations were somewhat repaired in late March when the trust board revoked its resolutions of 25 January 2016 concerning the trust board taking the lead progressing the Ngāti Maniapoto settlement, withdrawing from Te Kawau Mārō, and working to include all Ngāti Maniapoto in achieving a settlement.⁹⁵

With the parties' agreement, the Crown provided facilitators Peter Douglas and Ken Mair to assist the trust board and Te Kawau Mārō to work through their differences. During the March–August period, the facilitators attended six hui and reported on progress. Mr Douglas informed OTS that the trust board needed to

92. Document A56, p 29

93. Document A5, pp [11]–[12]

94. Document A46, p [12]

95. Document A46(a), pp 97–98

‘stand its ground and not reward bad behaviour’ and that Te Kawau Mārō did not have ‘widespread support’ but it did have ‘a local and vocal presence’.⁹⁶ He wrote:

[Te Kawau Mārō] have been given licence to work on this for the past two or so years by the Trust Board which may not have understood the consequences at the time. It has given them a sense of involvement and importance which is difficult to now withdraw.⁹⁷

Mr Douglas noted ‘considerable division’ between the two groups, and discussions seemed to stall at the trust board’s proposed structure for a mandated entity of ‘first xv’ members, including five Te Kawau Mārō members, five trust board members, and five ‘peers’.⁹⁸ Furthermore, a working group aimed at finding a path forward, which the two groups proposed, ultimately fell through.

Te Kawau Mārō initially agreed to the trust board’s ‘first xv’ structure proposal on 3 July.⁹⁹ However, on 5 August 2016, it wrote to the trust board reversing its position and reaffirming the structure set out in its original mandate, albeit with the ‘minor change’, according to Mr Maniapoto, of increasing trust board representation on Te Kawau Mārō from two to five members.¹⁰⁰ Te Kawau Mārō also objected to the idea that ‘independent outsiders’ or ‘peers’ would be coming in to ‘tell our people how to run their settlement’.¹⁰¹ By that point, the trust board had modified its proposal to a 6–5–4 model, whereby it increased the number of Wai claimant representatives by one and reduced the number of peers by one.¹⁰²

Mr Douglas reported that, at a kaumātua hui on 27 August, Te Kawau Mārō invited many supporters who voted down the trust board’s proposal for the new entity.¹⁰³ Emily Owen believed that this event, combined with the news that the Crown Forestry Rental Trust had terminated Te Kawau Mārō’s approved client status and OTS’s ongoing concerns over the representivity and accountability of Te Kawau Mārō, meant that OTS could no longer work with Te Kawau Mārō.¹⁰⁴ According to Mr Maniapoto, the motion at this hui called for two or three further hui-a-iwi to discuss the matter of mandate representation.¹⁰⁵ The outcome of subsequent hui in September, according to Mr Maniapoto, was ‘resounding support and preference for a hapū and regional claimant based mandate and settlement model’.¹⁰⁶

96. Ibid, p 227

97. Ibid, p 226

98. Ibid; doc A5(a), pp 200–203

99. Document A5(a), p 200

100. Ibid, pp 205–206; doc A46(a), pp 105–106

101. Document A46, p [32]

102. Document A46(a), p 107

103. Document A56(a), p 1137; doc A56, p 32

104. Document A56, p 32

105. Document A1, paras 83–85

106. Ibid, para 88

3.1.6

On 8 September, OTS wrote to Te Kawau Mārō advising that it was no longer working with it to progress the draft mandate strategy:

I am writing to confirm that the Crown is no longer working with Te Kawau Mārō towards a Crown endorsed mandate strategy. The reasons for this decision were outlined in correspondence from me earlier this year. I understand this is likely to cause some upset, however, it is important that we are clear in our position to both Te Kawau Mārō and the Crown Forestry Rental Trust . . .¹⁰⁷

This letter was written as ‘Broadening the Reach’ was underway, a subject that we discuss in detail in section 3.2.

3.1.6 Analysis

Our analysis of the Crown’s actions with Te Kawau Mārō and the trust board from 2014 up until the implementation of the ‘Broadening the Reach’ strategy leads us to conclude that the Crown’s concerns with the ability of Te Kawau Mārō to progress the Ngāti Maniapoto settlement were reasonable.

In over 20 months of engagement, the Crown repeatedly communicated its concerns to Te Kawau Mārō about its capacity to achieve and deliver a successful mandate. It was not ‘shifting the goal posts’, making it harder for Te Kawau Mārō to reach them. This was made apparent in multiple letters to Te Kawau Mārō about what the Crown required of a Ngāti Maniapoto mandating entity: namely, that it must be appropriately representative of Ngāti Maniapoto; that the terms of accountability must be clear; and that the status of Ngāti Apakura representation on Te Kawau Mārō had to be clarified. (Our analysis of this last issue will be covered in section 4.2.7.) The fact that Te Kawau Mārō took steps to address these issues in part (though, as established, these steps did not go far enough) demonstrates that the Crown had communicated the essence of its concerns.

Nonetheless, we consider the Crown’s messaging was sometimes inconsistent and unclear about how critical certain aspects of its policy were in order for Te Kawau Mārō to achieve the mandate. This was particularly the case in relation to the taurahere seats and the proposed additional seats for the trust board.¹⁰⁸ In addition to its correspondence with Te Kawau Mārō, the Crown relied heavily on internal documents, such as aide memoires and file notes, to attempt to demonstrate a consistent level of communication with the claimants about its concerns. However, it was unable to clearly establish the extent to which such documents were shared with the claimants as a means of further highlighting its concerns.

Besides the other ‘sticking points’ regarding accountability and the inclusion of the taurahere seats, the claimants took issue with the Crown’s requirement for the mandated entity to be appropriately representative of Ngāti Maniapoto as a whole. We heard a lot of evidence about nomenclature and the Crown’s characterisation

107. Document A56(a), p 1141

108. Transcript 4.1.3, pp 23–25

of Te Kawau Mārō as representing only ‘Wai claimants’, whereas the trust board was seen to represent ‘the whole of Ngāti Maniapoto’ or the ‘claimant community’. According to Mr Maniapoto, throughout the mandating process the Crown sought to ‘cast aspersions’ and to ‘ridicule’ Te Kawau Mārō, undermining and diminishing its status. He claimed that the Crown’s ‘false assertions’ that Te Kawau Mārō was ‘nothing more than a collection of Wai claimants’ and ‘not representative of the [Ngāti] Maniapoto people’ were an ‘excuse’ to stop working with it.¹⁰⁹ We agree that there were mixed messages and different understandings around exactly who Te Kawau Mārō represented. This arises at least in part because the evidence concerning its representivity was somewhat opaque. We also note that Te Kawau Mārō’s arguments about the trust board not being sufficiently representative of Ngāti Maniapoto essentially mirror the arguments the Crown put to us concerning the structure of Te Kawau Mārō. Our analysis of the representivity of the trust board’s structure is discussed further in section 4.1.3.

In particular, we consider unconvincing the claimants’ argument that the Crown used the findings of *The Ngāpuhi Mandate Inquiry Report* as a last-minute pretext for claiming that Te Kawau Mārō was inadequately representative of Ngāti Maniapoto.¹¹⁰ As previously demonstrated, the Crown had informed Te Kawau Mārō of its representation requirements on a number of occasions over 20 months, albeit not as consistently and clearly as it could have. Therefore, it cannot have come as a surprise to the claimants that representation was a central concern of the Crown’s. We do not consider the issue was raised late. Even though the Crown started to focus on the issue of 242 people voting for regional representatives on Te Kawau Mārō as a low number and inadequate to show true representation of Ngāti Maniapoto (allegedly in response to *The Ngāpuhi Mandate Inquiry Report*), it should not detract from the Crown’s actions in previously raising representation as an issue. In this sense, we conclude that the Crown’s communication to the claimants was reasonable, but we are concerned about the ambiguity of how often internal Crown documents were shared with the claimants.

On the issue of Crown policy being inflexible, we conclude that, on balance, the Crown exercised reasonable flexibility with regard to considering the possibility of having multiple post-settlement governance entities, particularly with Ngāti Rereahu, as was evident from correspondence from OTS regarding Minister Finlayson’s position on the issue.¹¹¹ Te Kawau Mārō, on the other hand, was inconsistent in its position around whether it was presenting a mandate with the option of multiple post-settlement governance entities or one settlement entity.¹¹² Although the Crown made efforts to accommodate Te Kawau Mārō’s changing position on this issue, we conclude that it could have shown more flexibility in its policy requirements concerning representation, accountability, and the taurahere seats. In this sense, it should have offered more tikanga-based solutions. We

109. Document A46, p [8]

110. Transcript 4.1.3, pp 20–21

111. Document A56(a), pp 886–889, 890–894

112. Ibid, pp 875–876, 1044–1045

consider the Crown's position on the requirement for a legal entity to be reasonable based on its existing policy.

Further, *The Tāmaki Makaurau Settlement Process Report* discussed the Crown's tendency to enter 'the business of picking winners' by choosing to work with 'groups who appear to offer the best chance of being able to deliver their constituency to a significant settlement'.¹¹³ Although an efficient objective, this approach could end up putting to the side groups that do not fulfil a 'success' profile (having good infrastructure, a stable and committed membership, and outstanding leaders), reinforcing to them that they matter less and leaving them 'feeling like losers', leading to suspicion and resentment.¹¹⁴

However, on balance, we do not think that the Crown 'picked its winner' and exercised favouritism in its treatment of the trust board over Te Kawau Mārō during this period. Ultimately, it lent its support to the trust board because it concluded that the trust board had the necessary support and infrastructure to become the Crown-recognised mandated entity. Nor is there any credible evidence that the Crown and the trust board colluded or had secret meetings. As is evident from the Crown's efforts to encourage negotiation and reconciliation between Te Kawau Mārō and the trust board from February to August 2016, it took a backseat in the relationship so that the tikanga of the parties could be at the forefront of any potential reconciliation attempts. However, we conclude that ultimately the Crown acted opportunistically following the breakdown in the relationship between Te Kawau Mārō and the trust board and that it used this to its advantage in ending its impasse with Te Kawau Mārō. The 'Broadening the Reach' strategy, discussed in further detail in the next section, emboldened and empowered the Crown to formally cut its ties with Te Kawau Mārō.

On the point of the facilitators' reports, we conclude that the immoderate language used in Mr Douglas's reports did invite accusations of bias and that the fact that Mr Mair did not provide written reports of the facilitation hui was a gap in the Crown's mandating process. We discuss our analysis of Mr Douglas's role as an 'independent' assessor for 'Broadening the Reach' in section 3.2.4.

In our view, internal iwi issues have played as much, if not more, of a role than the Crown's actions in the dispute regarding the mandated entity. *The Pakakohi and Tangahoe Settlement Claims Report* noted 'the artificiality of treating internal disputes as if they were disputes against the Crown' as an important consideration for the Tribunal to take into account when deciding whether or not to interfere in mandate decisions.¹¹⁵ We consider that leadership preferences and internal rivalries have drawn the Crown into some internal disputes where it should have no role or influence. We do not agree that the Crown was unduly influenced by the trust board following the arrival of a new wave of leadership in July 2015 that ultimately

113. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p12

114. Ibid

115. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p57

led to the trust board's first withdrawal from supporting Te Kawau Mārō on 25 January 2016. The evidence shows that the trust board had had concerns around Te Kawau Mārō's appropriateness to be a mandated entity for some time up to that point. According to Mr Ikin, the 5 August 2016 letter from Te Kawau Mārō (and the follow-up phone call with Mr Maniapoto the next day) convinced the trust board to forgo any further attempts at repairing its relationship with Te Kawau Mārō – a decision which the Crown had no influence in making.¹¹⁶ We do note, however, that the pressure the Crown placed on Te Kawau Mārō to agree to its policy requirements likely contributed to the disharmony with the trust board and, ultimately, to the breakdown of its relationship with Te Kawau Mārō.

Furthermore, we do not uphold the allegations that the Crown favoured the trust board because it was a 'Pākehā construct' and that it did not hold the necessary rangatiratanga to deal with negotiating the Ngāti Maniapoto settlement. Rangatiratanga can be found in a variety of entities. Māori have a history of adopting structures, including those prevalent in Western society, and adapting them for their own means. Despite being a 'creature of statute', the trust board is nonetheless an authoritative body with the necessary rangatiratanga to negotiate settlements with the Crown, as evidenced by its past involvement in negotiating the Waipā River and fisheries settlements. An entity establishes tikanga through its leaders and representatives, and it is through these individuals that iwi and hapū are given voice. The individuals who formed the first trust board were rangatira steeped in tikanga, and they saw the trust board's structure as the means for Ngāti Maniapoto to galvanise and move forward at that time. An analysis of the extent to which that structure may be considered representative of hapū appears in section 4.1.3.

In our view, the Crown's letter of 8 September 2016 to Te Kawau Mārō advising it that the Crown was severing their relationship withheld important information from the parties, which in the long-run would have a significant impact on their journey towards settlement. This information concerned the impact of the Crown's new 'Broadening the Reach' strategy on the decision to cease discussions with Te Kawau Mārō. We consider that this particular letter was a cursory and unsatisfactory way to end what had otherwise been a positive relationship with Te Kawau Mārō over 20 months. To terminate that relationship in a three-sentence letter, with a dubious explanation that it was due to reasons outlined in previous correspondence, is extremely regrettable.

We conclude that, whereas the Crown had legitimate concerns over Te Kawau Mārō's capacity to achieve and implement the Ngāti Maniapoto mandate, the abrupt manner in which the Crown terminated its relationship with Te Kawau Mārō was offhand and disrespectful. In our view, this abrupt end to over two years of good-faith negotiation was inherently bound up in the Crown's creation and implementation of 'Broadening the Reach', which is the subject of the next section.

116. Document A61, p [9]; transcript 4.1.2, pp 284, 292, 313

3.2 THE ‘BROADENING THE REACH’ STRATEGY

3.2.1 The positions of the parties

Claimant counsel submitted that the Crown considered ‘Broadening the Reach’ a ‘silver bullet’ for achieving Treaty settlements. Once Ngāti Maniapoto was identified as a ‘bold goals’ iwi, the Crown pursued mandate recognition at an ‘unprecedented speed not seen before in the Treaty settlement space’ and, consequently, did not follow proper procedure.¹¹⁷ The strategy’s aim of completing the process within 10 to 12 weeks was a radical departure from the standard mandating timeline of 12 to 18 months.¹¹⁸ Counsel submitted that, by implementing ‘Broadening the Reach’, the Crown prioritised its goal of completing more Treaty settlements over its duty to protect actively and to work alongside Ngāti Maniapoto as partners.¹¹⁹ The Crown acknowledged, counsel submitted, that the truncated timeframe carried risks, such as sowing ‘confusion’ among those who had expected Te Kawau Mārō to progress the mandate, and that this could have an ‘impact on participation rates.’¹²⁰ Counsel claimed that the speed at which the Crown carried out the mandating process after it stopped working with Te Kawau Mārō left hapū ‘reeling.’¹²¹

Counsel further submitted that the Crown informed only those ‘it thought needed to be “in the know”’ about ‘Broadening the Reach’ and the fact that it did not ‘broadcast’ the strategy indicated that it thought the strategy would not be well received. Counsel argued that the Crown’s withholding of such vital information from Ngāti Maniapoto, its Treaty partner, showed a lack of good faith and, as such, was a breach of the Treaty.¹²² The lack of transparency represented a cursory, preconceived assessment of Ngāti Maniapoto.¹²³ Counsel also argued that Te Kawau Mārō’s mandating process and the trust board’s involvement in it ‘put the Crown on notice as to the many and varied issues and complexities that existed at the time.’¹²⁴ These issues were exacerbated when the Crown pursued ‘Broadening the Reach’, and consequently it overrode the claimant community’s ability to resolve them internally and according to their tikanga. Multiple claimant groups also took issue with the appointment of Mr Douglas as a purportedly ‘independent’ assessor of the suitability of Ngāti Maniapoto to engage in priority negotiations under the ‘Broadening the Reach’ strategy. The claimants believed that this was a conflict of interest, given his previous role of facilitating between the trust board and Te Kawau Mārō as well as his other links to the trust board.¹²⁵

The claimants believed that it was ‘misleading’ for the Crown to describe its actions in working with the trust board on its mandate strategy prior to Cabinet

117. Submission 3.3.17, p 14

118. Ibid, pp 19–20

119. Ibid, p 20

120. Submission, 3.3.23, pp 10–11; doc A39(a), p 478

121. Submission 3.3.22, p 8

122. Submission 3.3.17, p 17

123. Submission 3.3.40, pp 3–4; submission 3.3.37, pp 11–13

124. Submission 3.3.30, p 18

125. Submission 3.3.17, p 23; submission 3.3.26, p 49

approval as ‘pre-work’ because it had poured substantial resources into the process.¹²⁶ The lack of a second submissions process also meant that there was no further chance for the concerns of hapū to be addressed.¹²⁷

Claimant counsel submitted that a mandate vote based on the trust board’s tribal register was not appropriate to test support for, in particular, the trust board’s mandate because Te Ihingārangi and Ngāti Rereahu had their own registers.¹²⁸ Counsel argued that the hapū voice was not heard in the individual vote process.¹²⁹ The individual vote was not a strong show of support and the Crown was well aware of the lack of support for the trust board’s mandate, as evident in its description of Ngāti Maniapoto as a “‘high” litigation risk’ in a Cabinet briefing paper.¹³⁰ In the claimants’ view, ‘one person, one vote’ was a Pākehā method that did not reflect the way Māori society typically operated, especially if it was a hapū collective.¹³¹

Crown counsel submitted that the Crown implemented ‘Broadening the Reach’ in response to a slowing momentum in Treaty settlements and, as such, it was necessary for it to reprioritise OTS’s workload. The Crown exerted no undue pressure to compel the trust board to agree to the strategy, counsel said.¹³² The Crown was already ‘legitimately and appropriately’ treating Ngāti Maniapoto as a priority group to progress into negotiations because it was one of the last large iwi yet to have reached a settlement. The flexibility of the mandating process under the strategy was informed by the mandating process that Ngāti Maniapoto had been engaged in over a long time.¹³³

Furthermore, Crown counsel argued, iwi and hapū had ample opportunity between September and December 2016 to ‘influence the long journey to explore and develop [the] mandate’ and that this ‘further informed the Crown’s decision.’¹³⁴ Regarding the tikanga of Ngāti Maniapoto decision-making, counsel submitted that at no point did the trust board or Te Kawau Mārō propose building a mandate strategy hapū by hapū.¹³⁵ Counsel also submitted that the ‘best established mechanism’ for reaching iwi members and for testing the support for, and the opposition to, the trust board’s mandate was the trust board’s tribal register but that the Crown also relied on advertising, public hui, and the trust board initiatives set up to cater for non-registrants.¹³⁶

Counsel for the trust board submitted that the tikanga of Ngāti Maniapoto decision-making had to be seen in light of the 1904 Te Kawenata, which was

126. Submission 3.3.17, p 19

127. Submission 3.3.24, p 23

128. Submission 3.3.23, pp 15–16; submission 3.3.30, p 43

129. Submission 3.3.23, p 12

130. Ibid, pp 14–15

131. Submission 3.3.22, pp 11–12

132. Submission 3.3.31, pp 28–29

133. Ibid, p 36

134. Ibid, p 38

135. Ibid, p 39

136. Ibid, pp 40, 42

3.2.2

underpinned by notions of kotahitanga and hapū working together as a collective, which was consistent with hapū autonomy. At no point did Ngāti Maniapoto agree to or endorse a hapū-based decision-making model, and counsel noted that neither Te Kawau Mārō's nor the trust board's mandate drafts proposed a hapū-specific vote on the mandate.¹³⁷

Counsel for the trust board argued that, despite the truncated timeframes that 'Broadening the Reach' proposed, neither the trust board nor the Crown would have been 'starting from scratch', due to the work undertaken during the lengthy engagement between the Crown and Te Kawau Mārō and the advanced state of the draft mandate strategy.¹³⁸ In addition, counsel submitted that the trust board's tribal register captured a large portion of the Ngāti Maniapoto population and provided alternative voting options to those not on the register.¹³⁹

3.2.2 Strategy origins and implementation

The priority negotiations strategy known as 'Broadening the Reach' originated some time in August 2016, at the same time as the relationship between Te Kawau Mārō and the trust board was becoming increasingly fraught. Lilian Anderson, the chief executive for Te Arawhiti/the Office for Māori Crown Relations, explained how the strategy emerged from OTS's observation of a slowing down in the rate of settlements. In developing the strategy, Ms Anderson explained that OTS had 'different conversations with different people', including Ministers and officials from Te Puni Kōkiri and Treasury.¹⁴⁰

OTS had identified several geographical areas as not having had the opportunity to receive economic and other benefits associated with Treaty settlements.¹⁴¹ The strategy's name reflected its animating goal: to focus OTS's resources on geographical areas and iwi that had not experienced comprehensive settlement. The strategy sought to 'accelerate some negotiations to provide the Crown and iwi the opportunity to complete historic Treaty settlements with these groups earlier than would otherwise be the case'.¹⁴² The architects of 'Broadening the Reach' concluded that OTS's goal to complete all settlements by the beginning of 2021 was unrealistic with the then-current strategy.¹⁴³ Ultimately, the strategy would compress a standard 12- to 18-month process for mandating into 10 weeks.¹⁴⁴

'Broadening the Reach' comprised four strategic 'pillars' with varying aims:

- ▶ 'bold goals' – prioritising negotiations with eight groups in unsettled areas;
- ▶ 'clearing the decks' – completing existing negotiations;
- ▶ 'business as usual' – finalising deeds of settlements; and

137. Submission 3.3.27, p 16

138. Ibid, p 14

139. Ibid, p 20

140. Transcript 4.1.2, p 57

141. Document A58, pp 2–3

142. Ibid, p 3

143. Document A46(a), p 122

144. Document A56(a), p 1146

Date	Event
7 September 2016	The Office of Treaty Settlements meets with the trust board to outline the proposal for Ngāti Maniapoto to be considered a 'bold goals' iwi and to work towards a Crown-recognised mandate in a truncated mandating timeframe
8 September 2016	The Office of Treaty Settlements writes to Te Kawau Mārō confirming it is no longer working with it to progress the mandate
9 September 2016	The Office of Treaty Settlements writes to the trust board to invite it to participate in priority negotiations
12 September 2016	The trust board accepts the offer of a 'bespoke' 10-week mandating process
13 September 2016	The Office of Treaty Settlements seeks agreement from Minister Finlayson and Minister Flavell on 'Broadening the Reach'
19 September 2016	Minister Finlayson and Minister Flavell confirm their support for 'Broadening the Reach'
17 October 2016	Cabinet approves 'Broadening the Reach'

Table 3.4 Brief chronology of key events in the mandating process, September to October 2016

- deferred and stopped groups – potentially deferring negotiations deemed unlikely for resolution.¹⁴⁵

Following an assessment consisting of a questionnaire filled out at a meeting on 7 September (by whom we are not aware), OTS identified Ngāti Maniapoto as eligible for priority negotiations for a comprehensive settlement under the 'bold goals' pillar due to their advanced tribal infrastructure and their involvement in previous Treaty settlements.¹⁴⁶ The 'independent' assessors present at the meeting to aid in the assessment of Ngāti Maniapoto and their participation in the strategy included Mr Douglas, Mr Mair, and Anaru Mills.¹⁴⁷

On the same day as the assessment was conducted, OTS and its 'independent' assessors met with representatives of the trust board to broach the possibility of Ngāti Maniapoto becoming a 'bold goals' iwi.¹⁴⁸ The trust board responded positively, although OTS advised the members present that, if the trust board did not agree to participate in the strategy, then negotiations would be unlikely to begin before 2017: 'This prioritisation was the reality of utilising the resources of the negotiations work programme most effectively.'¹⁴⁹ Above all, Emily Owen was adamant that this process would not be a 'tick box' exercise for the trust board and that no undue pressure was to be placed on them to carry out the required work

145. Document A58, pp 3–4

146. Document A58(a), p 1; transcript 4.1.3, p 205

147. Document A56(a), p 1139

148. Document A58, p 5

149. Document A56, p 35

3.2.2

needed to achieve a mandate. In an email sent later that evening to her colleagues, Ms Owen wrote:

So the [trust board] want to do the crazy plan . . .

If this can be pulled off it will be nothing short of amazing! It will be hard work but I'm sure we will do our very best for Maniapoto.¹⁵⁰

As mentioned previously, on 8 September 2016 Crown officials wrote to Te Kawau Mārō advising that OTS was no longer working with it to progress the draft mandate strategy. The letter made no mention of the 'Broadening the Reach' strategy as the reason for the change.¹⁵¹ Ms Owen also advised Te Puni Kōkiri that day that the 'bespoke' mandating process was highly confidential, as 'only certain members of [the trust board] are in the loop' and the 'timeframes are super tight'.¹⁵² The following day, the director of OTS formally wrote to the trust board confirming the invitation to participate in 'Broadening the Reach', which aimed to reach a deed of mandate by December that year and an agreement in principle by 30 August 2017.¹⁵³ In justifying its decision to invite the trust board to participate in the strategy, OTS explained that Minister Finlayson believed that Ngāti Maniapoto had 'not felt as many of the benefits of settlement as other groups around the country' and that the iwi was, or could be, 'a key partner in the economic development and prosperity of [its] region'.¹⁵⁴

The trust board had until 23 September to confirm whether it wanted to work towards achieving a Crown-recognised mandate by the end of November 2016. However, the trust board accepted OTS's offer to proceed with the 'bespoke' mandating process on 12 September – three days after the formal invitation.¹⁵⁵ The trust board believed that, combined with its prior negotiation experience and the fact that it was an appropriate representative body and entity, it was in the best interests of all Ngāti Maniapoto whānau, marae, and hapū to take the settlement process forward in a 'timely manner'.¹⁵⁶

On 13 September 2016, OTS and Te Puni Kōkiri gave advice to Minister Finlayson that he and the Minister for Māori Development, Te Ururoa Flavell, should approve 'Broadening the Reach'.¹⁵⁷ OTS also advised that the trust board was in the best position to seek a mandate as it met OTS's requirements for accountability

150. Document A56(a), p 1140

151. Ibid, p 1141

152. Document A46(a), p 110

153. Document A56, p 35

154. Document A7(a), p 76

155. Document A56, pp 35–36

156. Document A61, p [10]

157. Document A56, p 36

and representivity, as well as having demonstrated a willingness to engage with the claimant community, including Te Kawau Mārō, in a collaborative manner. Other benefits OTS identified included a ‘mitigation of the risk of opposition to the mandate’, due to Ngāti Rereahu having a trustee on the trust board, and the trust board’s firm view of having one collective settlement for Ngāti Maniapoto.¹⁵⁸ Minister Flavell had also wanted to meet with dissenting groups such as Te Kawau Mārō and Ngāti Rereahu alongside Minister Finlayson, but he was talked out of it by a Te Puni Kōkiri official and Mr Mair.¹⁵⁹ The reasons why OTS and Te Puni Kōkiri wanted the Ministers to avoid these meetings included that a ministerial meeting would give the groups ‘an increased sense of importance’; that it was unlikely the groups would change their views; and that the timeframes were simply too tight.¹⁶⁰ Ultimately, ministerial support for the strategy was granted on 19 September.

Cabinet approval for ‘Broadening the Reach’ was granted on 17 October 2016, following some ‘pre-work’ or ‘pre-assessments’ by Crown officials. Ms Anderson said that this was done to avoid presenting Cabinet an ‘empty strategy that may or may not work.’¹⁶¹ In the Cabinet paper for ‘Broadening the Reach’, Minister Finlayson justified a truncated mandating process because the remaining groups comprised roughly one-third of Māori people in the 2013 census.¹⁶² He qualified this, however, saying, ‘I will not settle with the bold goals groups at any cost.’¹⁶³

3.2.3 The voting and submissions process under the strategy

The report given to Ministers on 13 September 2016 noted that the mandating process would be ‘streamlined.’¹⁶⁴ This involved running the period for submissions on the mandate strategy concurrently with the mandate hui and voting period and removing the period for second submissions, which consequently extended the voting period by a week. The difference in the timeframes can be seen in table 3.5.

OTS believed the streamlined process, albeit much shorter than the standard process, remained open, fair, and transparent. Ms Owen said that the submissions, mandate hui, and voting would gauge support for the mandate strategy across the Ngāti Maniapoto large natural grouping and that, due to years of mandating discussion, OTS was sufficiently aware of the issues some Ngāti Maniapoto individuals had regarding mandating and Treaty settlement.¹⁶⁵ Moreover, past experience led OTS to believe that a second submissions round would not be beneficial,

158. Ibid, p 34

159. Document A46(a), p 184

160. Ibid

161. Transcript 4.1.2, p 56

162. Document A46(a), p 123

163. Ibid, p 126

164. Document A56, p 37

165. Ibid, pp 37–38

Steps	Standard mandate timeframes	Maniapoto mandate timeframes
1. Mandate strategy publicly notified and submissions invited	21 days*	35 days†
2. Mandate hui advertised	14 days	14 days
3. Mandate vote	21 days	28 days
4. Deed of mandate publicly notified and second submissions period	21 days	—
Total	77 days	42 days

* This is a minimum

† Concurrently with advertising the mandate hui and voting

Table 3.5: Formal mandating timeframes

Source: Document A56, p 37

because it ‘usually raised very similar issues to a first round’ – in this case, issues like the inclusion of Ngāti Rereahu.¹⁶⁶

Crown officials identified a couple of risks to the shortened mandate voting process, including a lower voter turnout and the perception that the process was rushed and did not enable sufficient time for consultation with all who would be affected.

The trust board attempted to mitigate the first risk by providing postal voting packs to all people on the tribal register and employing a communications expert to ensure that there was greater openness and engagement with the wider claimant community.¹⁶⁷ Those not on the tribal register but eligible to vote, being 18 years old or over, were able to cast a special vote subject to confirmation of Ngāti Maniapoto whakapapa.¹⁶⁸ In response to the second risk, OTS pointed to the trust board’s eagerness to proceed with the expedited process rather than the alternative of the standard timeframe of 12 to 18 months.¹⁶⁹

At the time of voting, the trust board’s tribal register listed 20,107 people out of the approximately 35,358 people who had identified as Ngāti Maniapoto in the 2013 census. Ms Owen estimated that there could be approximately 15,000 people of Ngāti Maniapoto descent not on the register.¹⁷⁰ Approximately 57 per cent of those on the register were eligible to vote. According to Ms Owen, the trust board had invested time in growing the register over many years, with its numbers almost doubling within the space of eight years.¹⁷¹ Te Kawau Mārō had also intended to use the register for voting on its mandate because it provided ‘a strong platform

166. Document A56, p 38

167. Ibid

168. Document A5, p [18]

169. Document A56, p 38

170. Ibid, p 40

171. Ibid

for conducting the mandating process' and because 'the total number of registered [Ngāti] Maniapoto members compares favourably to the number of people that identified as [Ngāti] Maniapoto at the last census.'¹⁷²

In order to secure the mandate, the trust board wanted to engage not only with Te Kāwau Mārō and the Wai claimant clusters but also with the Rereahu trust and the Maniapoto Central Region representatives who had previously opposed the Te Kāwau Mārō process. The trust board wrote to the chairs of these groups on 15 and 16 September inviting them to discuss the future of the Ngāti Maniapoto settlement, and it issued a media release setting out its intention to seek a mandate through 'Broadening the Reach'.¹⁷³ It also focused resources on encouraging individuals to participate in the vote, including by advertising in eight national and regional newspapers, on the trust board's website, and through email, radio, and social media channels.¹⁷⁴ At 11 mandating hui around New Zealand in October, the trust board and OTS representatives answered questions on the mandating and settlement process. Hui in Auckland, Wellington, Hamilton, and Te Kūiti were livestreamed, and offsite participants had the opportunity to submit questions online for the representatives to answer live.¹⁷⁵ Te Puni Kōkiri filed independent observer reports summarising the discussions at the hui and providing assurance that the hui had followed standard procedure.

Ms Owen explained how the trust board's draft mandate included changes made following the 2014–15 round of submissions, such as an updated list of Wai claims, new text in the ancestry section of the claimant definition, and a revision of the hapū list.¹⁷⁶ OTS also consulted Te Puni Kōkiri on the mandate. Ultimately, the Crown endorsed the mandate strategy on 23 September 2016 and notified Wai claimant representatives of the strategy and the impending submissions and voting process four days later.

3.2.4 Analysis

We take note of the finding in *The Tāmaki Makaurau Settlement Process Report* that the onus is on the Crown to manage perceptions, because 'perceptions affect relationships profoundly'.¹⁷⁷ This idea runs to the core of our analysis in this section.

Regarding the genesis and purpose of the 'Broadening the Reach' strategy, we agree with the findings of *The Whakatōhea Mandate Inquiry Report*. In creating this strategy and rushing to fulfil its goal of concluding Treaty settlements by mid-2020, the Crown 'lost sight' of some of its own settlement principles.¹⁷⁸ These negotiating principles, including 'good faith' and 'restoration of relationship', were

172. Document A56(a), p 67

173. Document A56, pp 38–39

174. Ibid, p 40

175. Document A5, p [15]

176. Document A56, p 39

177. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, p 88

178. Waitangi Tribunal, *The Whakatōhea Mandate Inquiry Report* (Wellington: Legislation Direct, 2018), p 85

3.2.4

intended to ensure that settlements were ‘fair, durable, final and occur in a timely manner’.¹⁷⁹ The Whakatōhea Tribunal found:

Political tensions within hapū and iwi over settlement strategy are not unusual, and a desire to expedite progress towards a Treaty settlement is a legitimate objective. But the process of reaching settlement still requires the exercise of care and a reasonable response to concerns raised.¹⁸⁰

In the present inquiry, we conclude that the Crown prioritised its political objectives over a proper and durable process. As such, the purpose of ‘Broadening the Reach’ sacrificed fairness to all the parties affected by the strategy for the expediency of achieving arbitrary settlement deadlines. Even if a reprioritisation of a work programme is a justifiably internal process, it must nonetheless be carried out in a manner that is fair to the parties affected.

Further, the Whakatōhea Tribunal concluded that the process for assessing the capacity, capability, and cohesion of Whakatōhea for participating in ‘Broadening the Reach’ appeared ‘cursory’.¹⁸¹ In our view, Ngāti Maniapoto was the subject of a similar cursory assessment. We received no evidence of what the criteria for the assessment was, other than a page of questions taken into the Crown’s meeting with the ‘independent’ assessors on 7 September 2016, which was also used in a meeting with the trust board that same day. However, there is no record of how these questions were answered or how circumstances specific to Ngāti Maniapoto were considered because the Crown’s evidence is that this questionnaire was not filled out.

We are not persuaded by the Crown’s reasons for failing to fill out the questionnaire or to provide any other documentation of its decision-making, which were that ‘Broadening the Reach’ necessitated a quick process to regroup the Crown’s several coinciding mandating processes and that the trust board was the obvious candidate to carry the mandate forward.¹⁸² A genuine assessment is crucial when such a radical shift in direction, strategy, or policy is proposed, and one clearly did not occur in this case.

While the Crown has argued that this was an internal strategy aimed at reprioritising resources, we conclude that the Crown was not transparent with Te Kāwau Māro and failed to let it know of the potential consequences of the new strategy.

Not only did the parties not know they were under assessment, but they did not know that ‘Broadening the Reach’ was being developed. We saw little documentation on the evolution of ‘Broadening the Reach’, which is particularly concerning

179. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna/Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 4th ed (Wellington: Office of Treaty Settlements, 2018), p 25

180. Waitangi Tribunal, *The Whakatōhea Mandate Inquiry Report*, p 86

181. *Ibid*, p 58

182. Transcript 4.1.3, p 224

given the haste with which the Crown proceeded and the consequences for the parties that were not consulted over the strategy. We also saw little evidence that ‘different conversations with different people’ took place. The Crown has no excuse to forgo documenting critical aspects of strategy or policy development or implementation, even if the timeframe has been exceptionally narrowed. In this sense, the Crown failed to manage perceptions, which in turn has had serious adverse consequences for the relationship between the trust board and the claimants.

Another perception the Crown failed to manage was the appearance of bias or conflict of interest in appointing Mr Douglas as an ‘independent’ assessor. We acknowledge that, while Mr Douglas has the skills and experience for the task, he has very close links to Ngāti Maniapoto and acted as a facilitator of the dispute between the parties.¹⁸³ We think that the claimants can legitimately question whether Mr Douglas was truly independent and that the Crown should have considered appointing assessors with no connection to the iwi or parties involved. The Crown should have been aware of any potential bias or conflict of interest and properly managed it.

We are also concerned with the blurring of boundaries between the facilitation of the dispute between Te Kawau Mārō and the trust board and the assessment of Ngāti Maniapoto for inclusion in the accelerated mandating process by the use of Mr Douglas and Mr Mair in both processes. The roles of facilitator and assessor have fundamentally different purposes. We understand that facilitators are impartial figures whose role is to assist the parties in dispute-resolution processes, while assessors play a decisive role. Ideally, the roles should be kept separate. We have a related concern about how the facilitators’ reports were used as part of the assessment process. There was also no evidence that the Crown took cultural advice or considered tikanga in appointing the assessors; it claimed to look only at the individuals’ experience and credentials. However, we acknowledge that Mr Douglas and Mr Mair are well-versed in tikanga and had been accepted by the parties as facilitators.

The Crown has stated that it did not exert any pressure on the trust board to participate in ‘Broadening the Reach’, but at the meeting with trust board representatives on 7 September 2016, OTS told the trust board that, if it did not agree to participate in the strategy, then negotiations would likely be deferred until at least 2017. Ms Owen told us that this was ‘the reality of utilising the resources of the negotiations work programme most effectively’, but we consider that this was a clear indication that the main purpose of the strategy was to prioritise the Crown’s political objectives.¹⁸⁴ Despite Ms Owen’s and the Crown’s insistence that there was no undue pressure placed on the trust board to agree to ‘Broadening the Reach’, the very fact that this caveat was given to the trust board at this meeting placed pressure on the trust board to agree to participate.

183. Following confirmation of the trust board’s mandate, Mr Douglas was subsequently appointed a negotiator by the trust board.

184. Document A56, p 35

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We also saw flaws in 'Broadening the Reach' as a 'bespoke', truncated, and accelerated process. First, even though 'Broadening the Reach' was a reprioritisation of the Crown's work programme, the Crown should not have proceeded with focusing resources into the trust board's pursuit of a mandate when it knew that what it was doing was a radical change in strategy. To do such significant 'pre-work' in getting the trust board's mandating process underway, prior to achieving Cabinet approval of the strategy in the first instance, does not seem to us a legitimate approach to implementing a significant change in Crown settlement policy or strategy. Any distribution of resources should have waited, at the very least, until Cabinet had approved the strategy and request for additional funding.

Secondly, we consider that the lack of a second submissions round was a serious oversight on the Crown's part. No matter the level of opposition raised regarding Te Kawau Mārō's previous mandating process and that raised in the first round of submissions in response to the trust board's mandating process, the Crown needed to conduct a thorough and robust assessment of opposition to the outcome of the vote through a second submissions round. *The East Coast Settlement Report* recommended that the Crown improve its settlement policy by having two submission rounds: one on the proposed mandate strategy and one on the outcome of the process. Such a change would give those opposing the mandate an opportunity to comment on the question to be posed to the claimant community, the system of voting to be used in seeking a mandate, and the inclusion or exclusion of particular groups in the mandate.¹⁸⁵ When that report came out, the Crown took this on board and adjusted its policy accordingly. However, to now rely solely on its assessment of previous opposition as an excuse to dispense with a second submissions round essentially sacrificed an avenue for members of Ngāti Maniapoto to voice concerns. Instead, the Crown rushed them through a process that, up until 'Broadening the Reach', had in our view been measured and considerate. Consequently, it is clear to us that 'Broadening the Reach' prioritised speed at the expense of tikanga and thorough consultation.

Thirdly, we conclude that the Crown officials' advice to Minister Flavell not to meet with dissenting groups in the early phases of 'Broadening the Reach' was ill-advised. Te Kawau Mārō and Ngāti Rereahu were significant dissenters to the mandate, and both groups should have been afforded the opportunity to meet with the Minister at his request. Claiming that a meeting would give them 'an increased sense of importance', that they were unlikely to change their views, or that a meeting would hold up the timeframes reveals the Crown's focus on prioritising political objectives over the Treaty relationship. Here, we draw a comparison to the scant respect shown when the Crown wrote a three-sentence letter terminating its relationship with Te Kawau Mārō. The Crown should endeavour to meet with its Treaty partner kanohi ki te kanohi, if that is what it takes to ensure a good-faith relationship.

185. Waitangi Tribunal, *The East Coast Settlement Report* (Wellington: Legislation Direct, 2010), p55

Finally, we consider that the tribal register voting system under ‘Broadening the Reach’ for the trust board’s mandate was robust and sufficient. As claimant Rawiri Bidois acknowledged, at no point was voting by hapū raised as a preference during Te Kawau Mārō’s mandating process.¹⁸⁶ At the very least, Te Kawau Mārō had no written record of this. In fact, the evidence suggests that Te Kawau Mārō was intending to use the trust board’s tribal register to carry out mandate voting if it had had the opportunity to reach that stage.¹⁸⁷ In our view, the trust board has kept a comprehensive register and has also developed suitable voting mechanisms to capture and allow for the participation of those individuals who were not in the tribal register or who did not want to be in the tribal register. As such, we conclude that the allegations the claimants made about the trust board’s mandate voting process being inappropriate and not accommodating the tikanga of hapū decision-making are not substantiated.

3.3 THE OUTCOME OF VOTING AND SUBMISSIONS

3.3.1 The positions of the parties

Claimant counsel argued that the outcome of the voting does not give the trust board the support it claims for its mandate, nor does it show sufficient support for the Crown to conclude that it was reasonable to recognise the trust board’s mandate.¹⁸⁸ In conjunction with claimant concerns about the speed at which the Crown carried out the mandating process, counsel argued that it was ‘impossible for the Crown to assure itself of the actual levels of support for and opposition against the Mandate.’¹⁸⁹ Counsel submitted that, despite the claimants giving their view, both in written submissions and at a mandate hui, those views were not reflected in an amendment to the trust board’s mandate.¹⁹⁰ Consequently, the Crown ‘clos[ed] its eyes’ to the flaws in the Ngāti Maniapoto large natural grouping ‘each time it received opposition’ from Ngāti Rereahu and Te Ihingārangi concerning the mandating process.¹⁹¹

Furthermore, counsel submitted, the Crown cannot have appropriately considered the lack of sufficient support and the small participation rates when recognising the trust board’s mandate. Counsel argued that low participation ‘across the board’ for mandating processes should not be used to justify ongoing low participation rates in mandating votes.¹⁹²

Crown counsel argued that the Crown was ‘well-informed’ of the support for, and the opposition to, the trust board’s mandate because of the ‘long period’ spent developing the various mandate proposals and that it was ‘well aware’ by this time of Ngāti Maniapoto’s interests and dynamics. Votes, submissions, and input via

186. Transcript 4.1.1, pp 131–132

187. Document A56(a), p 938

188. Submission 3.3.17, pp 20–21

189. *Ibid*, p 21

190. Submission 3.3.24, p 27

191. Submission 3.3.30, p 17

192. Submission 3.3.26, p 37

3.3.2

hui through the trust board's mandating process 'largely replicated' the sentiment of groups during Te Kawau Mārō's mandating process.¹⁹³ Consequently, counsel submitted, there was sufficient support for the mandate to be recognised.¹⁹⁴

The Crown stressed that 'numbers do matter' and that participation in the mandating vote was above average. Despite the amount of support being towards the low end, it was 'by no means the lowest'. Counsel argued that the Crown formed the view that opposition to the trust board's mandate was 'largely removed', as a 'significant' proportion of opposing submissions were from Ngāti Rereahu.¹⁹⁵

Counsel for the trust board reiterated that the majority of submissions in opposition from Ngāti Rereahu were resolved prior to the Crown's recognition of the trust board's mandate.¹⁹⁶ Counsel also argued that the extent of support for the claimants who continued to oppose the mandate was unclear.¹⁹⁷

3.3.2 Nature of opposition

The trust board notified Ngāti Maniapoto of its mandate strategy on 24 September 2016 and invited feedback. Submissions closed on 28 October 2016, while the voting deadline was extended to 5 November 2016 due to a delay in individuals receiving postal voting packs. There were many attempts to address the questions and concerns raised at the 11 mandating hui held in October, but ultimately there was no resolution to these concerns.¹⁹⁸

Following the 'bespoke' mandating process, 24.96 per cent of the 11,891 eligible people on the tribal register participated in the vote on the trust board's deed of mandate. Of the 2,968 votes received, 72.01 per cent were in favour of the mandate (2,130 for and 828 against, with 10 blank voting papers).¹⁹⁹

Crown officials believed that most of the votes against the mandate were 'likely to have been from Rereahu, given their level of opposition at the time of the mandate vote'.²⁰⁰ Of the roughly 770 submissions received, only 100 of these were in support. Approximately 480 opposing the mandate were the Rereahu trust template submissions requesting that Ngāti Rereahu be removed from the strategy to enable separate negotiations with ORS.²⁰¹ The trust board and the Rereahu trust reached an agreement soon after the vote. The trust board agreed to 'work with [the Rereahu trust] and other Rereahu representative groups to ensure that Rereahu interests and customary rights are understood and provided for [in negotiations]'.²⁰² This agreement addressed roughly 72 per cent of the submissions

193. Submission 3.3.31, p 38

194. Ibid, p 41

195. Ibid, pp 29–30

196. Submission 3.3.27, p 18

197. Ibid, p 23

198. Document A5, pp [15], [18]

199. Document A56, pp 41–42

200. Ibid, p 42

201. Ibid, pp 42–43

202. Document A7(a), pp 114, 148

in opposition. Ms Owen said that this was a factor in the Crown's decision to endorse the trust board's mandate.²⁰³

On 2 November 2016, Crown officials wrote to those submitters opposing the strategy and invited them to meet to discuss their submissions. The officials met with more than 50 submitters over a week later, and they held teleconferences with those who could not make the hui in person.²⁰⁴ The remaining opposers requested that OTS either remove individual hapū from the mandate or negotiate with hapū cluster groups. Some sought the removal of Wai claims from the mandate or believed that certain claims would miss out due to the large natural grouping policy.²⁰⁵ The trust board's response to these concerns is covered in section 3.4.2.

3.3.3 Analysis

The East Coast Settlement Report found that the Crown had a range of information available to it to inform and alert it to the nature of dissent on the East Coast when drawing up the mandate strategy.²⁰⁶ It also recommended that, in future settlements, the Crown engage with potential opponents of a negotiating mandate early in the process, before public notice of the mandate takes place and submissions are taken.²⁰⁷ Further, in *The Ngātiwai Mandate Inquiry Report*, the Tribunal found that the Crown was obliged to inform itself of the level of support or opposition by hapū to the deed of mandate.²⁰⁸

In this inquiry, we conclude that the Crown did engage with opposition appropriately prior to 'Broadening the Reach', but it later failed to do so, due largely to the speed at which 'Broadening the Reach' came to fruition. Consequently, the Crown did not sufficiently inform itself of the nature of the opposition, regardless of whether it believed it was fully apprised of the extent and nature of that opposition because of the previous Te Kawau Mārō mandating process.

Regarding the outcome of the vote for the trust board's mandate, we agree with Ms Owen's evidence that, while 72.01 per cent in favour is at the low end for the Crown to recognise a deed of mandate, it is still within the acceptable range for mandate recognition.

We agree with Harold Maniapoto that the effect of 'Broadening the Reach' was that the Crown held the trust board to a different standard in comparison with Te Kawau Mārō. Mr Maniapoto believed that, following the receipt of submissions, the Crown's expectation was that Te Kawau Mārō would address the submissions with a 'high level of activity and engagement'.²⁰⁹ Despite being inadequately financially resourced, in the first half of 2015 Te Kawau Mārō conducted up to seven hui face to face with various groups of submitters, a couple of which were facilitated

203. Document A56, p 43

204. Ibid, pp 42–43

205. Ibid, p 44

206. Waitangi Tribunal, *The East Coast Settlement Report*, p 26

207. Ibid, p 32

208. Waitangi Tribunal, *The Ngātiwai Mandate Report* (Wellington: Legislation Direct, 2017), p 54

209. Document A46, p [12]

by the Crown.²¹⁰ The Crown did not expect the trust board to undertake the same level of activity as Te Kawau Mārō. Instead, the Crown took control and accelerated towards mandate recognition, meeting with over 50 submitters in a matter of days, allowing only 20 minutes per meeting, and encouraging those with similar concerns to group themselves together.²¹¹ In this respect, we conclude, similarly to the finding of *The Whakatōhea Mandate Inquiry Report*, that the Crown placed its own political objectives – namely an accelerated settlement for Ngāti Maniapoto – over the interests of a fair, careful, and robust process that sufficiently addressed opposition to the trust board’s mandate.²¹² Despite this, we appreciate that the Crown had reason to believe that opposition was less since the trust board had reached an agreement with the Rereahu trust. However, it was still the Crown’s responsibility to run a fair and careful process. We conclude that the accelerated nature of the process – in particular the absence of a second submissions round – was not fair to the opponents of the trust board’s mandate.

We also acknowledge that, while there is no evidence that the trust board was present at these hui with the Crown and submitters, aside from a hui on 13 November 2016, it did make an effort to meet with dissenting submitters to conduct dialogue independent of the Crown.

3.4 THE CROWN’S RECOGNITION OF THE TRUST BOARD’S DEED OF MANDATE

3.4.1 The positions of the parties

Claimant counsel argued that evidence given in this inquiry by James Mitchell, the settlement and negotiations manager of OTS (now Te Arawhiti), that the claimants would suffer no prejudice because the conditions of settlement would not be finalised until the deed of settlement was signed was both ‘naïve’ and ‘short-sighted’.²¹³ Consequently, they saw the Crown as refusing to acknowledge opposition to the mandate, which continued to exist. By continuing to support the mandate, the Crown was ‘pitting whānau against each other,’ and ‘sadly once old friends are now on opposite sides of the Crown-created fence’.²¹⁴

Furthermore, counsel submitted that, following the signing of the agreement in principle, neither the trust board nor the Crown had engaged with them about the status of their claims in the trust board’s mandate.²¹⁵ The Crown’s actions in recognising that mandate had ‘undermined’ and ‘fractured’ the rangatiratanga, whanaungatanga, and significant relationships between and among all the people of Ngāti Maniapoto.²¹⁶

210. Document A46(a), pp 218–219

211. Document A56(a), p 1486

212. Waitangi Tribunal, *The Whakatōhea Mandate Inquiry Report*, p 43

213. Submission 3.3.17, p 22

214. Ibid, p 28; submission 3.3.23, p 21

215. Submission 3.3.24, pp 30–31

216. Submission 3.3.26, p 28

Regarding the relevance of the findings in *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, counsel argued that the Crown's continued recognition of the trust board's mandate in light of the report was inconsistent with the active protection of hapū rangatiratanga and tikanga.²¹⁷

Crown counsel submitted that the Crown's continued recognition of the trust board's mandate was fair and reasonable because opposition levels were 'not at the level' sufficient to trigger a review of its recognition.²¹⁸ Counsel also argued that *Te Mana Whatu Ahuru* did not 'materially assist the Tribunal in determining the urgency applications' because the findings did not describe how Ngāti Maniapoto hapū organised themselves today or after 1840.²¹⁹ Regarding the report's findings on Ngāti Apakura, the Crown accepted that, following its reading of these findings, its understanding of the relationship between Ngāti Apakura and Ngāti Maniapoto had changed.²²⁰

Counsel for the trust board argued that the level of opposition to its mandate had 'dwindled' over the course of the inquiry and, as such, was not at the level necessary for the Crown to retract its recognition of the mandate. It had maintained an 'open-door policy', seeking to meet with all groups within Ngāti Maniapoto, including the claimants, and a result of this had been positive engagement.²²¹ Regarding *Te Mana Whatu Ahuru*, counsel argued that the Crown's decision to recognise the mandate in light of the report was fair and reasonable.²²²

3.4.2 Recognising and maintaining the trust board's mandate for settlement negotiation

The trust board sent the final deed of mandate to OTS on 5 December 2016, and OTS and Te Puni Kōkiri assessed the deed against their criteria, which included:

- ▶ whether there were accountability processes;
- ▶ whether clear support had been given from the claimant community through an open and transparent process; and
- ▶ whether it defined the claimant community and the historical claims to be settled.²²³

As mentioned in section 3.3.3, the majority vote for the trust board's mandate was considered sufficiently high for ministerial recognition. OTS also believed that the trust board had adequately addressed the issues raised in submissions on the mandate and that the majority support for the mandate was achieved in an open and transparent way. Based on these factors, OTS and Te Puni Kōkiri recommended that Ministers recognise the trust board's mandate. OTS advised that

217. Submission 3.3.23, p 20

218. Submission 3.3.31, p 4

219. Geoffrey Melvin, Crown submissions concerning implications of parts 1 and 2 of *Te Mana Whatu Ahuru*, 3 October 2018 (Wai 2596 R01, submission 3.1.40), p 2

220. Ibid, p 4

221. Submission 3.3.27, p 25

222. Ibid, p 24

223. Document A56, p 45

any remaining opposition mostly related to the settlement policy and that further delaying the recognition of the mandate would ‘undermine [Ngāti] Maniapoto cohesion’, potentially giving a false expectation that OTS would be open to negotiate with more than one entity.²²⁴

Following this advice, Minister Finlayson and Minister Flavell formally recognised the trust board’s mandate on 14 December 2016. Three days later, the terms of negotiation were signed.²²⁵ OTS and Ngāti Maniapoto signed an agreement in principle on 15 August 2017.

In order to address some of the objections arising from the trust board’s mandate submissions process, the trust board created working groups, which included regional claimant clusters, to advise and guide it on certain aspects of the negotiations, including claims and redress.²²⁶ Consequently, clause 16 of the deed of mandate provided for these working groups as a possibility moving forward with the settlement.²²⁷ These groups would have direct access to the negotiation team. Similarly, the Strategic Negotiations Advisory Team was established, whose purpose was to ‘provide strategic direction and leadership on the development and implementation of [the trust board’s] Vision for Settlement by receiving, considering and offering advice in relation to matters referred to it by the Negotiation Team’.²²⁸ The trust board also sought specific input into the negotiations from kaumātua and rangatahi hui.²²⁹ The negotiating team’s protocol outlines the roles, functions, parameters, and guiding principles for the negotiating team, as well as the role of the advisory team. The advisory team comprised 12 or 13 representatives with standing in their respective communities, nine of whom were named claimants representing multiple claims from the Ngāti Maniapoto rohe.²³⁰

Under the terms of negotiation, the trust board is required to provide Crown officials with formal reports on how it is maintaining support for its mandate. Since having the mandate recognised by the Crown, the trust board has provided 10 such reports, covering correspondence relating to the mandate, the hui held, copies of pānui to the claimant community, and updates on membership.²³¹ On receipt of each report, OTS provides a written response. According to Mr Mitchell, OTS made clear on ‘several occasions’ that it expected the trust board to give urgency applicants opportunities to provide input into the negotiations.²³²

The trust board advised OTS that it held three rounds of hui with its community between January and August 2017, both within the rohe and in major centres around the country. The trust board reports indicate that trust board members,

224. Document A56(a), pp 1555–1556

225. Document A56, p 46

226. Ibid, p 44

227. Document A7(a), p 108

228. Document A1(a), p 220

229. Document A57, p 6

230. Ibid, pp 6–7; doc A57(a), p 338

231. Document A57, pp 7–8

232. Ibid, p 8

advisory team members, and the negotiating team attended approximately 37 hui during this period.²³³ Since then, the trust board has conducted two further rounds of hui to discuss post-settlement governance entity models and aspects of redress, and since April 2019 it has engaged with urgency claimants outside of formal mediation in around 15 to 20 hui.²³⁴

As mentioned in section 1.3.2, between 2 February and 14 August 2017, the Waitangi Tribunal received nine applications for an urgent inquiry into the Crown's recognition of the trust board's mandate. In September 2017, the deputy chairperson of the Tribunal, Judge Patrick Savage, asked the urgency claimants to provide evidence of their level of support for the trust board's mandate.²³⁵ The claimants provided the Tribunal with a petition containing 413 signatures.²³⁶ Mr Mitchell gave evidence, however, of some problems with the petitions, including, he claimed, some petitioners signing twice or not giving their full names or hapū and some petitioners being under the age of 18. He also said that there was a lack of clarity over whether some of the petitioners were opposing the trust board's mandate to negotiate with OTS.²³⁷

The Tribunal released parts I and II of *Te Mana Whatu Ahuru* in September 2018 after a request from the Crown and other parties to release sections of the report in pre-publication format to aid the negotiations.²³⁸ Following the report's release, officials from Te Arawhiti (previously OTS) told us that their staff had held workshops on 'its contents and their implications' and had featured its recommendations in most formal negotiation meetings.²³⁹

After the granting of urgency in November 2018, Te Arawhiti considered the possible prejudice to the urgency claimants if it continued to negotiate with the trust board. It decided that the claimants would not be prejudiced if the deed of settlement were signed and therefore a pause would not be necessary. It also considered whether there was a demonstrated high level of support in the claimant community and decided that this was the case. Crown officials noted that the urgency claims represented 'a relatively small proportion' of the 50 iwi and hapū (52 including Ngāti Hikairo and Ngāti Apakura) and the 175 Wai claimants named in the agreement in principle.²⁴⁰

Negotiations between the trust board and Te Arawhiti continued until May 2019, when Te Arawhiti agreed to pause them so that Tribunal-initiated mediation could be carried out between the trust board and the urgency claimants.²⁴¹ Te

233. Ibid, p 9

234. Ibid, p 9

235. Memorandum 2.5.8, p 2

236. Document A35, p 2

237. Ibid

238. Deputy Chief Judge Caren Fox, memorandum confirming discussions and directions at judicial conference, 28 February 2018 (Wai 898 RO1, memo 2.7.14), pp 2–3

239. Document A57, p 20

240. Ibid, pp 11–12

241. Memorandum 3.1.120, p 2; memo 3.1.157, p 1

3.4.3

Arawhiti continued this pause throughout the hearings up until the day before the Tribunal commenced hearing closing submissions for this inquiry in September 2019.²⁴²

3.4.3 Analysis

Maintaining the trust board's mandate and monitoring the level of continued opposition to it is a balancing exercise between those opposing the mandate and the interests of others who supported it. Our inquiry has benefited from a full range of evidence from the parties, enabling us to place the nature of the continued opposition to the mandate in a better context. Consequently, we conclude that the level of continued opposition is relatively modest and mostly confined to certain hapū. In the interests of the majority who voted, we consider that it is reasonable for the Crown to continue to recognise the trust board's mandate. The idea of balancing competing interests is further discussed in section 4.2.8. Some opposition in a mandating process is inevitable, and the Crown cannot be seen as 'pitting whānau against each other' when much of the dispute concerns internal iwi and hapū issues.

The Crown has exercised some patience in pausing the negotiations in 2019 for approximately five months so that the claimants and the trust board can sort out their differences in a mediated environment. From updates provided by the trust board and the Crown, as well as some claimants, this pause has proved useful in providing space to arrive at an agreement on some issues, though many are still outstanding. It appears to us that many of these issues concern redress and that the Crown has resumed negotiations so that they can be resolved. That is understandable. However, the Crown's announcement was ill-timed to coincide with the hearing of closing submissions. Informing the Tribunal and the claimants of this news the evening before closing submissions were held indicates a lack of empathy with the claimants' positions.

The Te Rohe Pōtae Tribunal recommended that the Crown act, 'in conjunction with Te Rohe Pōtae Māori or the mandated settling group or groups in question, to put in place means to give effect to their rangatiratanga.'²⁴³ We consider that the Crown has appropriately considered the giving of effect to hapū rangatiratanga in continuing to recognise the trust board's mandate, specifically regarding its continued support of the trust board's structure, which is discussed further in section 4.1. We discuss the role *Te Mana Whatu Ahuru* had regarding the Crown's interactions with Ngāti Apakura in section 4.2.7.

242. Memorandum 3.2.30, pp 1–2.

243. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version, Parts I and II* (Wellington: Waitangi Tribunal, 2018), p xli

CHAPTER 4

THE DEED OF MANDATE

In the previous chapter, we looked at the Crown's actions in the mandating process from 2013 until mediation began in May 2019.

In this chapter, we consider the claims concerning the Maniapoto Māori Trust Board's deed of mandate. First, we look at allegations that the Crown-recognised mandate did not make adequate allowance for hapū rangatiratanga. We then assess whether it is appropriate to include the various claimant groups to this inquiry within the claimant definition of the mandate. Finally, we consider claims about the remedy mechanisms available under the deed of mandate, particularly the amendment and withdrawal mechanisms.

4.1 HAPŪ RANGATIRATANGA

4.1.1 The positions of the parties

Claimant counsel argued that the deed of mandate was 'a mandate of individuals rather than hapū and whānau'.¹ It did not provide for hapū representation and authority. The marae-based representation structure of the trust board's deed of mandate was not applicable to some hapū because they either had no marae or affiliated to several.² Counsel referred to the text of *Ka Tika ā Muri* as a justification for the Crown to consider a departure from its large natural grouping policy: 'In some circumstances, it may be possible to deal with distinct hapū or whānau interests that are separate from the main tribal claims within a settlement. Distinct recognition for these groups can be part of a wider settlement package.'³

In deciding that Te Kawau Mārō was inadequately representative of hapū, counsel argued that the Crown either 'did not do its homework' or was being 'wilfully ignorant' when it assessed and found the trust board's representative structure preferable.⁴ Counsel argued that, under the Te Kawau Mārō model, the claimants had a voice which enabled them to provide input and that they were informed of

1. Submission 3.3.17, p 25

2. Ibid, pp 28–29; submission 3.3.26, p 40; submission 3.3.24, p 32; submission 3.3.30, p 41

3. Submission 3.3.17, p 29; Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna / Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* (Wellington: Office of Treaty Settlements, 2015), p 39

4. Submission 3.3.17, p 15

4.1.1

what was happening. The claimants alleged that this was not the case under the current trust board model.⁵

Counsel submitted that the voice of hapū carried ‘considerably more influence’ in the Te Kawau Mārō structure than in the trust board structure, as decision-making was done on a consensus basis through regional representatives.⁶ By contrast, counsel argued that the trust board’s mandate prevented hapū from exercising rangatiratanga and extinguished their rights to decide who they wanted to represent them.⁷ Specifically, the trust board structure did not allow for the sufficient exercise of hapū rangatiratanga in ‘the working of its accountability mechanisms.’⁸

Counsel further argued that the Strategic Negotiations Advisory Team failed to adequately address their opposition or to represent them in the trust board structure.⁹ Despite the Crown and the trust board pointing to the advisory team as the vehicle for hapū involvement, the claimants submitted that they had not had any input to the team.¹⁰

Crown counsel submitted that the trust board’s deed of mandate did not ‘provide for hapū specifically/expressly’, just as those drafted under Te Kawau Mārō did not.¹¹ Instead, counsel argued, the mandate structure was reflective of the way in which Ngāti Maniapoto whānau, hapū, and iwi chose to organise themselves. Subsequently,

it appears that [the trust board] then and now, and [the strategy steering group] and [Te Kawau Mārō] then (if not now) agreed that hapū are a central identification and unit of political operation within [Ngāti] Maniapoto but that explicit provision for this was not required in the structuring of its mandate body.¹²

Therefore, in those circumstances, the Crown submitted that the trust board’s mandate did appropriately provide for hapū rangatiratanga to the extent considered necessary, which fell short of explicit provision. In addition, counsel argued that hapū rangatiratanga was not a significant concern in the submissions opposing the trust board’s mandate. If it had been, those assessing the mandate ‘would have considered it.’¹³

Counsel for the trust board submitted that its structure enabled hapū to have a prominent role in Ngāti Maniapoto decision-making, while also reflecting the importance of marae and kotahitanga.¹⁴ Counsel noted that, while this structure

5. Submission 3.3.24, p 12

6. Submission 3.3.22, pp 18–19

7. Submission 3.3.25, p 37

8. Submission 3.3.26, p 39

9. Submission 3.3.24, p 32

10. Submission 3.3.23, p 22

11. Submission 3.3.31, p 45

12. Ibid, p 46

13. Ibid, p 46

14. Submission 3.3.27, p 25

was ‘not unconscious or indifferent to the role of hapū in decision making, as hapū are represented through marae’, it recognised that ‘hapū are not necessarily the primary authority through which decisions are made [for the iwi]’.¹⁵ Counsel stated that the trust board had undertaken a ‘robust engagement process’, which contained ample opportunity for claimants, hapū, and whānau to participate meaningfully in the negotiations.¹⁶ Counsel also noted that a degree of pragmatism was necessary in balancing the representation of interests in settlement negotiations. Counsel submitted that a structure providing trustee positions for all 54 ‘active hapū’ listed in the trust board’s deed of mandate was not suitable for Ngāti Maniapoto and did not reflect how Ngāti Maniapoto had traditionally acted.¹⁷

-4.1.2 The structure of the Maniapoto Māori Trust Board

In accordance with the Maori Trust Boards Act 1955, section 6 of the Maniapoto Maori Trust Board Act 1988, and the Maori Trust Board Regulations 1985, the Maniapoto Māori Trust Board consists of 15 trustees. This number comprises:

- seven trustees appointed by the seven trust board regional management committees (RMCs);
- six trustees elected by those eligible to vote if on the trust board tribal register or via a special vote;
- one trustee appointed by the Kaumātua Kaunihera o Maniapoto; and,
- one trustee appointed by Kīngi Tuheitia.¹⁸

The trust board is weighted slightly towards representatives of 54 constituent marae, grouped into seven RMCs: Rereahu, Mōkau ki Runga, Hauauru ki Uta, Te Tokanganui-ā-noho, Nehenehenui, Ngā Tai ō Kawhia, and Tuhua Hikurangi. Each RMC is made up of two representatives from each marae in the region. The RMCs then appoint one representative to the trust board.¹⁹ Multiple hapū may and do affiliate to marae contained in the RMCs. However, there is no direct representation for hapū. According to Keith Ikin, hapū have a voice in this structure to the extent that hapū are engaged with their marae or individuals that vote for general representatives.²⁰ Mr Ikin elaborated on how marae are central to the structure of the trust board and Ngāti Maniapoto decision-making:

Our whanau, hapu and marae are inter-connected but it is through our marae that we organise our hui, structure our representation, make our decisions. This is not to diminish the importance of hapu within Maniapoto. Instead it reflects the practice of our old people that the marae was the focal point of iwi and hapu decision making, with some marae belonging to multiple hapu. It is a practice which is consistent with the highly dynamic nature of Maniapoto hapu throughout history.²¹

15. Ibid, p 4

16. Ibid, p 26

17. Ibid, pp 17–18

18. Document A7(a), pp 102–103

19. Document A5, pp [3]–[4]

20. Ibid, p [4]

21. Document A61, p [4]

Emily Owen also noted the Crown's view that the trust board, though not primarily a hapū-based organisation, reasonably provided for hapū involvement through its marae-based representative system.²²

As mentioned in section 3.4.2, the trust board structure has an additional body known as the Strategic Negotiations Advisory Team among other working groups that focus on various aspects of the negotiation process (like historical research and operations).²³ James Mitchell believed that advisory team members had engaged widely with the claimant community, having attended multiple hui in the lead-up to the agreement in principle.²⁴ In hearing, Mr Ikin said that the advisory team was not a specifically hapū representative structure; rather, representation was by region of knowledge-holders who have 'a broad knowledge across the whole of [the] rohe and bring different additional knowledge sets to advise the [trust board] in terms of the [negotiation] process'.²⁵ They may hold knowledge about local areas, history, whakapapa, the impact of Crown actions, and settlement processes. Eric Crown said in hearing that, if those on the advisory team did not have the requisite knowledge, then it was up to them to make the relevant links with people who did have the knowledge.²⁶

Paul Meredith, a Ngāti Maniapoto researcher, explained that 'the dominant wider group identity for the rohe post European time' had by far been Ngāti Maniapoto as an iwi.²⁷ He referenced the history of Ngāti Maniapoto-affiliated peoples working together, as evidenced by the 1904 accord known as Te Kawenata. Te Kawenata thus spoke to 'the unity of the tribe amidst concerns of division: "ko tenei kotahitanga mo Ngāti Maniapoto ake me ona hapu maha", or this unity for Ngāti Maniapoto proper and its many subtribes'.²⁸ Mr Meredith noted that Te Kawenata acknowledged both iwi and hapū but recognised unity as central to the well-being and prosperity of Ngāti Maniapoto as a people.

Where the structure of the trust board revolves around regional groupings, the structure of Te Kawau Mārō revolved around representatives of regional Wai claimant clusters and operated on a haukāinga population basis. Te Kawau Mārō comprised 17 representative members divided up as follows:

- ▶ two from the trust board;
- ▶ two from Maniapoto ki te Raki;
- ▶ two from Maniapoto ki te Tonga;
- ▶ two from the Te Hauauru Claims Collective;

22. Document A7, p 19

23. Document A57, p 6

24. Ibid, p 7

25. Transcript 4.1.2, p 351

26. Transcript 4.1.1, p 226

27. Document A60, p [12]

28. Ibid, p [23]. A translation of Te Kawenata on the Maniapoto Māori Trust Board website renders this phrase as, 'The Accord is of and for Ngāti Maniapoto and its many hapū': 'The "Kawenata" of Ngāti Maniapoto and its Many Hapū', PDF file, no date, <https://www.maniapoto.iwi.nz/wp-content/uploads/2016/10/Ko-Te-Kawenata-English-Translation.pdf>, p 1, accessed 11 November 2019.

- two from Maniapoto ki te Rohe Tuhua;
- two from the Rereahu Wai claim region;
- two from Ngāti Apakura (taurahere seats); and
- three from Te Kaumātua Kaunihera o Maniapoto.²⁹

Harold Maniapoto explained that the structure of Te Kawau Mārō embodied mana whakahaere and all the representatives had been elected to it by hapū for the purpose of seeking the mandate to negotiate Ngāti Maniapoto's historical claims.³⁰ He emphasised that Te Kawau Mārō's decision-making was in accordance with Ngāti Maniapoto tikanga in the sense that, '[w]hen a person turns up to a hui to make decisions, there is an understanding that they are not doing so of their own accord, but have been directed by the hapū to do so.'³¹ Te Kawau Mārō representatives were required to report back to their hapū communities on 'not less than a monthly basis' to seek feedback on 'all current and prospective matters'.³²

4.1.3 Analysis

Referring to the Pakakohi and Tangahoe settlement claims inquiry, the Ngāpuhi Mandate Tribunal found that a joint marae and hapū structure for achieving a mandate was 'fundamentally sound': 'The Tribunal considered that local marae were the best place to look to in matters of customary authority and commended a "bottom up" process of hui on marae to generate support for the mandate.'³³

The Tribunal also found that the Tūhoronuku Independent Mandated Authority's deed of mandate privileged individuals over hapū. This was inconsistent with their tikanga and, as such, hapū were not enabled to make a decision to stand outside the structure and pursue their claims using the leadership they approved.³⁴

The Ngātiwai Mandate Tribunal also found that, in the circumstances of Ngātiwai, the Ngātiwai Trust Board had an internal consultation process with the Crown over the deed of mandate that did not take into account or protect the tikanga and rangatiratanga of affected hapū.³⁵ The Tribunal did not accept that the marae acted as 'proxy for hapū' in mandate matters and there was 'no evidence to suggest that marae committees or board trustees elected by the marae have any authority to make decisions or speak for hapū on matters involving settlement of Treaty claims'.³⁶ Furthermore, the Tribunal said with regard to advisory bodies:

29. Document A5, p [8]. We received several documents that pointed to the number of representatives on Te Kawau Mārō ranging from 16 to 18.

30. Document A46, pp [11]–[12]

31. Ibid, p [9]

32. Ibid, p [11]

33. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report* (Wellington: Legislation Direct, 2017), p 24

34. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report* (Wellington: Legislation Direct, 2015), p 74

35. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report*, p 41

36. Ibid, p 47

‘Providing opportunities for hapū, as a particular class of interest to advise on issues of relevance and importance to them, is not the same as providing representation and accountability to those hapū that wish to be so represented.’³⁷

On the matter of the trust board in Ngātiwai operating under a ‘marae-based structure’, *The Ngātiwai Mandate Inquiry Report* said:

Marae provide a place from which members of Ngātiwai elect people who will represent Ngātiwai. This distinction is important. If trustees do not represent the particular interests of their marae, they cannot represent their hapū . . . and in particular shared hapū, from making decisions and maintaining whanaungatanga relationships when it comes to Treaty negotiations.³⁸

By contrast, we accept Mr Ikin’s evidence that the central position of marae in the trust board structure reflects their status as a focal point of decision-making for the iwi and hapū of Ngāti Maniapoto. Therefore, it is appropriate that marae have a prominent role in the structure of the mandated entity.

Here, it is clear to us that, although the trust board structure does not contain explicit provision for hapū representation, it is sufficiently broad to ensure involvement of a wide cross-section of the iwi. This is through the trust board’s structure, including the RMCS, general or ‘peer’ representatives, and a Kaumātua Kaunihera representative. The trust board provides a model that balances the interests of all groups whilst ensuring that the hapū voice still comes through. Those individuals of hapū who are not represented through a marae in the RMCS can vote and therefore claim representation through the general representatives. In summary, the trust board has appropriately weighted its structure towards haukāinga through the RMCS, despite approximately 90 per cent of individuals on the Ngāti Maniapoto tribal register living outside the rohe. This embracing of marae-based representation is consistent with a long-standing tradition of Ngāti Maniapoto coming together at certain points in their history.

In relation to the advisory team, our view is that the hapū representation on that group is for technical and advisory purposes, that it is not intended to be a decisive voice for hapū within the mandate structure, and that it should not be viewed as such. This is consistent with the finding in *The Ngātiwai Mandate Inquiry Report* in relation to a similar group. The difference between that situation and the mandate we are examining in this inquiry is that the Ngātiwai Tribunal concluded that the mandate structure did not provide adequately for the rangatiratanga of hapū, whereas in this inquiry we have concluded that the mandate structure does provide for hapū rangatiratanga. Here, we also note the finding in *The Pakakohi and Tangahoe Settlement Claims Report* that, if claimants do not have an affiliated marae, then it is incumbent on them to produce evidence of a ‘ground swell’ of

37. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report*, p 48

38. Ibid, p 50

non-marae-based support to justify their decision to stand apart.³⁹ In the present inquiry, the claimants did not provide such evidence.

Therefore, we conclude that the trust board's structure appropriately reflects Ngāti Maniapoto decision-making. However, we do consider it rather conspicuous for the Crown to place its full support behind the trust board's structure being representative of hapū because there is a lack of explicit provision for hapū. Here, we draw a comparison to the Crown's persistent concerns around Te Kawau Mārō's structure, which was equally silent on how hapū were represented.

As the structure of Te Kawau Mārō similarly lacked explicit evidence that it provided a greater allowance for hapū representation, we do not find the claimants' argument that Te Kawau Mārō was more reflective of mana whakahaere than the trust board convincing. It appears to us that the argument that Te Kawau Mārō's structure enabled hapū rangatiratanga has been retrofitted in order to justify its suitability to seek the mandate. However, a mandate does not necessarily have to provide for hapū rangatiratanga. The negotiating body must be willing to provide for hapū to be represented in its decision-making in accordance with its tikanga. In this case, we conclude that the trust board is prepared to do that and has the necessary rangatiratanga to do so, especially considering its involvement in the Waipā River and fisheries settlements. The Ngāpuhi Tribunal recognised that the duty of active protection can apply to a variety of political or organisational structures representing Māori interests, such as iwi, councils, trusts, and hapū, depending on the circumstances of the case.⁴⁰ Thus, we do not accept that the trust board, as a statutory body, is less capable of embodying rangatiratanga and mana whakahaere than Te Kawau Mārō.

We consider it problematic that the claimants would oppose the trust board's mandate on the basis of whakapapa. Te Kawau Mārō was established with the purpose of seeking the mandate for the whole of Ngāti Maniapoto, just as the trust board is set to do. In this sense, we think that the claimants cannot justifiably change their position on which entity appropriately represents them, in this case Te Kawau Mārō, on the basis of whakapapa, because both entities are claiming to represent the same group of people. The claimants' assertions of not identifying with Ngāti Maniapoto whakapapa now that their claims will be settled under the trust board therefore appear contradictory. This issue also goes to the heart of the claimants' consent to their inclusion in the mandate, which is the subject of the next section and will be discussed in more detail there.

4.2 THE CLAIMANT DEFINITION

The claimant definition in a deed of mandate describes the group whose claims will be settled through negotiation between the mandated entity and the Crown. Clause 1 of the trust board's deed of mandate defines Ngāti Maniapoto 'for the

39. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 65

40. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 23

purpose of Treaty settlement negotiations’ as ‘the collective group of individuals who descend from the ancestors named [in the deed of mandate], or any recognised ancestor of the [54 hapū and iwi] listed in [clause] 2 of this document.’⁴¹

Mr Meredith drafted the trust board’s deed of mandate claimant definition, taking his lead from Te Kawenata. He has stated in evidence that the definition acknowledged both iwi and hapū whilst reminding the people that their wellbeing and prosperity would flourish if they were united and maintained their Ngāti Maniapoto identity and traditions.⁴² A non-exhaustive list of 54 hapū is included in clause 2 of the mandate, which was sourced from the 2008 terms of agreement for the Ngā Wai o Maniapoto process. Several hapū are highlighted as distinct hapū within Te Rohe Pōtae, including Ngāti Hikairo, Ngāti Apakura, and Ngāti Hinemihi ki Petania. There is also a recognition that ‘hundreds of traditional [Ngāti] Maniapoto hapū’ were not listed because they were not considered active.⁴³

The claimant definition begins with a brief description of Te Kawenata o Maniapoto, which was drafted by Ngāti Maniapoto rangatira in 1904. As described in *Te Mana Whatu Ahuru*, Te Kawenata was signed following the Crown’s assertion of practical authority in Te Rohe Pōtae.⁴⁴ Reflecting Māori’s understanding of their own authority and that of the Queen at the time, Te Kawenata expresses an understanding of kāwanatanga as a protective power, both in respect of mana and in the possession of lands and resources. A co-existence of the Queen’s authority and Māori mana was envisioned, whereby Māori mana could be placed ‘under’ the Queen’s protection.

Te Kawenata also speaks of the unity of Ngāti Maniapoto and their hapū, as well as Te Nehenehenui as the shelter or whare for these groups. The associated Te Nehenehenui document talks of the pū tūpuna, or founding ancestors of the iwi, and how the ancestor Maniapoto ‘became the mana’ and the name for the iwi and the descendants of his father, Rereahu:

Ka moe a Rereahu i a Rangianewa, ka puta ko Te Ihingarangi. Ko Rereahu ano ka moe i a Hineapounamu, ka puta ko Maniapoto, i muri ko Matakore, ko Tuwhakahekeao, ko Turongotapuarau, ko Kahuariari, ko Kinohaku, ko Te Rongorito. (Rereahu married Rangianewa and begat Te Ihingarangi. Rereahu then married Hineapounamu and begat Maniapoto, followed by Matakore, Tuwhakahekeao, Turongotapuarau, Kahuariari, Kinohaku and Te Rongorito.)⁴⁵

Te Io Wānanga, widely considered a child of Rereahu and younger sibling of Maniapoto, was added to the claimant definition. Maniapoto is said to have received mana whatu ahuru, or ‘the sunifier of the tribes and subtribes under the leaders over the many past generations’. The deed of mandate explains that this

41. Document A5(a), p 4

42. Document A60, p 23

43. Document A7(a), pp 98–99

44. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims – Pre-publication Version, Parts I and II* (Wellington: Waitangi Tribunal, 2018), p 168

45. Document A7(a), p 97

mana was bestowed upon Maniapoto by Rereahu because Maniapoto displayed the requisite leadership qualities and, with the support of his siblings, upheld that mana amongst the people. The tribe is called Ngāti Maniapoto because the mana of Maniapoto is encompassed in his siblings, their descendants, and those descendants of Hia and Raka through marriage:

Na runga i te rironga o te mana o Rereahu i a Maniapoto me tona kaha ki te hapai i te iwi me tona rangatiratanga apiti ki te toputanga o ana teina ki te hapai i taua mana tae iho iho ki te karapitanga o ratou uri ko ana tuakana me ana teina, tuahine, me nga uri o Hia me Raka i runga i te moemoenga, ka uhi te mana o Maniapoto ki runga i a ratou katoa.⁴⁶

In the following subsections, we discuss and analyse the evidence of specific claimants regarding whether they should be included in the deed of mandate and whether it is appropriate that they be included without their consent. Regarding Ngāti Apakura, we discuss whether the Crown's position in relation to their exclusion and then re-inclusion in the deed of mandate was fair and reasonable.

Also relevant to our discussions below are several previous Tribunal findings that we take into consideration across all the different claimant arguments regarding the claimant definition. *The Tāmaki Makaurau Settlement Process Report* said that, while Crown officials are not expected to be experts in whakapapa, they need to have engaged with enough Māori knowledge to understand nuances regarding where people are from and why groups differ from one another.⁴⁷ Accordingly, *The Ngātiwai Mandate Inquiry Report* said that it is 'both desirable and necessary' that robust research is undertaken on the claimant definition before a mandate is sought.⁴⁸ *The East Coast Settlement Report* said that 'the Tribunal does not, in general, make judgements on matters of identity'.⁴⁹

At the outset of this discussion, we acknowledge the issues raised in the claimants' closing submissions about their ability to seek specific redress that is deeply significant to them. However, we reiterate that this inquiry is solely focused on the Crown's actions in the mandating process and the adequacy of the deed of mandate as it currently stands. Therefore, issues concerning specific redress are outside the scope of this inquiry and should instead form part of the negotiations between the mandated entity, the claimants, and the Crown.

4.2.1 Ngāti Paretāpoto

4.2.1.1 *The positions of the parties*

Counsel for the Ngāti Paretāpoto claimants (Wai 2611) submitted that they should never have been included in the trust board's mandate as they whakapapa not to

46. Ibid

47. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 109

48. Waitangi Tribunal, *The Ngātiwai Mandate Report*, p 43

49. Waitangi Tribunal, *The East Coast Settlement Report* (Wellington: Legislation Direct, 2010), p 62

4.2.1.2

Ngāti Maniapoto but rather to the father, Rereahu, via his first son, Te Ihingārangi, and continuing to Kahatuatini and Paretāpoto.⁵⁰ Their argument continued twofold: that the Crown had subsequently enforced a ‘falsehood of whakapapa’ that had delegitimised the true identity of Ngāti Paretāpoto and that it was not for the trust board nor the Crown to define the hapū – only they could do that for themselves, in accordance with hapū autonomy.⁵¹ The claimants sought a recommendation that the hapū be removed from the mandate.

While the Crown did not directly address the claims of Ngāti Paretāpoto, Crown counsel submitted that, whether Ngāti Maniapoto included the descendants of Maniapoto’s father was not a matter that the Crown or the Tribunal could resolve but an internal dispute within Ngāti Maniapoto.⁵²

4.2.1.2 Background

Hardie Peni gave evidence that Ngāti Paretāpoto came from a direct line from Rereahu via his first son, Te Ihingārangi (Maniapoto’s elder brother born to a previous wife). From Te Ihingārangi, the line continues to Kahatuatini and then to Ngāti Paretāpoto. Mr Peni said:

it is true to say that everyone who is [Ngāti] Maniapoto is also Ngāti Rereahu, by virtue of their whakapapa. It is not conversely true though that everyone who is Ngāti Rereahu is also Ngāti Maniapoto – it is possible to have [Ngāti] Rereahu whakapapa independently of [Ngāti] Maniapoto . . .⁵³

Mr Peni said that, despite a ‘strong emphasis’ on the Ngāti Maniapoto whakapapa line throughout Te Rohe Pōtae today, some people still retain their identity as Ngāti Rereahu through Maniapoto’s siblings, Te Ihingārangi and Tuwhakahekeao.⁵⁴

The traditional tribal boundary of Ngāti Paretāpoto is within the Mai Rangitoto ki Tuhua region, known as the ‘Lands of Rereahu’. The hapū affiliates to Te Ahoroa Marae and Ko te Hokinga Mai ki te Nehenehenui (Otewa) Marae within its tribal boundary.⁵⁵ Lorraine Anderson described how, due to her tupuna Komanga and his sons, ‘I can confidently state that our people are ahikāroa to the whenua of Te Nehenehenui, also known as Otewa; mai Rangitoto ki Tuhua.’⁵⁶ Other evidence she pointed to showing affiliation to Ngāti Paretāpoto included her father’s carved tekoteko, which he named Hautangirua after Paretāpoto’s husband, various whānau named after Hautangirua and Paretāpoto, a tekoteko called Kahatuatini and a female figurine called Paretāpoto at Otewa Marae, and Ngāti Paretāpoto listed in a 1960 *Gazette* notice as having tribal affiliations to Otewa Marae.⁵⁷ Also

50. Submission 3.3.23, p 24

51. Ibid, p 25

52. Submission 3.3.6, pp 5–6

53. Document A39, p 13

54. Ibid

55. Document A4, p 2

56. Document A38, p [4]

57. Ibid, pp [4]–[5]

in Mr Peni's evidence was a photo of a marae constructed by the late Canon Rua Anderson, a respected Ngāti Maniapoto knowledge-holder, in 1975. The marae was called Teohaotuoroa and 'depicted the philosophy of our Hapu claim 20 years before it formed: "Ko Rereahu te Matua, Ko Te Ihingarangi te Tuakana, Ko Maniapoto te Mana"',⁵⁸

In evidence on behalf of the trust board, Mr Meredith asserted that Ngāti Paretāpoto had 'historically been regarded as a hapū of Ngāti Maniapoto'.⁵⁹ In support of this claim, he cited a 1992 interview given by the Reverend Canon Anderson in which Anderson made several references to the relationship between Ngāti Maniapoto and Ngāti Paretāpoto, including a description of Otewa Marae as sitting within "tenei rohe i roto i a Maniapoto, i a Ngāti Maniapoto me ōna karangatanga maha" (this area within Maniapoto, Ngāti Maniapoto and its many divisions).⁶⁰ Anderson also gave his whakapapa 'commencing with Hoturoa through to Rereahu, then via his first son Te Ihingarangi, then through to Kahatuatini, then Paretāpoto and then down to himself Te Rua o ngā Haora'.⁶¹ Finally, to support the inclusion of the Rangitoto–Tuhua region within the deed of mandate's area of interest, Mr Meredith cited a map of Ngāti Maniapoto tribal boundaries produced by Pei Te Hurinui Jones.

4.2.1.3 Analysis

In response to Mr Meredith's evidence, Ms Anderson provided further context around her father's 1992 interview. She stressed that, at that time, he held the position of Te Mauri o Maniapoto – the Ngāti Maniapoto Kaumātua Kaunihera elected representative to the trust board. Therefore, it was logical that he emphasised the connection that Ngāti Paretāpoto had with Ngāti Maniapoto. She argued:

If our research team had established four years earlier than it did; it is my belief that his korero would have emphasised different historical aspects of the region. Meredith has selected quotes that suit his contractual objectives. However they are out of context in terms of understanding the interviewee's position regarding treaty land claims.⁶²

Ms Anderson further claimed that Canon Anderson had to balance his dual public roles of Te Mauri o Maniapoto and clergyman. Consequently, this meant that he was 'politically correct' in his interactions with iwi members and in representing Ngāti Maniapoto in various public settings.⁶³ In private, however, he aggressively pursued specific rights of his tūpuna. Anderson recognised the 'divisions' between descendants of Maniapoto and Te Ihingarangi, and he 'employed

58. Document A39(a), p 3

59. Document A60, p [3]

60. Ibid

61. Ibid, p [4]

62. Document A38(b), pp [2]–[3]

63. Ibid, p [4]

4.2.2

skills of diplomacy’ when interacting with Ngāti Rereahu kaumātua as someone who represented Ngāti Maniapoto.

In light of this evidence, we acknowledge that the whakapapa that individuals have identified in this inquiry is deeply personal and frequently defined by a complexity of relationships. This is especially so given the evidence presented to us of some individuals identifying more closely to Te Ihingārangi and Rereahu, encapsulated by the pepeha associated with Teohaotuoroa Marae. This philosophy not only shows the prominence of Rereahu and Te Ihingārangi to some individuals from Ngāti Paretāpoto but also expresses the mana of Maniapoto. Our view is that the complex relationships expressed in the pepeha are similar to those expressed in the claimant definition. Nonetheless, we must adhere to the scope of the Tribunal’s functions. In this case, we think it is inappropriate for us to reach a conclusion on the claimants’ whakapapa. That is a personal aspect of identity that only the claimants can have authority to determine.

However, taking on board our conclusion in section 4.1.3 regarding the claimants’ contradictory argument of refusing to support the trust board on the basis of whakapapa when Te Kawau Mārō also claimed to represent the entirety of Ngāti Maniapoto, we conclude that Ngāti Paretāpoto should be included in the trust board’s mandate as a matter of principle.

4.2.2 Te Ihingārangi

4.2.2.1 *The positions of the parties*

Counsel for the Te Ihingārangi claimants (Wai 2614) submitted that the Crown had ignored the ‘prolonged and active calls’ for Ngāti Rereahu to negotiate its own comprehensive settlement with the Crown and that, by extension, this affected Te Ihingārangi due to their close connection.⁶⁴

Counsel argued that the 1904 Te Kawenata was of ‘little significance’ to Ngāti Rereahu and Te Ihingārangi today because none of the tūpuna from the two groups had signed it.⁶⁵ Furthermore, counsel submitted that Mr Meredith did not talk to the people of Ngāti Rereahu or Te Ihingārangi about their histories before he drafted the claimant definition and that, consequently, the definition was a ‘Ngāti Maniapoto-centric view of the world’ that failed to acknowledge the independent identity of Te Ihingārangi.⁶⁶ Counsel argued that Te Ihingārangi were not a hapū of Ngāti Maniapoto and never had been.⁶⁷

Counsel stated that the two brothers shared an equal and autonomous status (an understanding deriving from Te Ihingārangi’s kōrero tuku iho regarding their tūpuna).⁶⁸ In the claimants’ view, ‘this whakapapa and tikanga of Te Ihingārangi has not been acknowledged nor catered for in the mandate and negotiation structure’.⁶⁹

64. Submission 3.3.30, p 12

65. Ibid, p 24

66. Ibid, p 25

67. Ibid, p 29

68. Submission 3.3.9, p 3

69. Ibid

Again, while the Crown did not directly address the claims of Te Ihingārangi, Crown counsel submitted that whether Ngāti Maniapoto included the descendants of Maniapoto's father was not a matter the Crown or the Tribunal could resolve but an internal dispute within Ngāti Maniapoto.⁷⁰

4.2.2.2 Background

Antonio Tipene described the whakapapa of Te Ihingārangi in detail. Turongo married Māhinārangi, and together they had Raukawa. Raukawa married Tūrongoihi, and they had Rereahu. Rereahu married Rangianewa, who was the daughter of Tamaio, granddaughter of Uenuku Te Rangihōkā, and great-granddaughter of Whatihua. Rereahu and Rangianewa gave birth to their only child together, Te Ihingārangi.⁷¹

Whatihua's other son, Uenuku Tūwhatu, had Tuatangiroa. Tuatangiroa married Pakururangi and together they had Hineaupounamu, who ended up being Rereahu's second wife. Rereahu and Hineaupounamu gave birth to Maniapoto and Tuwhakahekeao.⁷² The age gap between Te Ihingārangi and his half-brother, Maniapoto, is estimated to be more than 40 years.

Mr Tipene emphasised that, because Te Ihingārangi was the mātāmua, or first born, he had a distinct identity to Maniapoto and should not be considered a descendant of Maniapoto. Consequently, Te Ihingārangi should not be seen as a hapū of Ngāti Maniapoto and to suggest so was an 'insult'. He went on to say, '[t]he brothers were both equal in their status and we do not want this insult to be carried forward both amongst our people and any official documentation.'⁷³ In this sense, Te Ihingārangi were willing to work alongside Ngāti Maniapoto but not under them.

In contrast to this evidence, Mr Meredith said that, whilst it was not stated explicitly, a reader of the trust board's deed of mandate 'should be able to recognise that Te Ihingārangi is the tuakana or elder sibling to Maniapoto and others'.⁷⁴ In this way, Ngāti Maniapoto have always acknowledged Te Ihingārangi as the tuakana. He also noted that the deed of mandate re-emphasised the 'widely accepted history' within Ngāti Maniapoto that Rereahu passed his mana, mana whatu ahuru, to Maniapoto. However, the deed of mandate did not recount the conflict between Te Ihingārangi and Maniapoto, which had long been a topic of debate among the iwi.

Mr Meredith believed that Te Ihingārangi maintained a distinct identity as Ngāti Te Ihingārangi around the Waimiha–Tūhua region, although this identity was within the wider Ngāti Maniapoto tribal and geographical landscape.⁷⁵ Although he acknowledged flexibility within te ao Māori regarding the status of

70. Submission 3.3.6, p 6

71. Document A50, p 2

72. Ibid, pp 2–4

73. Ibid, p 5

74. Document A60, p [5]

75. Ibid, p [9]

4.2.2.3

identification, he maintained that, historically, Ngāti Rereahu was ‘a significant hapū of a larger Ngāti Maniapoto identity’.⁷⁶

4.2.2.3 Analysis

Darron Te Reti responded to Mr Meredith’s evidence about what was actually bestowed upon Maniapoto by Rereahu. Maniapoto did not receive mana whenua from Rereahu; he was given the mana to lead his people. Therefore, Te Ihingārangi ‘held and maintained mana whenua over his lands through his whakapapa to his mother Te Rangiānewa, and to ignore this fact was a ‘misapplication of tikanga’.⁷⁷

We consider that the evidence tends to support Te Ihingārangi being more closely aligned with Ngāti Rereahu than Ngāti Maniapoto. Our reasoning for this is further highlighted by Mr Meredith’s assertion that the ambit of Ngāti Maniapoto tikanga means that the iwi can recognise Ngāti Rereahu as an iwi in itself because hapū and iwi identities are not fixed in time. In this case, we think that this approach is appropriate.

Further, Mr Meredith utilised some self-acknowledged ‘crude’ methodologies to try to substantiate that Ngāti Rereahu was very rarely referred to as an iwi historically. These methodologies included, for example, a basic quantitative reading of search results on the ‘Papers Past’ website.⁷⁸ Regardless of other well-utilised methodologies employed by Mr Meredith, such as looking at electoral rolls, we consider the weight of oral evidence from the claimants to be more convincing in this case.

However, we say this with the same caveat that we will not determine the whakapapa of Te Ihingārangi and how this may justify their inclusion in the trust board’s mandate. Our analysis merely shows that there is a case for Te Ihingārangi to align more closely with Ngāti Rereahu rather than Ngāti Maniapoto. As such, we conclude that Te Ihingārangi should be included in the trust board’s mandate, although there should be scope for the hapū to combine with Ngāti Rereahu in any prospective post-settlement governance entity because of its closer affiliation to Ngāti Rereahu. This conclusion is consistent with Mr Te Reti’s evidence that, whereas Maniapoto held the mana, Te Ihingārangi retained the mana whenua over his lands.

4.2.3 Ngāti Paia**4.2.3.1 The positions of the parties**

Counsel for the Ngāti Paia claimants (Wai 2621) argued that the interests of Ngāti Paia had been ‘subsumed by those of the iwi’, represented through the trust board, and as such the hapū had effectively been left ‘voiceless’ because ‘they do not whakapapa to [Ngāti] Maniapoto, do not have a marae and are not registered with the [trust board]’.⁷⁹ Counsel submitted: ‘To force them under the [Ngāti]

76. Document A60, p [11]

77. Document A16, p [3]

78. Document A60, p [12]

79. Submission 3.3.24, p 3

Maniapoto umbrella is to deny the mana handed down to their hapū under Whaita to Paia . . . [and] invisibilises them.’⁸⁰

Counsel argued that Mr Meredith’s assertions regarding Ngāti Paia whakapapa were incorrect because he relied heavily on Wayne Taitoko’s commissioned report and, in writing the report, Mr Taitoko never spoke to the nominated knowledge-keepers of Ngāti Paia. According to the claimants, this report was not approved by the Wipaea Manu Trust and was unknowingly attached to June Elliot’s brief of evidence in the Te Rohe Pōtae district inquiry.⁸¹ The Wai claims of Ngāti Paia were included in both the trust board’s mandate and the agreement in principle, but this had been done, counsel argued, ‘with only a cursory look at their whakapapa and without their consent’.⁸² Counsel submitted that, in operating collectively, the claimants wished to do so with hapū from the same geographical region they had been working alongside for generations.⁸³

Crown counsel argued that Ngāti Paia met the threshold for inclusion as shared hapū of Ngāti Maniapoto through one of their whakapapa lines.⁸⁴ Regarding the use of Mr Taitoko’s report as confirming the status of Ngāti Paia, counsel pointed to Ms Elliot’s acknowledgement that, for some Ngāti Paia individuals, the report ‘clarified a lot of their desires’ despite its inaccuracy. Counsel also noted that the parts of *Tē Mana Whatu Ahuru* released so far contained few references to Ngāti Paia.⁸⁵

4.2.3.2 Background

Ngāti Paia fall under the Maniapoto ki te Raki cluster established in the early stages of the Te Rohe Pōtae district inquiry to help meet the Crown Forestry Rental Trust’s participation requirements. As the claimants and their tūpuna had experienced similar trauma in the same geographical area, their claims all related to the land and public works takings around Tokanui Hospital and Waikeria Prison.⁸⁶ Subsequently, the cluster presented extensive evidence in the district inquiry on the interrelationships between various groups in the rohe, raupatu, and public works takings.

Both Gordon and John Thomson said that Ngāti Paia had always been a ‘highly autonomous hapū’ from northern Te Rohe Pōtae, on lands originally held by their tūpuna, Whaita. Whaita’s mana began on these lands, which included the Te Awamutu, Kihikihi, and Pokuru blocks, following the expulsion and ‘near total extermination’ of the original inhabitants, Kahupungapunga, after the murder of Whaita’s sister, Koroukore, at the hands of her husband, Parahore.⁸⁷ Ngāti Paia used this kōrero to justify their distinct identity.

80. Ibid, p 5

81. Ibid, p 7

82. Ibid, p 8

83. Ibid, p 10

84. Submission 3.3.31, p 51

85. Ibid

86. Transcript 4.1.1, p 402; submission 3.3.24, p 10

87. Document A45, p 2

4.2.3.3

Following Whaita's death, his mana and lands were inherited by his sons, Huiao and Ngutu. Following Huiao's death, Ngutu also inherited his brother's lands. Ngutu's great-grandson, Paia, later took over his grandfather's inheritance, and he is the ancestor from which Ngāti Paia derive their name.⁸⁸ Whaita, however, is not a recognised tūpuna of Maniapoto. Neither, the Thomsons contended, were Huiao and Ngutu in their time.⁸⁹

The Thomsons explained that Ngāti Paia were not listed as a constituent hapū of Ngāti Maniapoto, nor did they choose to be, and they did not have a marae listed with Ngāti Maniapoto. Ngāti Paia had a stronger connection and commitment to Manga instead of Maniapoto:

Where Manga went, we went. At times this meant alliances with others including Waikato Tainui and Maniapoto for various reasons, as he held mana rangatiratanga, mana tangata over the Rohe Pōtae and was a prominent supporter of the Kiingitanga. The alliances were temporary and situational to Ngāti Paia, the commitment to Manga was personal and permanent.⁹⁰

To be included in the trust board's mandate, the Thomsons contended, would 'deny the mana handed down to our hapū under Whaita to Paia and replace it with another . . . [w]e would then lose our identity as a people'.⁹¹

Mr Meredith believed that Ngāti Paia, although an autonomous hapū, had strong historical affiliations with Ngāti Maniapoto.⁹² He relied heavily on Mr Taitoko's historical report on Ngāti Paia, which showed that the hapū had a 'broad' yet direct line of descent from Hoturoa, the captain of the *Tainui* waka, to Paia.⁹³ He also noted that Paia, through his parents, Tamatatai and Ikamoeawa, was a descendant of Rakataura and, according to Te Kawenata, the Ngāti Maniapoto tribal identity included descendants of Rakataura through marriage alliances.⁹⁴ In contrast to the Thomsons' view, Mr Meredith also said that Ngāti Ngutu and Ngāti Huiao were recognised hapū of Ngāti Maniapoto because the whakapapa of many of their descendants shared lines with Maniapoto and his siblings.⁹⁵ He also acknowledged that it was his omission that Ngāti Paia were not included in the list of hapū in the deed of mandate.⁹⁶

4.2.3.3 Analysis

Again, we acknowledge that the whakapapa individuals have identified in this inquiry is intensely personal and frequently defined by a complexity of

88. Document A45, p 3

89. Ibid

90. Ibid, p 7

91. Ibid

92. Document A60, p [20]; transcript 4.1.2, p 379

93. Document A18, p [4]

94. Ibid, p [5]

95. Ibid, p [7]

96. Document A60, p [20]

relationships, like those concerning Ngāti Paretāpoto, but we must adhere to the scope of the Tribunal's functions. In this case, we think that it is inappropriate for us to reach a conclusion on the claimants' whakapapa.

However, consistent with our conclusion in section 4.1.3 regarding the claimants' contradictory argument of refusing to support the trust board on the basis of whakapapa when Te Kawau Mārō also claimed to represent the entirety of Ngāti Maniapoto, we conclude that Ngāti Paia should be included in the trust board's mandate. We consider it surprising that the claimants should now challenge a commissioned report that was part of their evidence before the Te Rohe Pōtae district inquiry. In this case, inclusion in the trust board's mandate is justified as a matter of principle. We do, however, conclude that the trust board and the Crown should provide a statement in the deed of mandate recognising the autonomous nature of Ngāti Paia.

4.2.4 Ngāti Paretekawa

4.2.4.1 *The positions of the parties*

Counsel for the Ngāti Paretekawa claimants (Wai 2620) argued that the Crown had ignored the 'unique position' of Ngāti Paretekawa in having claims straddling a number of inquiry districts, including those which have been settled under the Waikato Raupatu Claims Settlement Act 1995 and the Raukawa Settlement Act 2014.⁹⁷

Ngāti Paretekawa are connected to Ngāti Maniapoto and Waikato-Tainui, with strong links to Ngāti Raukawa due to their long history in the Pūniu area. The raupatu of the 1860s impacted Ngāti Paretekawa severely, rendering them virtually landless.⁹⁸ The claimants said that the intricacies of these relationships with neighbouring hapū and iwi meant that, historically, there were times when Ngāti Paretekawa worked with hapū like Ngāti Paia and Ngāti Raukawa. As such, the Crown was inflexible in its large natural grouping policy, which was 'unsophisticated' and did not account for the dynamic nature of iwi and hapū.⁹⁹ The claimants submitted that, in accordance with the Crown's policy on settling claims concerning whenua raupatu, Ngāti Paretekawa met the criteria for having a separate settlement.¹⁰⁰

The Crown argued that Ngāti Paretekawa met the threshold for inclusion as shared hapū through Ngāti Maniapoto as one of their whakapapa lines.¹⁰¹

4.2.4.2 *Background*

Paretekawa was the only daughter of Te Kanawa and Whaeapare. Her brothers elevated her to chieftainess status. Samuel and Jock Roa gave evidence that, from

97. Submission 3.3.26, p 8

98. Ibid, p 4

99. Ibid, p 21

100. Ibid, p 31

101. Submission 3.3.31, p 51

this point in time, there were two separations that were defining moments in the establishment of the Ngāti Paretekawa identity.¹⁰²

The first separation occurred following the death of Hore, who was the son of Paretekawa and Te Momo o Irawaru. Hore and his second wife, Ngungu, had Peehi Tukorehu.¹⁰³ Peehi, a prominent Ngāti Maniapoto rangatira, quarrelled with his Ngāti Raukawa relations and, as a result, a collective broke away from Ngāti Raukawa and connected with Ngāti Maniapoto instead. Those who joined Peehi included his siblings – Te Akanui, Te Rangihiroa, Whaeapare II, and Te Uaki – and the family of Whati and Ngunu, with whom Peehi had grown up.¹⁰⁴

The second separation occurred after a disagreement between Peehi and his tuakana, Te Akanui, at the papakāinga Haere-awatea. A taua, or war party, entered the pā because Peehi objected to Te Akanui's request to shut the gate. As a result, those Ngāti Paretekawa individuals whose principal affiliations were with Te Akanui, as well as other hapū, left Haere-awatea. Ngāti Paretekawa individuals who affiliated to Peehi remained.¹⁰⁵

Ngāti Paretekawa under Te Akanui came to reside near Mōkau on a block called Te Karu o te Whenua, between the Mapiu Stream and the Mōkau River. Te Huatare Wahanui invited them to remain there as a means of protecting his lands from Whanganui iwi and hapū that were advancing north. Following Te Huatare's death, Wharo Kaitangata and Reihana Wahanui officially gifted the land to Ngāti Rahurahu, and it became known as Kahuwera. The Roas said that '[a]ll of the Ngāti Rahurahu people are Ngāti Paretekawa but not all of Ngāti Paretekawa are Ngāti Rahurahu.'¹⁰⁶ Ngāti Rahurahu descend from only three tūpuna – Te Akanui, Te Paetai, and Paiaka – and they identify with Rewi Manga Maniapoto from his father Te Ngohi Kawhia's (son of Te Akanui) side. Rewi inherited the mana of Kahuwera from his father.¹⁰⁷

Ngāti Paretekawa have already partially settled under the Waikato-Tainui settlement. The Roas contended that Rovina Maniapoto-Anderson and Mr Taitoko signed the Waikato-Tainui settlement not under Ngāti Paretekawa of Te Akanui but under Ngāti Paretekawa of Peehi Tukorehu. As such, Mangatoatoa Marae was 'the only Ngāti Paretekawa marae that reap[ed] the benefits from Waikato Tainui', where there are two further marae belonging to the hapū: Napinapi Marae and Tarewaanga Marae.¹⁰⁸ Similarly, Robert Te Huia said that the inclusion of Ngāti Paretekawa in the Waikato-Tainui settlement was a consequence of the constant struggle that Ngāti Maniapoto had to have their raupatu grievances acknowledged by the Crown.¹⁰⁹

Mr Meredith gave evidence that Ngāti Paretekawa were a prominent and

102. Document A18, pp [8]–[9]; doc A21, pp 2–3

103. Document A18, p [8]

104. Document A21, p 3

105. Ibid

106. Ibid, p 4

107. Ibid, pp 4–5

108. Ibid, p 6

109. Document A44, p 18

chiefly hapū of Ngāti Maniapoto, with close links to Ngāti Raukawa and Waikato-Tainui.¹¹⁰ He also remarked on the interdependence that Ngāti Paretekawa had with other hapū.¹¹¹

4.2.4.3 Analysis

Again, we acknowledge that the whakapapa individuals have identified in this inquiry is intensely personal and frequently defined by a complexity of relationships, like those of Ngāti Pareāpoto and Ngāti Paia, but we must adhere to the scope of the Tribunal's functions. In this case, we think that it is inappropriate for us to reach a conclusion on the claimants' whakapapa. We note that the situation in which Ngāti Paretekawa now find themselves has been exacerbated by the Crown's actions in partially settling with some of the hapū that whakapapa to a different Paretekawa tupuna, thereby causing further division within the hapū.

However, we conclude that Ngāti Paretekawa should be included in the trust board's mandate because it is likely to be the most appropriate settlement to settle their claims. Also, we conclude that the trust board and the Crown provide a statement in the deed of mandate recognising not only the autonomous nature of Ngāti Paretekawa but also the nuances of the hapū's identity.

4.2.5 Ngāti Wharekōkōwai

4.2.5.1 The positions of the parties

Counsel for the Ngāti Wharekōkōwai claimants (Wai 2879) argued that the deed of mandate did not 'purport to represent' any interests of Ngāti Wharekōkōwai, especially as the last Ngāti Wharekōkōwai marae, Te Ara Whakaarorangi, was not included in the marae list.¹¹² The deed of mandate also sought to extinguish the original Wai 1599 claim.¹¹³ As such, the claimants argued that, even though Ngāti Wharekōkōwai were an iwi, through past Crown actions and omissions they were 'culturally inexistent' and their absence from the deed of mandate meant that they were faced with the challenge of forging an identity amongst the masses named in the deed.¹¹⁴ The claimants submitted that the Crown should make alternative arrangements for Ngāti Wharekōkōwai to progress towards their own settlement.¹¹⁵

The Crown did not provide a position on Ngāti Wharekōkōwai, other than to say that the issue of whether certain hapū were active were matters for the people to decide, not the Crown or the Tribunal.¹¹⁶

4.2.5.2 Background

To understand this claim, it is necessary to relay the context of it within the Te Rohe Pōtae district inquiry. In that inquiry, an element of Ngāti Wharekōkōwai's

110. Document A60, p [15]

111. Transcript 4.1.2, pp 376–377

112. Submission 3.3.21, p 5

113. Ibid

114. Ibid

115. Ibid, p 8

116. Submission 3.3.31, p 6

claim (Wai 1599) was their subsequent loss of identity as an iwi since the mid-1800s. Pani Paora-Chamberlin wished to reconnect those individuals who may whakapapa to Ngāti Wharekōkōwai.¹¹⁷

Mr Paora-Chamberlin initially believed, upon filing the historical claim, that all of the hapū listed in Wai 1599 descended from Ngāti Rereahu. However, his further research revealed that Ngāti Wharekōkōwai did not derive from Ngāti Rereahu, the ancestor Rereahu, or any other direct or related descendant of the ancestor Rereahu. Rather, Ngāti Wharekōkōwai as a hapū were said to derive from an ancestor called Te Wharekōkōwai, who was not related to any person descending from the *Tainui* waka. Te Wharekōkōwai was connected to the *Taiaroa* waka. Descendants of Ngāti Wharekōkōwai married descendants of Ngāti Uekaha (of Ngāti Maniapoto) and Te Ihingārangi (of Ngāti Rereahu). However, despite descending from both hapū, the descendants maintained their Ngāti Wharekōkōwai identity separate from other hapū until the Native Land Court was established in Ōtorohanga.¹¹⁸

Mr Meredith said that there was ‘very little whakapapa or other historical information’ on which Ngāti Wharekōkōwai could claim a distinct identity from Ngāti Maniapoto and Tainui more broadly.¹¹⁹ After undertaking some research, he concluded that the hapū was historically a Ngāti Maniapoto hapū rather than an active one. For example, among other block claims in the Native Land Court, he found in the *Ōtorohanga Minute Book*, regarding the Tahaia block investigation, that Herewini Te Watikena had stated that Ngāti Wharekōkōwai were his hapū and Ngāti Maniapoto his iwi.¹²⁰ Beyond this, Mr Meredith struggled to find further evidence establishing a Ngāti Wharekōkōwai identity.

4.2.5.3 Analysis

We think that it is difficult for Ngāti Wharekōkōwai to establish at this time their status as an active hapū or iwi independent of Ngāti Maniapoto or Ngāti Rereahu. Therefore, we agree with Mr Meredith that Ngāti Wharekōkōwai were a historical hapū with affiliations to Ngāti Maniapoto. We do not consider that Ngāti Wharekōkōwai should be included in the hapū list of the trust board’s mandate. It is not for this Tribunal to determine hapū status, and we suggest that Ngāti Wharekōkōwai must be recognised by other hapū if they wish to be viewed or seen as an active hapū.¹²¹ Having said this, we do consider it appropriate for the Wai 1599 claim to be included in the deed of mandate.

117. Document A55, p [4]

118. Ibid, pp [2]–[3]

119. Document A60, p [21]

120. Ibid, p [22]

121. This is in line with the tikanga that the possibility of reviving extinct hapū ‘depends entirely on whether there are a sufficient number of descendants to reconstitute a hapū, and whether other hapū agree to their revival’: Hirini Moko Mead, *Tikanga Māori: Living by Māori Values* (Wellington: Huia Publishers, 2003), pp 217–218. Mead further states, ‘There is a period of testing for revived hapū and it is possible to fail to live up to expectations.’

4.2.6 Tūhoro whānau

4.2.6.1 *The positions of the parties*

The issue raised by the Tūhoro whānau's claim was that the deed of mandate did not adequately provide for distinct whānau settlement. Counsel for the Tūhoro whānau claimants (Wai 2663) argued that the Crown did not have the policy framework, nor had it sufficiently informed itself of, or understood, the concerns of the Tūhoro whānau, specifically regarding the extensive losses and prejudice they had suffered due to the Crown's past actions.¹²²

The whānau has long advocated for specific whānau compensation in Treaty settlements in general, even during the Te Rohe Pōtae district inquiry.¹²³ They pointed to the letter from James Mitchell on 3 October 2017, in response to their concerns about the deed of mandate and agreement in principle, which confirmed that Minister Finlayson had decided that the Crown would negotiate with only one Ngāti Maniapoto large natural grouping but that distinct recognition or redress would be possible for whānau and hapū.¹²⁴ They argued that OTS never entertained the possibility of a separate whānau settlement, even after two hui with OTS where they outlined their grievances and provided comprehensive documentation. One of these hui was on 10 November 2016, the day the Minister informed the trust board of this decision.¹²⁵

The 'only substantive step' towards recognising the potential of a separate settlement for the Tūhoro whānau, the claimants argued, was when Mr Meredith suggested that the Tūhoro whānau marae, Te Rourou-Iti-a-Haere, could be listed separately, as historic hapū are.¹²⁶ However, this was never implemented. The claimants argued that, despite OTS historians reviewing a report by Bruce Stirling on Tūhoro whānau history, there remained an onus on OTS to be 'personally apprised of the issues and evidence, in order to make appropriate decisions', but that, in this case, that did not happen.¹²⁷

The Crown argued that the approach it had taken was consistent with the *Ka Tika ā Muri* policy in that it was open to Ngāti Maniapoto to structure 'distinct recognition' into the settlement for certain groups.¹²⁸ However, it stated that it remained uncertain as to whether the Tūhoro whānau claims were separate from the main tribal claims. Nevertheless, due to the detail and quality of the available information regarding the history of the whānau, there was a 'strong basis' for informed negotiations to take place.¹²⁹

122. Submission 3.3.28, p 3

123. Ibid, p 4; Tom Bennion and Lisa Black, closing submissions on behalf of the Tūhoro whānau, 28 October 2014 (Wai 898 R01, submission 3.4.238), p 33

124. Document A42(a), p [2]

125. Submission 3.3.28, p 5

126. Ibid, p 6; doc A56(e), pp 5–6

127. Submission 3.3.28, pp 6–7

128. Submission 3.3.31, p 52

129. Ibid, p 52

4.2.6.2

However, following the Tribunal's closing hearing for this inquiry in September 2019, the claimants advised the Tribunal of several agreements that had been reached with the trust board for:

- ▶ an acknowledgement of their tūpuna in the deed of settlement, with a process for all other whānau to receive a similar acknowledgement if they wish it;
- ▶ an acknowledgement in the Ngāti Maniapoto historical account describing the impact of native townships legislation on whānau;
- ▶ a meeting with the Ōtorohanga District Council on matters regarding native township leases and unmarked graves on land taken from their urupā;
- ▶ the inclusion in the trust board's deed for a post-settlement governance entity of a commitment to support whānau, marae, and hapū aspirations, including aspirations to re-establish historic marae such as Te Rourou-Iti-a-Haere;
- ▶ a voice for whānau in co-design and co-investment workshops; and
- ▶ the appearance on the back of the Ngāti Maniapoto settlement book of Te Rourou-Iti-a-Haere as a historic marae, along with references to the Tūhoro whānau and links to Te Kotahitanga Marae.¹³⁰

4.2.6.2 Background

Janette Thompson attended a hui with OTS on 9 November 2016 to give oral submissions on the trust board's mandate, one of which was a request to amend the deed of mandate so that specific mention was given to the Tūhoro whānau.¹³¹ When asked by Crown officials why she considered that the trust board would not address the whānau's views, Ms Thompson said 'nowhere within the [trust board's mandate] is there a reference to whanau[;] if whanau recognition was important then some reference to whanau would be within the mandate.'¹³² At the time, the trust board lacked 'a clear line of communication, processes and ability' for whānau to participate in negotiations with the Crown over their Wai claim.¹³³

Describing the evidence her whānau gave at the same hui, Ms Thompson said that her father, Wayne Thompson, was frustrated and sad due to the lack of specific acknowledgement and blatant omission of the whānau's tūpuna in the trust board's deed of mandate. This was despite the evidence of 'substantial whanau whenua recognition and ownership of multiple land blocks across the Waikato whenua (and further afield)'. Her uncle, Joseph Tūhoro, also pointed to the whānau's omission from the trust board's list of iwi and hapū, 'despite its size being such that it qualifies as a hapū'.¹³⁴ On this point, Ms Thompson said that her research showed the whānau had approximately 1,200 members.¹³⁵ Another figure of 2,000 members had been provided by Anthony Tūhoro at a hui with OTS on 10 November 2016.¹³⁶ Under cross-examination, Ms Thompson said that

130. Submission 3.3.43, p1

131. Document A25, p1

132. Ibid

133. Ibid, p2

134. Ibid, p3

135. Ibid, p5

136. Document A56(a), p1530

she estimated the number of the Tūhoro whānau through her whakapapa, which started from Tūhoro 1 and carried through four generations.¹³⁷

Regarding Mr Mitchell's letter of 3 October 2017, Ms Thompson said that his response was contrary to the policy outlined in *Ka Tika ā Muri*, which allowed for whānau and hapū settlements. Under cross-examination, Ms Thompson said that Mr Mitchell's letter lacked detailed information on what matters the Crown had considered and how they had been considered, as well as what information had been shared with the trust board regarding the impact on the mandate.¹³⁸

After reading the report on Tūhoro whānau lands by Mr Stirling, Mr Meredith agreed that the whānau's land losses were extensive. However, in evidence he pulled out this comment of Mr Stirling's:

This is in many ways not a unique story, for a similar fate befell almost every whanau in Te Rohe Potae. This report is not asserting that the Tuhoro whanau or their history are unique, special, or more important than the history of the many other whanau (and hapu and iwi) involved in this inquiry, and it was not written in order to ascribe any such status to them.¹³⁹

Ultimately, however, Mr Meredith drew attention to clause 1.7.3 of the agreement in principle, which acknowledged whānau: 'Descent groups of Maniapoto means: every whanau, hapu, iwi or group composed of individuals who descend from a Maniapoto tupuna.'¹⁴⁰ Mr Mitchell also cited this particular clause in his 3 October 2017 response to the Tūhoro whānau, where he explained that the clause's inclusion in the agreement in principle was the whānau's assurance that they would be adequately catered for.¹⁴¹ For Ms Thompson, the addition of this clause 'completely misses the point'.¹⁴²

4.2.6.3 Analysis

On the evidence provided to us, it is clear that the claimants' position has shifted from a very focused argument asking for specific recognition of the whānau in the trust board's deed of mandate to a wider argument seeking separate whānau settlements. The claimants have also more recently stated that they should be recognised as a hapū. In either case, we acknowledge the agreement that the claimants and the trust board have come to regarding the recognition of whānau in the deed of settlement.

Any separate whānau settlement must be a discussion for negotiations on a case-by-case basis. The Crown's large natural grouping policy appropriately recognises whānau, but the nature and extent of such recognition must be specific to the circumstances of any particular settlement. There would be considerable practical

137. Transcript 4.1.1, pp 327–329

138. Ibid, p 330

139. Document A60, p [21]

140. Ibid; doc A57(a), p 241

141. Document A42(a), p [2]

142. Document A42, p 3

4.2.7

difficulties for the Crown if it were to cater for each and every whānau claim in settlements. In this sense, the floodgates would open and a time-consuming precedent would be set. We do not consider this to be a reasonable approach or consistent with the policy of comprehensive settlement with large natural groups.

Regarding the claimants' argument that the Crown did not sufficiently inform itself of the whānau's history and circumstances warranting distinct recognition, we conclude that the Crown did sufficiently inform itself by reading Mr Stirling's report. The Crown has also stated that there is enough information available to carry out informed negotiations going forward, which we see as a positive sign for the Tūhoro whānau.

Finally, we are not persuaded by the claimants' assertion that they are a hapū and should be included in the hapū list. Ms Thompson's clarification that she identified between 1,200 and 2,000 members from her whakapapa signals to us that this number accounts for a number of generations and does not represent living whānau members. As with our analysis of Ngāti Wharekōkōwai, the issue of hapū status is not merely a numbers game but a complex issue of tikanga, including whether the Tūhoro whānau is recognised by other hapū as an active hapū.¹⁴³

4.2.7 Ngāti Apakura

4.2.7.1 *The positions of the parties*

Counsel for the Ngāti Apakura claimants (Wai 2596) submitted that the Crown failed to act fairly, reasonably, and with the utmost good faith when it indiscriminately applied its large natural grouping policy to exclude Ngāti Apakura from the Ngāti Maniapoto large natural grouping.¹⁴⁴ The Crown's subsequent change in position within the last year following the release of *Tē Mana Whatu Ahuru* to now re-include Ngāti Apakura claims, insofar as they are based on descent from a Ngāti Maniapoto tupuna, 'creates for itself its own fresh set of issues.'¹⁴⁵

The claimants pointed to the manaaki and whanaungatanga of Ngāti Maniapoto following their displacement, arising from the war and raupatu of the nineteenth century, which allowed the hapū to establish four marae in the Ngāti Maniapoto rohe: Mangarama, Mōkau Kohunui, Parekatini/Tomotuki, and Tane Hopuwai.¹⁴⁶ Despite these marae sitting within the Ngāti Maniapoto large natural grouping structure, their exclusion meant the non-Waikato-Tainui raupatu and non-raupatu claims were 'stranded in limbo with no clear pathway forward.'¹⁴⁷

The claimants argued that on numerous occasions in the past the Crown had

143. According to Mead in *Tikanga Māori*, pp 214–216, when a whānau becomes large enough, 'it will either have to either divide into several whānau or be regarded as a hapū'. By then, 'it will be acting like a hapū and will be recognised by other hapū as no longer being a whānau'. Hapū status is also signalled by 'the establishment of a marae or . . . the intention to do so'. 'A hapū without a marae is not recognised by others as being real. Tikanga demands that a hapū must have a marae, or some building that substitutes for a marae, such as a culture centre.'

144. Submission 3.3.18, p 1

145. Ibid

146. Ibid, p 7

147. Ibid

recognised the relationship that Ngāti Apakura has with Ngāti Maniapoto.¹⁴⁸ With the Ngāti Maniapoto mandate, they argued for either a separate settlement process for the remaining Ngāti Apakura claims that was parallel to the Waikato-Tainui and Ngāti Maniapoto settlement processes or distinct representation within the Ngāti Maniapoto large natural grouping.¹⁴⁹

At present, they argued, it was of ‘significant concern’ that the Crown now sought to re-include Ngāti Apakura in the mandate following the signing of the agreement in principle because it forced Ngāti Apakura to ‘again turn to their Ngāti Maniapoto whanaunga and . . . seek redress out of what Ngāti Maniapoto have already secured.’¹⁵⁰ The clauses currently in the agreement in principle relating to cultural redress on ‘an exceptional basis’ did not provide ‘any certainty’ for Ngāti Apakura that additional redress could be secured, and they were problematic due to the fact that they confined redress to that category.¹⁵¹ It also remained possible that, should redress be given to Ngāti Apakura on the fixed quantum given to Ngāti Maniapoto, it could come at a cost to the rest of the iwi. Before the agreement in principle was signed, the claimants’ re-inclusion in the trust board’s mandate was a viable way forward, but a complication now arose because the Crown had not given any commitment to settle outstanding claims.¹⁵² Further to the issue of inclusion, the claimants submitted that the Crown had predetermined the re-inclusion of Ngāti Apakura in the settlement earlier in 2019, despite not carrying out a proper engagement process with the claimants.¹⁵³

On the other hand, the Crown argued that Ngāti Apakura met the threshold for inclusion as shared hapū through Ngāti Maniapoto and one of their whakapapa lines.¹⁵⁴ In response to the issue of whether the Crown’s position in relation to the exclusion of Ngāti Apakura from the deed of mandate had been fair and reasonable, the Crown acknowledged the ‘complex and finely balanced issues’ at play in terms of the relationship between Ngāti Apakura and Ngāti Maniapoto, the Waikato-Tainui raupatu settlement, and the outstanding Ngāti Apakura claims.¹⁵⁵

The Crown conceded that, since the initial decision to include Ngāti Apakura in the deed of mandate, its understanding of the relationship between Ngāti Apakura and Ngāti Maniapoto had developed ‘only to the extent that whakapapa connections could be made to named tūpuna.’¹⁵⁶ Consequently, it now understood that Ngāti Apakura required particular consideration. The Crown submitted that at the time of the closings it remained committed to exploring options with both Ngāti Apakura and Ngāti Maniapoto and that the question was *how* might Ngāti

148. Ibid, p 8

149. Ibid, p 9

150. Ibid, p 18

151. Ibid, p 19

152. Submission 3.3.38, p 3

153. Submission 3.3.18, pp 20–21

154. Submission 3.3.31, p 51

155. Ibid, p 54

156. Ibid

4.2.7.2

Apakura be included in a way that accurately represented their relationship with Ngāti Maniapoto.¹⁵⁷

4.2.7.2 Background

Ngāti Apakura have a unique history and connection to Ngāti Maniapoto. Following the Crown's attack and massacre of their women, children, and elderly at Rangiaowhia on 21 February 1864, those Ngāti Apakura who evaded capture fled in different directions, including to Ngāti Maniapoto and Waikato-Tainui.¹⁵⁸

The Waikato-Tainui raupatu claims of Ngāti Apakura were settled in the Waikato Raupatu Claims Settlement Act 1995, but *Te Mana Whatu Ahuru* has found that Ngāti Apakura have outstanding non-Waikato-Tainui raupatu and non-raupatu claims, which the Crown must recognise in the Te Rohe Pōtae district inquiry. This recognition was justified both because the hapū had clear pre-invasion whakapapa ties to Ngāti Maniapoto and close affiliations with Ngāti Maniapoto made following the traumatic events of Rangiaowhia and because Ngāti Apakura people continued to reside in Te Rohe Pōtae.¹⁵⁹ Furthermore, the Crown has recently endorsed the final Waikato-Tainui remaining claims mandate strategy, which should capture the Waikato-Tainui non-raupatu claims of Ngāti Apakura. Consequently, Ngāti Apakura have found themselves caught between two separate settlement processes: those of Ngāti Maniapoto and Waikato-Tainui.

Crown officials did not express a clear position on the inclusion or exclusion of Ngāti Apakura in the Ngāti Maniapoto large natural grouping until 17 February 2015, when they said that removing Ngāti Apakura from the Ngāti Maniapoto large natural grouping claimant definition would be 'the most desirable outcome'.¹⁶⁰ An internal email also showed Crown officials applying claimant definition on the basis of descent and not geographical area. The following day, the Crown advised Te Kawau Mārō that it would be 'consistent with Crown decision making' if Te Kawau Mārō decided to remove Ngāti Apakura from the mandate strategy and that it was for Te Kawau Mārō to decide whether to add Ngāti Apakura seats to its board, though it would not receive additional funding for this.¹⁶¹ Te Kawau Mārō subsequently voted on 8 July 2015 to provide Ngāti Apakura with two seats on its board.¹⁶²

Crown officials continued to recommend that Ngāti Apakura be excluded from the list of hapū in the mandate because they did not descend from Ngāti Maniapoto, and Te Kawau Mārō eventually took up this recommendation, removing them from its mandate.¹⁶³ In November 2015, the Ngāti Apakura seats were redesignated as taurahere seats.¹⁶⁴ However, the seats remained a sticking point

157. Submission 3.3.31, p 55

158. Document A40, pp 3–4

159. Waitangi Tribunal, *Te Mana Whatu Ahuru*, pp 21–22, 601

160. Document A56(d), p 25

161. Document A56(a), p 831

162. Document A3(a), p 48

163. Document A56(a), p 908

164. Document A41(a), p 8

for the Crown and, in the end, it refused to endorse Te Kawau Mārō's mandate strategy.¹⁶⁵

When it came to the trust board's mandate, Ngāti Apakura were again left out of the list of hapū and their claims were removed from the mandate, so the trust board is not currently mandated to represent Ngāti Apakura in the settlement process.¹⁶⁶ Ngāti Apakura are currently included only to the extent that they enjoy a whakapapa relationship through intermarriage and common ancestry dating back to Rereahu and Hineapounamu.¹⁶⁷ A similar clause is also present in the agreement in principle, yet it goes further to state that Ngāti Maniapoto and the Crown intend to explore the most appropriate way to include them in the deed of settlement.¹⁶⁸

Crown officials held preliminary discussions with the claimant community in July 2018 about amending the claimant definition to re-include Ngāti Apakura in the Ngāti Maniapoto large natural grouping. The claimants made it clear that, without additional redress, an amendment to the claimant definition alone would not resolve their urgency claim issues.¹⁶⁹ Prior to the engagement process being finalised, Te Arawhiti communicated in two separate instances in February and March 2019 that 'the [Ngāti] Maniapoto settlement should settle Ngāti Apakura claims insofar as they are based on descent from [Ngāti] Maniapoto tūpuna.'¹⁷⁰

4.2.7.3 Analysis

We conclude that the Crown's exclusion of Ngāti Apakura from the deed of mandate was not justified because it should have better informed itself of the hapū's unique position as refugees following the invasion of Rangiaowhia. We understand and acknowledge that the Crown now better appreciates the subtleties of the hapū's status following the findings of *Tē Mana Whatu Ahuru*, but if it had carried out sufficient research before the report's release, some of these issues could have been mitigated.

We also struggle to understand the Crown's reasoning for creating a distinction for re-inclusion between those with Ngāti Maniapoto whakapapa and those with non-Ngāti Maniapoto whakapapa when the Te Rohe Pōtae Tribunal has already found that the Crown must recognise Ngāti Apakura's remaining non-Waikato-Tainui raupatu and non-raupatu claims in the Te Rohe Pōtae district inquiry.

One issue that seriously concerns us is the need for the Crown to revisit the resourcing for negotiations and the quantum for settlement if Ngāti Apakura are to be re-included in the mandate. The latter would need to be appropriately sized to account for Ngāti Apakura's claims related to the inquiry district and the demonstrable prejudice they have suffered as a result of Crown actions arising from war and raupatu.

165. Document A56(a), p 1029

166. Document A56(d), p 97

167. Document A5(a), p 5

168. Document A57(a), p 240

169. Document A57, pp 27–28; transcript 4.1.2, pp 435–438

170. Document A57(b), p 360; doc A41(a), p 12

4.2.8 Inclusion in the deed of mandate without claimant consent**4.2.8.1 *The positions of the parties***

The claimants submitted that they did not give their free and informed consent for the trust board to take over their historical claims.¹⁷¹ The Crown ‘deliberately disregarded, disrespected or flouted the force of their decision and failed to gain the most fundamental precept of the Treaty relationship in its recognition of the [trust board’s] mandate, the consent of hapū.’¹⁷² The claimants argued, ‘the support of hapū should have been formally tested as part of the process leading up to the Crown’s decision to recognise a mandate.’¹⁷³ If the argument of implied consent is upheld, the claimants submitted that implied withdrawal of consent must also be valid here because the Rereahu trust had since withdrawn its support for the trust board.¹⁷⁴

No consultation took place between the trust board and the claimants around their inclusion in the trust board’s mandate, and thus they argued that consultation was required similar to that which took place with the 1904 Te Kawenata: ‘Without agreement from hapū rangatira or adequate consultation with hapū members, the hapū independence is therefore subsumed into a construct to meet a Crown policy process.’¹⁷⁵ In choosing to make a conscious decision and support Te Kawau Mārō’s mandate, Ngāti Paia were exercising their tino rangatiratanga – an opportunity that was not given to them, the claimants argued, with the trust board’s mandate. Instead, their claims were ‘swept in with everyone else’s with no consultation or discussion about the reasons for their opposition.’¹⁷⁶

The Ngāti Paretāpoto claimants also submitted that they would suffer prejudice if their historical Wai 729 claim (concerning their whenua forming part of the Mangaokewa and Tawarau forestry lands) were settled under the trust board’s mandate because they had not authorised the trust board to do so. They would also lose their legal right to pursue remedies under section 8HB of the Treaty of Waitangi Act 1975.¹⁷⁷

The Crown argued that there were no Tribunal statements to the effect that the consent of Wai claimants to a mandate ‘must be obtained.’¹⁷⁸ However, it submitted that the Wai claimants had been consulted regarding the negotiation and settlement of their claims by:

- ▶ the trust board engaging with the Wai claimant clusters and other groups in September 2016;
- ▶ OTS notifying the Wai claimant representatives of the trust board’s mandate strategy and submissions and voting process in September 2016;

171. Submission 3.3.23, p 25; submission 3.3.26, pp 39–40; submission 3.3.30, pp 38–39

172. Submission 3.3.23, p 26

173. Ibid, p 27

174. Submission 3.3.30, p 39

175. Submission 3.3.26, p 43

176. Submission 3.3.24, p 6

177. Submission 3.3.23, pp 3, 36

178. Submission 3.3.31, p 53

- the trust board holding mandating hui to discuss its mandate (which included the Crown's attendance to provide answers to attendees);
- the Crown writing to submitters on the trust board's mandate strategy and meeting with them or communicating with them by telephone in November 2016; and
- the Ngāti Maniapoto negotiators involving traditional knowledge-keepers in developing negotiated redress (through the advisory team), as well as the trust board supporting the involvement of affected groups in particular negotiation matters.¹⁷⁹

The trust board agreed with the position taken by the Waitangi Tribunal that there was no general concern that 'extinguishing an historical claim against a claimant's will might violate their legal rights (such as those protected by the New Zealand Bill of Rights Act 1990) or be in contravention of the principles of the Treaty of Waitangi'.¹⁸⁰ The Crown is within its rights on occasion to extinguish a claim without claimant consent if there is clear evidence that it is following the wishes of a majority of the collective that has been mandated for negotiations. The trust board also pointed to *The Whakatōhea Mandate Inquiry Report*, which held that claimants cannot have an 'effective veto' over the settlement of their claims.¹⁸¹

4.2.8.2 Analysis

In *The East Coast Settlement Report*, the Tribunal cautioned against placing too much emphasis on the rights of individual claimants against those of groups that may stand to benefit from a settlement. As such, the Tribunal concluded:

The Crown is acting within its rights when on some occasions it extinguishes a claim without the consent of individual claimants if there is clear evidence that the Crown is following the wishes of a majority of the collective that has been mandated for negotiations.¹⁸²

However, the Tribunal stopped short of giving the Crown a blanket endorsement to extinguish historical claims without claimant consent, instead re-emphasising the importance of consultation as early as practically possible in the mandating process.¹⁸³ In the present inquiry, we have already concluded that the speed at which 'Broadening the Reach' was developed and implemented hindered a thorough consultation process. Consequently, the consultation that needed to occur in fact did not. However, we conclude there are other reasons why, in this case, some claimants should technically be included in the trust board's deed of mandate without their consent.

179. Ibid, pp 53–54

180. Waitangi Tribunal, *The East Coast Settlement Report*, pp 48–49

181. Waitangi Tribunal, *The Whakatōhea Mandate Inquiry Report* (Wellington: Legislation Direct, 2018), pp 41–42

182. Waitangi Tribunal, *The East Coast Settlement Report*, p 49

183. Ibid, p 50

As mentioned above, *The Whakatōhea Mandate Inquiry Report* stated that claimants could not have an ‘effective veto’ over the settlement of their claims. We agree with this finding and consider that the circumstances in this inquiry are similar. The inclusion of claims in a mandate must be a balancing exercise between those who consent and those who do not consent. If one can characterise those who are not consenting as the minority, then one needs to look at the reasons why they are not consenting and weigh these against the majority who consented to inclusion through the mandating voting process.

In this case, we consider that, on principle, the minority, who have come to us to air their grievances about inclusion and their reasons for not being included in the mandate, do not outweigh the majority who voted for the trust board’s mandate. We are not convinced by the claimants’ arguments that their express consent is required. They claimed that Te Kawau Mārō more adequately represented their interests and, subsequently, the implications this had on how their whakapapa relates (or does not relate) to Ngāti Maniapoto. However, as discussed in section 4.1.3, Te Kawau Mārō was purporting to seek the mandate on behalf of Ngāti Maniapoto, just as the trust board currently is. Because of this, we cannot see how the claimants can justify their exclusion from the mandate on the basis of whakapapa or a lack of hapū rangatiratanga (another factor we discussed previously in section 4.1.3). In both respects, Te Kawau Mārō and the trust board have similarly represented themselves.

We acknowledge the claimants’ arguments around the context in which Te Kawenata decision-making occurred and that adequate consultation was carried out in that case that took hapū consent into consideration. However, we note that neither Te Kawau Mārō’s mandate nor the trust board’s mandate proposed to seek consent on a hapū-by-hapū basis, which we discussed in section 3.2.4.

Regarding the specific issue of binding recommendations raised by the Ngāti Paretāpoto claimants, we note that the parts of *Te Mana Whatu Ahuru* released at the time we received closing submissions for this inquiry had not made findings on the Wai 729 historical claim. *The Ngāpuhi Mandate Inquiry Report* found that, by recognising the mandate of the Tūhoronuku Independent Mandated Authority to negotiate the settlement of all Ngāpuhi historical claims, the Crown removed the capacity for hapū to seek binding recommendations from the Waitangi Tribunal. Consequently, ‘[t]he land’s return directly to the hapū concerned would depend entirely on negotiations and the agreement of those who may have no customary interest in those lands at all’. In that case, the Crown should have assured itself that the hapū concerned ‘had come to a decision, in a manner compliant with their tikanga, to sacrifice that opportunity [to seek binding recommendations] for the benefits of an all-in process’.¹⁸⁴

In the present inquiry, we conclude that the Crown did not assure itself that the claimants had decided to forgo such a valuable opportunity, as there were several instances during the mandating process when they had expressed opposition to the

184. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 77

trust board's mandate.¹⁸⁵ Nonetheless, we consider that on balance the claimants' consent is not fully necessary and that it is sufficient to draw the Crown's attention to the importance of this issue and of involving the claimants in the settlement negotiations. However, we reiterate the Ngāpuhi Tribunal's caution to claimants that, should they wish to withdraw from the mandate, there is no guarantee that they will receive favourable findings in support of binding recommendations.¹⁸⁶

A reasonable withdrawal process can be a mitigating factor on the issue of consent. This is discussed in the next section.

4.3 THE REMEDIES AVAILABLE UNDER THE DEED OF MANDATE

4.3.1 The positions of the parties

Counsel for the claimants submitted that the withdrawal mechanism was 'not just ambiguous . . . [but] unreasonable'.¹⁸⁷ They argued that the Crown set a double standard by recognising the mandate with 72 per cent support of those who voted, while requiring any group that wanted to amend or remove the mandate to achieve a 75 per cent majority in support.

For several claimant groups, the withdrawal provisions in the trust board's mandate were 'never an option' because they were not a registered hapū, did not have a registered marae, and were not on the tribal register, so it meant 'nothing' to them.¹⁸⁸ Nevertheless, they submitted that holding a meeting of 350 'Maniapoto members' when most lived outside the rohe and when they were not a hapū of Ngāti Maniapoto was 'so difficult' that it was 'beyond the threshold of reasonableness to achieve, particularly with no funding'.¹⁸⁹ The claimants further argued that the withdrawal mechanism could be interpreted as requiring a petition instead of a special vote and that the validity of the withdrawal or amendment option was ultimately at the discretion of the Crown or the trust board.¹⁹⁰

The Crown argued that, in principle, there was 'no argument that fair and workable amendment and withdrawal mechanisms [were] appropriate', and it was willing to be helpful 'at all stages'.¹⁹¹ It maintained that the 350 members required to trigger the withdrawal clause process constituted only one per cent of the total population of approximately 35,000 Ngāti Maniapoto members and reflected 'the seriousness of triggering the withdrawal processes'.¹⁹² Furthermore, the Crown argued that there was 'no concrete basis to say the resources required for the steps in the withdrawal mechanism [meant] it [was] impractical to make use of it'.¹⁹³

185. Document A39, p 7

186. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 77

187. Submission 3.3.17, p 27; submission 3.3.23, p 34

188. Submission 3.3.24, pp 25–26; transcript 4.1.1, p 395

189. Submission 3.3.24, p 26

190. Submission 3.3.40, pp 5–6

191. Submission 3.3.31, p 56

192. Ibid, p 57

193. Ibid

4.3.2

The trust board argued that the deed of mandate included a ‘fair process’ for amendment or withdrawal from the mandate and it was uncertain why the claimants had not triggered the dispute resolution process. The 350-person threshold to call a special general meeting was ‘entirely appropriate’.¹⁹⁴

4.3.2 The dispute resolution process

Under the trust board’s deed of mandate, the dispute resolution process consists of eight steps, which are a prerequisite to triggering the removal or amendment of mandate process. These steps, identified in clause 15, are:

1. [The trust board] will, in good faith, take all reasonable steps to resolve any dispute internally that may arise in connection with the mandate and/or the negotiations settlement process.
2. Should a dispute of any kind arise the dispute must be submitted to [the trust board] in writing and [the trust board] shall acknowledge receipt of the dispute in writing within 10 working days of the date of receipt.
3. If a dispute is referred to [the trust board] a Disputes Committee shall be appointed by [the trust board] to consider the dispute. The Disputes Committee shall consist of three trustees and two representatives appointed by the Kaumātua Kaunihera.
4. Where a dispute relates to registration, the members of the Disputes Committee must not have been members of the Whakapapa Validation Committee or have been involved in determining issues of whakapapa, in regards to registration applications.
5. [The trust board] may remove and replace members of the Disputes Committee at their discretion.
6. The role of the Disputes Committee is to facilitate the resolution of, or failing resolution to make findings on, the relevant dispute.
7. No findings or decisions of the Disputes Committee shall be binding on the parties to the dispute, including [the trust board].
8. [The trust board] shall notify its decision, together with any reasons, and the findings of the Disputes Committee, in writing to all parties to the dispute.¹⁹⁵

The process for removing or amending the trust board’s mandate is also set out:

1. Any issues or concerns regarding [the trust board’s] mandate, that propose the amendment or removal of [the trust board’s] mandate, must first be addressed through the disputes resolution process outlined above.
2. If the issues or concerns are not resolved through the disputes resolution process then a special meeting can be called to determine whether the mandate process, as

194. Submission 3.3.27, p30

195. Document A7(a), p107

set out in this section of the mandate strategy, should be commenced to remove or amend the mandate.

3. A quorum of 350 [Ngāti] Maniapoto members, registered or unregistered, is required to call a special meeting. (Unregistered members may be subject to a whakapapa validation process.)
4. Notice of this meeting will be sent to all registered members of [Ngāti] Maniapoto as well as advertised in national and provincial newspapers.
5. Voting will be taken on whether to commence the process to remove or amend the mandate.
6. Voting will be for all registered and unregistered [Ngāti] Maniapoto members aged 18 years and over.
7. An opportunity to vote by special vote will be provided for any unregistered members and will be subject to meeting whakapapa requirements.
8. A 75% majority vote is required in order to commence the mandate process to amend or remove [the trust board's] mandate.
9. In order to remove or amend [the trust board's] mandate, the same process as set out in sections 18–22 of the Mandate Strategy must be followed.
10. If a 75% majority vote is not reached but there remains concerns or issues with the mandate, the Trust Board will consult with the Office of Treaty Settlements and will address these concerns and issues.¹⁹⁶

Emily Owen noted that the trust board's withdrawal mechanism was similar to that in previous mandate strategies, including that contained in the Te Kawau Mārō mandate strategy.¹⁹⁷ The claimants take particular issue with points 3, 8, and 10 in the above process for removing or amending the mandate. These points are the subject of our analysis in the next section.

4.3.3 Analysis

The Ngāpuhi Mandate Inquiry Report found that the failure to include a workable withdrawal mechanism in the deed of mandate was a breach of the Treaty principle of partnership and the duty of active protection.¹⁹⁸ A workable withdrawal mechanism was also 'crucial for real accountability', and providing hapū with the right to withdraw did not 'necessarily mean that they will choose to exercise it'.¹⁹⁹ Indeed, as the report found, '[s]trength comes from choice, not from lack of it'.¹⁹⁹ Although the Ngāpuhi context was different to the Ngāti Maniapoto one, we agree with the Tribunal's finding on the necessity of including a 'workable' withdrawal mechanism in the deed of mandate. *The Ngātiwai Mandate Inquiry Report* similarly found: 'If hapū are named as part of the mandate then our view is that, just

196. Ibid, pp 107–108

197. Document A56, pp 49–50

198. Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, p 78

199. Ibid

as the mandate should provide a mechanism to secure hapū consent, it requires a mechanism which allows them to withdraw.²⁰⁰

With these previous Tribunal findings in mind, we conclude that the 350 Ngāti Maniapoto members needed to call a special general meeting is a high, yet reasonable figure. This is due to the size of the Ngāti Maniapoto population, which, at the time we received evidence, numbered approximately 35,000.

However, we conclude that the wording of this particular point is unclear. The use of 'quorum' is misleading and ambiguous. To some, it may suggest that 350 people must be in one place at the same time in order for them to then call a special general meeting. If this is what the deed of mandate requires, we conclude that it is unreasonable. It would be a logistical challenge for many people to carry out. It also does not make sense for people to assemble first in order to call for a special general meeting at a later time. It would be more reasonable if the signatures of 350 people were needed to call for a special general meeting at a later date.

We conclude that a commonsense reading of the point as it stands suggests that 350 signatures on a petition is required to call a special general meeting. We note, too, that the individuals who sign do not need to be registered with the trust board. As such, we draw a comparison here to the petition presented to Judge Savage, where the claimants were able to assemble over 400 signatures to demonstrate support for the urgency applications. In this context, we further highlight that 350 is not an unreasonable and unachievable figure.

Regarding the issue of obtaining a 75 per cent majority to commence the removal or amendment of mandate process, we consider that this is a standard threshold for special resolutions to amend constitutions of entities or to remove mandates. Removing or amending a mandate is a serious matter and, in our view, a bare majority is insufficient. Comparing this requirement with the 72 per cent majority of Ngāti Maniapoto members who voted in favour of the trust board's mandate is not an appropriate or straightforward comparison to make. The Crown assesses a range of criteria, as earlier discussed, when determining whether to confirm a mandate. If a strict 75 per cent majority were needed to confirm a mandate for settlement, the rate of achieving settlements would likely decrease.

We consider it reasonable that, in order to remove or amend the mandate, the same process as stated in the trust board's mandate strategy must be followed. On a principled basis, why should it be easier to remove a mandate than to obtain it? As such, this would entail the public notification of hui and other opportunities to vote on the proposed removal or amendment of the mandate. It should not be too low a threshold because this is such a fundamentally important step in the mandating and settlement process.

However, from a practical point of view, the process set out in point 9 of the removal or amendment process, which requires the holding of nationwide hui, is costly and difficult, if not virtually impossible, for a claimant group to run without the funding or resources of the trust board. Even though the Crown has indicated that it would be willing to be helpful 'at all stages', whether that includes funding

200. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report*, p 58

was not explicit. The Crown told the Ngātiwai Tribunal that it was not Crown policy (at that time) to fund mandate withdrawal processes and that a directive from Cabinet would be necessary for any funding to be made available.²⁰¹ We have not been advised that this position has changed, but we note that in his evidence Mr Mitchell said, in contrast to the Whakatōhea mandate inquiry, ‘the Crown clarified its position that it would consider funding those parts of the withdrawal process where funding could be an impediment’.²⁰² We are unsure to whom that clarification was provided; whether it was given to the trust board or to other parties is unclear from the evidence. In any event, the Crown’s position on funding mandate removal or amendment processes in the current mandate inquiry is vague and ambiguous, and the claimants would benefit from clarification around exactly what funding might be available to them and when.

201. Ibid, p 56

202. Document A57, p 19

CHAPTER 5

FINDINGS AND RECOMMENDATIONS

In this chapter, we outline our findings and apply Treaty principles to those matters where we have identified breaches by the Crown. We then determine whether the claimants have been prejudiced and, if they have, whether the prejudice is of such a nature that it requires steps or actions being recommended to remove or mitigate it. Finally, we conclude with a section on our recommendations.

5.1 THE MANDATING PROCESS**5.1.1 Was the Crown's recognition of the Maniapoto Māori Trust Board's mandate fair, reasonable, and made in good faith?**

Our overall finding is that the Crown's recognition of the Maniapoto Māori Trust Board's mandate was reasonable. However, we have been seriously troubled by aspects of the Crown's decision-making process and, in particular, by the impact of the 'Broadening the Reach' strategy on the mandating process. We consider that the Crown had legitimate concerns about Te Kawau Mārō but that the speed and manner in which it ended its relationship with Te Kawau Mārō and then recognised the trust board's mandate demonstrates how it prioritised its own political objectives over fair process and a good-faith Treaty relationship.

In coming to this particular finding, we are mindful of the Tribunal's view in *The Pakakohi and Tangahoe Settlement Claims Report* not to interfere in mandate decisions except in 'clear cases of error in process, misapplication of tikanga Maori, or apparent irrationality'. The relevant considerations that are applicable in this inquiry to determine whether or not the Tribunal should interfere include the political nature of the decision-making, 'the artificiality of treating internal disputes as if they were disputes against the Crown', and the difficulty of the subject matter.¹

In the present case, we set out the reasons for our finding by examining the following questions in turn:

- Were the Crown's actions in ceasing to work with Te Kawau Mārō to develop a mandate strategy to working solely with the trust board to develop a mandate strategy and a deed of mandate fair and reasonable?
- What role did the Crown's 'Broadening the Reach' strategy play in the

1. Waitangi Tribunal, *The Pakakohi and Tangahoe Settlement Claims Report* (Wellington: Legislation Direct, 2000), p 57

5.1.1

decision to offer the trust board the opportunity to engage in priority negotiations with the Crown via an accelerated, ‘bespoke’ mandating process?

- Did the Crown sufficiently inform itself of the levels of support for, and opposition to, the trust board’s mandate prior to its recognition, including claimant and hapū support and opposition?
- Was there sufficient support to warrant the mandate’s recognition?

Regarding the first question, we consider that the Crown had legitimate concerns about Te Kawau Mārō’s level of support and ability to progress a mandate. By September 2016, Te Kawau Mārō had lost support from key groups, including several regional claimant clusters and the trust board, leaving it with a relatively narrow base of support. Further, the Crown had been consistently concerned about Te Kawau Mārō’s failure to finalise outstanding accountability and representation issues. The Crown had engaged with Te Kawau Mārō in good faith for over 20 months and had actively encouraged Te Kawau Mārō and the trust board to negotiate and reconcile their differences. An internal dispute as to how the iwi should be represented played a significant role in this relationship breakdown. Ultimately, the Crown determined that the trust board had the appropriate structure and support (further discussed in section 5.2.1) to carry the mandate forward. In these ways, we find that the Crown’s reasons for ceasing to work with Te Kawau Mārō were reasonable.

Having examined the Crown’s records on the matter (such as letters, file notes, and aide memoires), we also find that its policy requirements during the period in question were largely consistent. But it is unclear to us how consistently it communicated these policy requirements to the claimants. It is likely that the pressure that it exerted on Te Kawau Mārō to agree to its policy requirements contributed to the disharmony with the trust board and, ultimately, the breakdown of the relationship. On the point of ‘picking a winner’, we do not think that the Crown exercised favouritism in its treatment of the trust board over Te Kawau Mārō, but we do think that it took advantage of the breakdown of their relationship to expedite the settlement process through the trust board. The three-sentence letter in which the Crown terminated its relationship with Te Kawau Mārō, with no detailed explanation as to why, was a disrespectful way to end a relationship that had faltered but that was founded on good-faith principles. We find that the Crown’s actions in ceasing to work with Te Kawau Mārō lacked the required level of respect and fairness and did not meet its Treaty settlement principle of good faith.

Regarding ‘Broadening the Reach’, the Crown failed to give the highest priority to its Treaty settlement principles of good faith and restoration of relationship. Its swift change in direction following the introduction of the ‘Broadening the Reach’ strategy in September 2016 was nothing short of brutal. Within a five-day period, the Crown offered the trust board the opportunity to participate in ‘Broadening the Reach’ and dismissed Te Kawau Mārō in a three-sentence letter and the trust board accepted the Crown’s offer of a ‘bespoke’ 10-week mandating process. The ‘independent’ assessment process for ‘Broadening the Reach’ was cursory and appeared to us neither independent nor substantive. It is difficult for us to arrive

at any other conclusion because the Crown produced virtually no documentation concerning this significant new strategy, which had far-reaching consequences for Ngāti Maniapoto. The speed at which 'Broadening the Reach' was created and implemented was not conducive to having a robust, durable, and longlasting Treaty settlement. In these ways, we find that 'Broadening the Reach' played a decisive role in the Crown's decision to offer the trust board the opportunity to engage in priority negotiations via an accelerated, 'bespoke' mandating process.

Regarding the Crown sufficiently informing itself of the support for, and opposition to, the mandate, the Crown told us that it was aware of the nature and size of the opposition to the trust board's mandate due to its past engagement with Ngāti Maniapoto. As such, it saw no reason to conduct a second round of submissions, as was standard, because it thought that similar issues would be raised. This was a clear departure from its established mandating process and a flawed decision based on assumptions about the opposition previously expressed to the mandate of Te Kāwau Mārō, which primarily concerned Ngāti Rereahu and the issue of a separate post-settlement governance entity. The trust board was a new mandate-seeking entity, and the Crown was obligated to conduct fresh due diligence on levels of tribal support for, and opposition to, its proposed mandate. The Crown's assumption that it understood the Ngāti Maniapoto landscape as a result of its prior involvement in a separate group's mandate strategy development appears to us to be too focused on a desire to try to save time in expediting the settlement process.

The Crown may well have believed that it had a high awareness and knowledge of the levels of support for, and opposition to, the trust board's mandate. However, this does not seem to us to be a sufficient reason to discard an important feature of the mandating process through which individuals and groups could express their views. Instead, the Crown prioritised pragmatism at the expense of fairness. In this way, we find that the Crown did not sufficiently inform itself of the levels of support for, and opposition to, the trust board's mandate prior to its recognition, including claimant and hapū support and opposition. By not sufficiently informing itself about the level and nature of opposition to the trust board's mandate, the Crown could not appreciate the full range of circumstances of the Ngāti Maniapoto claimant community. Consequently, this had a detrimental effect on the relationship between the claimants and the trust board moving forward with the settlement process.

Finally, regarding the question of whether sufficient support existed for the Crown to recognise the trust board's mandate, the outcome was that 72.01 per cent of those who voted were in favour. This was on the low end for the Crown to recognise a mandate but still within what is considered to be an acceptable range. In this way, we find that there was sufficient support to warrant the recognition of the trust board's mandate.

Overall, we find that the Crown's recognition of the trust board's mandate was reasonable but that aspects of the process to achieve it were not fair nor undertaken in good faith. As such, the Crown breached the principle of partnership

5.1.2

as it damaged the restoration of the Treaty relationship between itself and Ngāti Maniapoto. By failing to carry out genuine engagement with the claimants in the mandating process, the Crown also failed in its duty of active protection. Moreover, by failing to carry out a second round of submissions, the Crown failed in its duty to sufficiently inform itself as to the level of opposition to the trust board's mandate. The Crown also failed to protect the whanaungatanga between the claimants and the trust board from the point at which 'Broadening the Reach' became an active strategy. Linked to this is a breach of the principle of equal treatment, as the Crown exacerbated an already fragile relationship between the claimants and the trust board when it pursued 'Broadening the Reach' at the expense of Te Kawau Mārō and its supporters.

5.1.2 Was it reasonable for the Crown to rely on the trust board's register for the purpose of the mandate and the October 2016 vote?

There was a high level of agreement in this inquiry that the trust board's register was robust and fit for the purpose of conducting a mandate vote. Te Kawau Mārō had intended to use the trust board's register to carry out mandate voting, if it had reached that stage. This is a clear indication that the register was viewed as the most reliable means of communicating with the greatest number of iwi members. The trust board also provided various voting options for iwi members who were not registered or who did not wish to be registered.

Accordingly, we find that it was reasonable for the Crown to rely on the trust board's register for the purpose of the mandate and the October 2016 vote.

5.1.3 In considering whether to recognise the trust board's mandate, was the Crown required to consider if the mandate left a path for distinct hapū and whānau interests to be accommodated, potentially by a separate settlement or settlements?

One of the minimum standards for the duty of active protection set out in *The Ngāpuhi Mandate Inquiry Report* requires the Crown to practically and flexibly apply the large natural grouping policy according to the rangatiratanga and tikanga of affected groups. A fundamental aspect of the exercise of rangatiratanga and tikanga of Ngāti Maniapoto is maintaining kotahitanga, or unity, among themselves and affiliated groups at moments of great importance to the iwi. This goes hand-in-hand with the maintenance of whanaungatanga relationships amongst Ngāti Maniapoto groups.

The desire to proceed together united or under the umbrella of kotahitanga was evident from early discussions and planning to progress the Treaty claims of Ngāti Maniapoto through the Te Rohe Pōtae district inquiry. During this process, the Crown made several indications that it was prepared to contemplate separate post-settlement governance entities, particularly in relation to Ngāti Rereahu. However, Te Kawau Mārō rejected that approach because it was 'striving for kotahitanga'. The trust board has taken a similar approach and continues to meet with various parties to discuss redress, post-settlement aspirations, and arrangements. Nonetheless, we do think that the Crown could have been more proactive

in offering options or solutions when it considered flexibly applying its policy on post-settlement governance entities.

Therefore, in line with the minimum standard above, we conclude that the Crown has applied the large natural grouping policy in a practical and flexible way consistent with the tino rangatiratanga and tikanga of Ngāti Maniapoto. It was reasonable, in the circumstances of Ngāti Maniapoto, for the Crown to recognise a mandate that provided for a single comprehensive settlement. This is not to diminish the important roles of marae, whānau, and hapū in tribal structure and decision-making but is consistent with the evidence we heard that, historically, Ngāti Maniapoto's strength and unity come from the constituent parts acting collectively at certain times of great importance to the iwi.

Accordingly, we find that, in considering whether to recognise the trust board's mandate, the Crown appropriately considered whether the mandate should leave a path for distinct hapū and whānau interests to be accommodated, potentially by a separate settlement or settlements.

5.1.4 Is the Crown's decision to continue to recognise the trust board's mandate fair and reasonable in light of *Te Mana Whatu Ahuru*?

A significant recommendation the Tribunal made in parts I, II, and III of *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* was that the Crown should put in place means to give effect to the rangatiratanga of Te Rohe Pōtae Māori or its mandated entity or entities. In supporting the trust board's structure and therefore its mandate, which accommodates the necessary rangatiratanga of Ngāti Maniapoto Māori (who make up a large part of Te Rohe Pōtae Māori), the Crown has appropriately considered the Tribunal's recommendation in the district inquiry report. In other words, its recognition of the trust board's mandate is providing both Ngāti Maniapoto Māori and the trust board the means to give effect to their rangatiratanga.

We do not consider there to be any other findings or recommendations made in the parts of *Te Mana Whatu Ahuru* released so far to be of particular relevance to the issues of the current mandating inquiry. Chapter 2 of the report establishes the tribal landscape up to 1840. Other chapters detail the context of the 1904 Te Kawenata, which provides insight into Ngāti Maniapoto decision-making. The exception is the Te Rohe Pōtae Tribunal's finding on Ngāti Apakura, which we will give our findings on in section 5.2.4.

Accordingly, we find that the Crown's decision to continue to recognise the trust board's mandate in light of this report is fair and reasonable.

5.1.5 Is the Crown's decision to continue to recognise the trust board's mandate fair and reasonable in light of continued opposition?

We noted in chapter 3 that assessing the continued opposition to the trust board's mandate is a balancing exercise between those opposing the mandate and the interests of others supporting it. Taking on board all the evidence presented to us concerning the nature of continued opposition, it is clear that the amount of opposition remains relatively small and confined to particular hapū. In relation

to mandate maintenance, the Crown told us that it has required the trust board to include the claimants in the negotiations, and we are aware that many of the claimants in this inquiry have been engaged in discussions concerning redress during the course of our hearings. In our view, the Crown has appropriately acknowledged the interests of the majority who voted to support the trust board's mandate. This is in line with the minimum standard in *The Ngāpuhi Mandate Inquiry Report* that the Crown actively protect the rangatiratanga and tikanga of those hapū that are opposed to their claims being negotiated by the mandated entity and that it weigh this protection of hapū with that of non-hapū interests in the modern context.

The Tribunal initiated mediation between the Crown and the claimants so that the parties could come to an agreement on certain issues, and we acknowledge the Crown's support for the further discussions between the trust board and the claimants that carried on for several months after mediation occurred. This shows that the Crown was prepared to act reasonably and fairly to allow the parties to sort out the issues amongst themselves.

Accordingly, we find that the Crown's decision to continue to recognise the trust board's mandate in light of continued opposition is fair and reasonable.

5.2 THE DEED OF MANDATE

5.2.1 Does the trust board's deed of mandate appropriately provide for hapū rangatiratanga?

The trust board's mandate allows for an appropriate weighing of interests according to the rangatiratanga and tikanga of the affected groups within Ngāti Maniapoto. *The Ngāpuhi Mandate Inquiry Report* included the minimum standard that the Crown recognise that the structure of the mandated entity must allow for hapū interests to be tested and heard. While the trust board's mandate does not include specific provision for hapū representation, just as Te Kawau Mārōs did not, we are satisfied that its structure is sufficiently broad to account for hapū rangatiratanga and that it appropriately balances the interests of different Ngāti Maniapoto groups. Those hapū that do not affiliate to the marae listed within the trust board's RMC structure in the mandate are appropriately represented through elected general or 'peer' representatives, in addition to the kaumātua and Kingi Tuheitia representatives. In this way, the trust board's structure allows for hapū interests to be tested and heard.

Marae are the focal point of iwi and hapū decision-making within Ngāti Maniapoto. This is consistent with the evidence that we heard around the tikanga and early colonial history of the district – that Ngāti Maniapoto have been the dominant, wider group identity in Te Rohe Pōtae, as well as the iwi uniting under the 1904 Te Kawenata. The trust board's structure takes account of this history and is slightly weighted to haukāinga and kaumātua representatives, with the general seats being in the minority.

Accordingly, we find that the trust board's deed of mandate appropriately provides for hapū rangatiratanga.

5.2.2 Is it appropriate that Ngāti Paretāpoto, Te Ihingārangi, Ngāti Paia, Ngāti Paretekawa, Ngāti Wharekōkōwai, and the Tūhoro whānau be included in the trust board's mandate?

We said in chapter 4 that we do not consider it appropriate for the Waitangi Tribunal to determine the whakapapa of the claimants. That is an internal issue of identity. Regarding Ngāti Paretāpoto and Ngāti Paia, it is apparent that their whakapapa comprises complex relationships. However, it is conspicuous that both hapū justify their exclusion from the trust board's mandate on the basis that they do not whakapapa to Ngāti Maniapoto, when they supported an entity, Te Kawau Mārō, that claimed to represent Ngāti Maniapoto in pursuing the mandate for the settlement. While this point is discussed further in section 5.2.3, it will suffice to say that, for this reason, we find that it is appropriate for Ngāti Paretāpoto and Ngāti Paia to be included in the trust board's mandate as a matter of principle.

Similarly, Ngāti Paretekawa's whakapapa is characterised by a complexity of relationships. Ngāti Paretekawa's unique status as having strong connections with not only Ngāti Maniapoto but also Waikato-Tainui and Ngāti Raukawa, both of whom are partially or fully settled, means they face an unfortunate and difficult position. However, the Ngāti Maniapoto settlement provides the best opportunity for Ngāti Paretekawa to settle their claims. Accordingly, we find that it is appropriate for Ngāti Paretekawa to be included in the trust board's mandate.

Regarding Te Ihingārangi, evidence shows that they align themselves more closely with Ngāti Rereahu than Ngāti Maniapoto. For this reason, there is an opportunity for Te Ihingārangi to combine with Ngāti Rereahu in any prospective post-settlement governance entity. Accordingly, we find that it is appropriate for Te Ihingārangi to be included in the trust board's mandate.

It is not for this Tribunal to determine whether Ngāti Wharekōkōwai is an active hapū or iwi independent of Ngāti Maniapoto or Ngāti Rereahu. That is a complex issue of tikanga that includes recognition by other hapū. Accordingly, we find that it is not appropriate for Ngāti Wharekōkōwai to be included in the trust board's mandate as a hapū or an iwi but that the Wai 1599 claim should be included.

We acknowledge that the Tūhoro whānau have come to an agreement with the trust board regarding an acknowledgement of their tūpuna in the deed of settlement, with a process for other whānau to receive a similar acknowledgement if they wish it. However, like Ngāti Wharekōkōwai, it is not appropriate for this Tribunal to determine whether the Tūhoro whānau are a hapū and should be listed as such in the trust board's mandate. Again, that is a complex issue of tikanga that includes recognition by other hapū.

5.2.3 Is it appropriate for claims to be included in the mandate without the consent of the claimants?

There are two minimum standards in *The Ngāpuhi Mandate Inquiry Report* relevant to whether it is appropriate for claims to be included in the mandate without the consent of the claimants. First, the Crown must allow for an appropriate weighing of the interests of groups in any recognised mandated entity, one that

5.2.4

takes into account factors including the number and size of hapū, the strength of affected hapū, and the size and location of the population. Secondly, the Crown must actively protect the rangatiratanga and tikanga of those hapū that are opposed to their claims being negotiated by the mandated entity and it must weigh this protection of hapū with that of non-hapū interests in the modern context.

In chapter 4, we carried out a balancing exercise that showed that, in principle, it is a minority who object to being included in the trust board's mandate and that their reasons for not consenting fail to outweigh the majority, who voted to support the mandate. Refusing to give their consent on the basis of whakapapa and supposed lack of hapū representation were not sufficient reasons to say that the Crown was not justified in including them in the trust board's mandate without their consent. A suitable withdrawal mechanism is available to the claimants should they wish to withdraw from the mandate, and it is discussed further in section 5.2.5.

Regarding the Ngāti Paretāpoto claimants' concern around seeking binding recommendations under section 8HB of the Treaty of Waitangi Act 1975, we find that the Crown did not sufficiently inform itself as to the nature of the claimants' consent to having their claim included in the trust board's mandate. Again, however, a suitable withdrawal mechanism is available to the claimants should they wish to withdraw from the mandate. Having said this, we urge the claimants to take our caution into consideration: there is no guarantee of receiving favourable findings in support of binding recommendations should they wish to exercise this option.

Accordingly, we find that it is appropriate for claims to be included in the mandate without the consent of the claimants in the circumstances of this inquiry. However, we emphasise that this issue is highly contextual to each inquiry of this nature and requires assessment on a case-by-case basis.

5.2.4 Has the Crown's position in relation to the exclusion of Ngāti Apakura from, and their subsequent proposed re-inclusion into, the trust board's deed of mandate been fair and reasonable?

The Crown told us that, following the release of *Te Mana Whatu Ahuru*, it has a greater understanding of the intricacies relating to Ngāti Apakura's identity and, as such, has now accommodated them in the trust board's mandate. This has primarily been through an acknowledgement that only Ngāti Apakura claims from those individuals with Ngāti Maniapoto whakapapa will be settled under the Ngāti Maniapoto settlement. However, as mentioned in chapter 4, we are not clear why this distinction has been made when the Te Rohe Pōtae Tribunal has found that the Crown must recognise the remaining non-Waikato-Tainui raupatu and non-raupatu claims in the Te Rohe Pōtae district inquiry.

Nonetheless, the Crown has caused the Ngāti Apakura claimants significant uncertainty by first allowing for their inclusion in Te Kawau Mārō's proposed mandate and then by insisting that they be excluded in subsequent drafts. These inconsistent actions have now left the claimants' remaining non-Waikato-Tainui raupatu and non-raupatu claims in limbo, with no clear pathway forward to settle them. Furthermore, the Crown is once again putting a strain on Ngāti Apakura

and Ngāti Maniapoto whanaungatanga, as both groups continue to be caught up in the Crown's fluctuating position.

Accordingly, we find that the Crown's position in relation to the exclusion of Ngāti Apakura from, and their subsequent proposed re-inclusion back into, the trust board's deed of mandate has not been fair and reasonable. As such, the Crown has breached the principle of partnership. The Crown has also breached the principle of reciprocity and the duty of active protection in failing to act fairly, practically, and flexibly to accommodate the tino rangatiratanga of Ngāti Apakura. We further find that the Crown did not sufficiently inform itself of the nuances of tribal identity when it excluded Ngāti Apakura from the deed of mandate. Finally, we find that the Crown failed in its duty to preserve amicable relations and the whanaungatanga between Ngāti Apakura and Ngāti Maniapoto.

5.2.5 Are the remedies available under the deed of mandate, particularly the amendment and withdrawal mechanism, fair, workable, reasonable, and reflective of hapū rangatiratanga?

As we discussed in chapter 4, it is standard practice for a dispute concerning the amendment or removal of the trust board's mandate to be addressed through an internal disputes resolution process first. The threshold of 350 Ngāti Maniapoto members for a special general meeting is high but not unreasonably so, given the size of Ngāti Maniapoto and the potential implications of the process. However, the use of the word 'quorum' is ambiguous and could be read either of two ways. One way, which we consider would be unreasonable, would require 350 people to assemble at one place to call for a special general meeting. Alternatively, a commonsense reading would suggest that 350 signatures on a petition is required to call a special general meeting. This point needs to be clarified through an amendment to the deed of mandate.

The 75 per cent majority to commence the removal or amendment of mandate process is high but is not an unusual threshold for special resolutions involving amendments to constitutions of entities or the removal of mandates. However, we consider that there is more of an issue with the process in point 9, concerning whether Crown funding is available to claimants who wish to carry out the removal or amendment process. Without access to funding, this process, which includes nationwide hui, is likely to be prohibitive and unworkable for the claimants.

There is no provision for hapū or any other groups to withdraw from the trust board's mandate. Only the entire 'Maniapoto' group can remove or amend the mandate by effectively running a further mandating process, which is consistent with the basis on which the mandate was sought. This threshold aligns with the minimum standard set out in *The Ngāpuhi Mandate Inquiry Report* that the structure of the mandated entity must allow for hapū interests to be tested and heard. This includes how any group within the mandate can test it.

Accordingly, we find that, provided that the Crown clarifies aspects of the remedies available under the deed of mandate that we have identified, the amendment and withdrawal mechanism is fair, workable, reasonable, and reflective of hapū rangatiratanga.

5.3 SUMMARY OF FINDINGS

Our findings in this chapter have been:

- The Crown's reasons for ceasing to work with Te Kāwau Mārō were reasonable, but the manner in which the Crown terminated its relationship with Te Kāwau Mārō did not meet the standard of conduct required and breached the Treaty settlement principle of good faith.
- 'Broadening the Reach' played a decisive role in the Crown's decision to offer the trust board the opportunity to engage in priority negotiations via an accelerated, 'bespoke' mandating process.
- By failing to conduct a second submissions round, the Crown did not sufficiently inform itself of the levels of support for, and opposition to, the trust board's mandate prior to its recognition, including claimant and hapū support and opposition.
- There was sufficient support to warrant the Crown's recognition of the trust board's mandate.
- On balance, whereas the Crown's recognition of the trust board's mandate was reasonable, aspects of the process to achieve it were not fair nor undertaken in good faith.
- It was reasonable for the Crown to rely on the trust board's register for the purpose of the mandate and the October 2016 vote.
- In considering whether to recognise the trust board's mandate, the Crown appropriately considered whether the mandate should leave a path for distinct hapū and whānau interests to be accommodated, potentially by a separate settlement or settlements.
- The Crown's decision to continue to recognise the trust board's mandate in light of *Te Mana Whatu Ahuru* is fair and reasonable.
- The Crown's decision to continue to recognise the trust board's mandate in light of continued opposition is fair and reasonable.
- The trust board's deed of mandate does appropriately provide for hapū rangatiratanga.
- It is appropriate for Ngāti Paretāpoto and Ngāti Paia to be included in the trust board's mandate as a matter of principle.
- It is appropriate for Ngāti Paretekawa and Te Ihingārangi to be included in the trust board's mandate.
- It is not appropriate for the Tribunal to determine whether Ngāti Wharekōkōwai should be included in the trust board's mandate as a hapū or an iwi, but the Wai 1599 claim should be included.
- It is not appropriate for the Tribunal to determine whether the Tūhoro whānau should be included as a hapū listed in the trust board's mandate.
- It is appropriate for claims to be included in the mandate without the consent of the claimants in the circumstances of this inquiry.
- The Crown's position in relation to the exclusion of Ngāti Apakura from, and their subsequent proposed re-inclusion into, the trust board's deed of mandate has not been fair and reasonable.

- Provided that the Crown clarifies aspects of the remedies available under the deed of mandate that we have identified, the amendment and withdrawal mechanism is fair, workable, reasonable, and reflective of hapū rangatira-tanga to the extent necessary in the circumstances of this inquiry.

5.4 PREJUDICE

In analysing the mandating process and the deed of mandate, we have highlighted not only the flaws and errors in the Crown's actions and omissions but also the reasons why the claimants were reluctant to consent to inclusion in the trust board's mandate. In finding that the Crown breached certain Treaty principles throughout the mandating process, we must now determine whether these breaches caused prejudice to the claimants and whether that prejudice requires steps or actions being recommended to remove or to mitigate the prejudice.

We consider that the key instances in which prejudice to the claimants arose in this inquiry were the inception and implementation of the 'Broadening the Reach' strategy and the Crown's fluctuating position regarding the status of Ngāti Apakura in the mandate. We find these claims to be well-founded.

Regarding 'Broadening the Reach', the Crown damaged the whanaungatanga relationship between the trust board and the claimants. Not only was this clear in the evidence presented to us, but it was also reflected in the strained relationships on display at our hearings between whānau and tribal associates of long and productive standing. While this in part may reflect intra-tribal dynamics not of the Crown's making, we are sure all parties would agree that such a strain has been exacerbated by the Crown's implementation of 'Broadening the Reach'.

In respect of Ngāti Apakura, the Crown's fluctuating position on whether the hapū should be included in the mandate or not has effectively trampled on the tino rangatiratanga of the claimants and Ngāti Apakura as a whole.

We consider that all the claimants have suffered prejudice due to the Crown's marginalisation of them in the mandating process, especially around the removal of expected avenues and mechanisms to express dissent about the settlement process. As a result, the Treaty relationship has been damaged because the claimants have lost confidence in the Crown, believing that it prefers not to engage with them.

Finally, we consider that the claimants suffered prejudice as the Crown still has no policy or strategy that we can see for engaging with groups that do not fit neatly into the large natural grouping rubric. This leaves these groups and their claims in limbo with no clear pathway forward.

Assessing the prejudice is a balancing exercise between that of the claimants and that of those individuals who support the trust board's mandate. There is a risk that, should we make recommendations that suggest halting negotiations and declare the trust board's mandate invalid, those who supported it will face further delay to settlement negotiations, further uncertainty, an increased financial burden, and a lost opportunity to settle on terms that they have agreed to.

We also note that the claimants have recourse to a dispute resolution process which we have judged to be largely reasonable and workable and that there will also be an opportunity for all members of Ngāti Maniapoto to exercise their vote on whether to accept the final settlement package. In the run-up to this final vote, those groups and individuals still opposed to settlement will have the opportunity to express their opposition and to influence the outcome. In these ways, potential prejudice can be mitigated.

We also face the possibility that a decision not to recommend a halt to negotiations in these circumstances will be viewed as tacit approval for the shortcomings in the Crown's conduct. We reject this view and have sought to be very clear about where the Crown has misstepped, as well as our expectation that the Crown will not repeat such conduct.

We consider that there are appropriate recommendations that will remedy or mitigate the claimants' prejudice we have identified, short of recommending a halt to negotiations. Ultimately, these will benefit all parties to this settlement. We give our recommendations in the next section.

5.5 RECOMMENDATIONS

It is not lost on us that this urgent inquiry contains complex issues, particularly regarding the claimant definition. Our first key finding – that it was reasonable for the Crown to recognise the trust board's mandate – balances and takes account of the nuances of Crown actions in the mandating process. However, there were serious issues with the Crown's process in recognising the trust board's mandate, particularly the implementation of 'Broadening the Reach' and the Crown's fluctuating position on Ngāti Apakura's inclusion in the mandate. Our second key finding – that the trust board's mandate as it currently stands is largely adequate – appropriately considers the complexities regarding claimant consent and hapū rangatiratanga.

We acknowledge the desire of Ngāti Maniapoto to settle their historical grievances as soon as possible. We also acknowledge that the staged release of parts of *Te Mana Whatu Ahuru* is, without doubt, a key driving force in continuing momentum towards settlement.

As such, we have no wish to halt this process, which has come so far. Doing this would, in our opinion, cause further unnecessary delay to settlement. It would be unfair to the majority of those who voted in favour of the trust board's mandate to deprive them of a timely settlement. It appears to us that the discussions between the trust board and the claimants following mediation were fruitful. Also, the resumption of negotiations between the trust board and the Crown is a positive indicator that the parties are keen to continue ironing out the remaining issues, particularly concerning redress, which seems to be the area where a lot of claimant uncertainty lies.

With these ideas in mind, we think that, with some adjustments, the trust board's mandate can appropriately reflect Ngāti Maniapoto's interests and satisfy the claimants' issues and concerns going into settlement. Having reached our

conclusions and findings in this chapter, we have several practical recommendations to help guide the Crown and parties towards reaching an amicable, durable, and robust settlement:

- The Crown should include distinct recognition in the claimant definition regarding the nuances and complexity of the relationship that Ngāti Paretāpoto, Ngāti Paia, and Ngāti Paretekawa have, each in their own way, with Ngāti Maniapoto.
- The Crown should include distinct recognition in the claimant definition regarding the complex history and unique status of Ngāti Apakura and their relationship with Ngāti Maniapoto.
- The Crown should disregard its qualification in the claimant definition that Ngāti Apakura claims are recognised only insofar as they are based on Ngāti Maniapoto whakapapa and should instead endeavour to settle all outstanding non-Waikato-Tainui raupatu and non-raupatu claims of Ngāti Apakura in this settlement.
- The Crown should give serious and due consideration to the possibility of Te Ihingārangi combining in any prospective post-settlement governance entity with Ngāti Rereahu.
- Should the outstanding non-Waikato-Tainui raupatu and non-raupatu claims of Ngāti Apakura be included in this settlement, the Crown should adjust the resourcing for negotiations and the quantum for settlement.
- The Crown should clarify point 3 of the removal or amendment of mandate process, particularly the wording of '[a] quorum of 350 Maniapoto members'.
- The Crown should communicate to all parties to the trust board's mandate the nature of the funding available to them should they wish to proceed with the removal or amendment of mandate process.
- Given our conclusion that the Crown prioritised its political objectives over its Treaty relationship with Ngāti Maniapoto, we recommend that the Crown prioritise its Treaty relationship with Ngāti Maniapoto by having an active regard to its duty of whanaungatanga.

We would also like to note that it does not appear that the Crown has taken on board the Ngātiwai Tribunal's suggestion that it take steps to ensure its policies concerning 'shared interests' in negotiations are robust so that hapū can exercise tino rangatiratanga within mandated entities.² We consider it necessary to re-emphasise this point in this inquiry as well. We also note that the Tribunal has repeatedly found the Crown in breach of its whanaungatanga duty in previous mandate inquiries. As such, we think that the Crown needs to actively protect whanaungatanga among all Māori in the Treaty settlement space.

We have weighed these recommendations against the likely prejudice to those individuals and hapū that currently support the trust board and are content for the negotiations to proceed. We acknowledge that implementing these recommendations may delay the negotiations, but we do not think that this delay will be

2. Waitangi Tribunal, *The Ngātiwai Mandate Inquiry Report* (Wellington: Legislation Direct, 2017), p84

considerable or harmful on relationships between the claimants, the trust board, and the Crown. In fact, we think that, provided that the Crown gives the claimants the distinct recognition they deserve and that the trust board continues to make the effort to talk with the claimants about any discrete redress issues, the whanaungatanga among parties will be maintained and the Crown will be able to restore its relationship with Ngāti Maniapoto.

We have the utmost faith in Ngāti Maniapoto to come together united and strong under the principle of kotahitanga once again, at such a monumental and pivotal moment in its history, to achieve a positive outcome in this settlement for all Ngāti Maniapoto individuals, whānau, and hapū.

Dated at *Wellington* this *10th* day of *December* 2019

Sarah Reeves

Judge Sarah Reeves, presiding officer

Aroha Harris

Dr Aroha Harris, member

William Te Rangiuā (Pou) Temara

Professor William Te Rangiuā (Pou) Temara, member



APPENDIX I

GLOSSARY OF TECHNICAL MANDATING TERMS USED IN THIS INQUIRY

Agreement in principle '[A]n agreement between the Crown and a claimant group, marked by the signing of a formal document or, in some cases, the exchange of letters between the claimant group and the Minister for Treaty of Waitangi Negotiations. The Agreement in Principle outlines the nature and scope of all settlement redress and is the basis for the final Deed of Settlement. An Agreement in Principle is non-binding on the Crown and claimant group.'¹

Claimant community All Ngāti Maniapoto descendants, living in or outside of the district, registered or unregistered.

Claimant group definition '[A] description of those people whose claims will be settled and who will be the beneficiaries of the settlement and the governance entity.'²

Crown funding 'Crown funding provided to a claimant group as a contribution towards the costs they incur in negotiating their settlement.'³

Deed of mandate '[A] formal statement prepared by a claimant group stating who is appointed to represent them in negotiations with the Crown, and how the mandate was approved by the claimant group.'⁴

Deed of settlement '[T]he complete, detailed and formal settlement agreement signed on behalf of the Crown and the claimant group.'⁵

Large natural group(ing) A large group that shares tribal interests. It is a Crown preference to negotiate settlements with a large natural group rather than individual hapū or whānau within a tribe.⁶

Mandating for negotiations '[P]rocess by which the claimant group chooses representatives and gives them the authority to negotiate with the Crown on behalf of the group.'⁷

Post-settlement governance entity '[T]he governance entity is the representative, accountable and transparent body that receives and manages the settlement on behalf of the claimant group. It will: represent the claimants in regard to the settlement; make decisions on how to manage any redress received in the settlement package (cash,

1. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki te Tiriti o Waitangi me ngā Whakaritenga ki te Karauna / Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 4th ed (Wellington: Office of Treaty Settlements, 2018), p 142

2. Ibid

3. Ibid

4. Ibid, p 143

5. Ibid

6. Ibid, p 39

7. Ibid, p 144

Appi

properties and other redress); [and] make decisions on how benefits (if any) are passed to the beneficiaries of the settlement.’⁸

Quantum ‘[T]otal monetary value of the redress in terms of cash and assets provided to a claimant group in settlement of their historical claims. It also refers to the total amount of financial and commercial redress in a settlement package.’⁹

Wai claimants Those named individuals or groups that have directly submitted claims to the Waitangi Tribunal.

Wai claimant clusters (groups) Originated from the Wai claims regions established in 2007 as part of a Ngāti Maniapoto Treaty implementation plan created in preparation for the Te Rohe Pōtae district inquiry. Wai claimants formed clusters that were grouped into regional forums. Representatives from the forums and the trust board formed the Maniapoto Claims Coordination Committee to coordinate the approach to the district inquiry.¹⁰

Wai claimant representatives Those representatives of Wai claimant clusters on an entity, such as Te Kawau Mārō.

8. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua*, p 70

9. *Ibid*, p 144

10. Document A56, p 12n

APPENDIX II

CHRONOLOGY OF KEY EVENTS IN THE MANIAPOTO MANDATING PROCESS

Sources: Documents A1, A5, A7, A8, A10, A26, A46, A54, A56, A61

2013

- 3 July* The Maniapoto Mandate Strategy Steering Group officially forms.
- 19 November* The Maniapoto Mandate Strategy Steering Group submits a draft mandate strategy to the Minister for Treaty of Waitangi Negotiations.
- 9 December* The Office of Treaty Settlements assesses the draft mandate strategy and notes the Te Maru o Rereahu Trust's opposition to the strategy, as well as issues with claimant definition, accountability, and the representative structure.

2014

- 20 March* The Office of Treaty Settlements meets with the Maniapoto Mandate Strategy Steering Group to discuss issues around representation, accountability, and legal entity status.
- 26 September* The Office of Treaty Settlements emphasises at meetings with the Te Maru o Rereahu Trust, the Maniapoto Mandate Strategy Steering Group, Ngāti Apakura, and others that there will be only one comprehensive settlement for the Ngāti Maniapoto large natural grouping.
- 1 October* Te Kawau Mārō is established as a non-legal entity. The Maniapoto Mandate Strategy Steering Group meets with the Office of Treaty Settlements to discuss amendments to the draft mandate.
- 10 November* The Maniapoto Central Region withdraws from the mandating process of the Maniapoto Mandate Strategy Steering Group and Te Kawau Mārō following an initial withdrawal on 13 October 2014.
- 15 December* Te Kawau Mārō submits a final draft mandate strategy to the Office of Treaty Settlements. The office continues to have several concerns, including opposition from the Te Maru o Rereahu Trust, Ngāti Apakura, and Ngāti Hikairo; hapū representation; the withdrawal mechanism; and legal entity status.
- 17 December* The Office of Treaty Settlements endorses Te Kawau Mārō's strategy for notification and invites views, submissions, and inquiries.

2015

- 8 February* Te Kawau Mārō receives 288 submissions on its deed of mandate (284 opposed; four in support).
- 18 February* The Office of Treaty Settlements meets with Te Kawau Mārō to discuss how to address the submissions.

Appii

- 1 April* The Maniapoto Māori Trust Board enters into a service level agreement with Te Kawau Mārō.
- 1 May* Te Kawau Mārō responds to a proposal from the Te Maru o Rereahu Trust for its own post-settlement governance entity ('a strong collective face is required for the negotiations with the Crown').
- 10 June* Te Kawau Mārō confirms its position to the Office of Treaty Settlements ('striving for te kotahitanga').
- 17 June* Te Kawau Mārō writes to the Office of Treaty Settlements with proposed amendments to its draft mandate strategy.
- 21 July* The Maniapoto Māori Trust Board advises the Governor-General of its newly elected trustees.
- 28 August* The Maniapoto Māori Trust Board writes to Te Kawau Mārō asking it to pause its mandating hui while it carries out its aspirations hui.
- 9 September* Te Kawau Mārō produces the final version of its mandate.
- 3 October* Maniapoto ki te Tonga withdraws support from Te Kawau Mārō's mandating process.
- 15 October* Te Kawau Mārō emails its updated mandate strategy to the Office of Treaty Settlements.
- 20–21 October* The Office of Treaty Settlements writes to Te Kawau Mārō expressing concern with the turnout of 242 voters in the hui appointing Te Kawau Mārō representatives (inconsistencies in the date).
- 20, 28 October* The Office of Treaty Settlements writes to Te Kawau Mārō on the indefinite term for representatives on Te Kawau Mārō, rather than a three-year period, and it suggests that they 'consider establishing additional seats for trustees who have been appointed by the whole claimant community'.
- 30 October* The Office of Treaty Settlements emails Te Kawau Mārō saying that it would endorse the mandate strategy if two issues are addressed: the taurahere seats being advisory only and the term of appointment needing to be a one-year or three-year term.
- 13 November* Te Kawau Mārō writes to the Office of Treaty Settlements and explains that Ngāti Apakura will remain as taurahere representatives and appointed trustees will be reviewed annually.
- 11 December* The Maniapoto Māori Trust Board meets with the Minister for Treaty of Waitangi Negotiations on other matters (introduction of new member of Parliament) and also discusses how Te Kawau Mārō 'needs representatives of the broader Maniapoto interests in addition to the current Wai claimant focus', showing that mandate and settlement matters are discussed.
- 23 December* The Office of Treaty Settlements emails the Maniapoto Māori Trust Board and Te Kawau Mārō and advises them that the issues have not been fully addressed.

2016

- 21 January* The Office of Treaty Settlements speaks with and writes to Te Kawau Mārō reiterating its outstanding concerns and stating that Te Kawau Mārō needs to reach an agreement with the Crown on a mandate strategy prior to commencing mandate hui.
- 24 January* The Maniapoto Māori Trust Board has a strategic planning hui and identifies several risks to the Ngāti Maniapoto settlement should Te Kawau Mārō seek a mandate without Crown recognition.
- 25 January* Te Kawau Mārō meets and resolves that the Office of Treaty Settlements is not

justified in suggesting that it lacks proper representation and decides to go out and seek mandate without Crown recognition ('We are on the road'). The Maniapoto Māori Trust Board also meets and resolves to withdraw from Te Kawau Mārō and to take the lead in progressing the Ngāti Maniapoto mandate.

- 27 January* The Maniapoto Māori Trust Board notifies Te Kawau Mārō of its resolutions.
- 29 January* Te Kawau Mārō writes to the Office of Treaty Settlements with proposals to address its concerns.
- February–August* Discussions take place between the Maniapoto Māori Trust Board and Te Kawau Mārō concerning the trust board rejoining Te Kawau Mārō. The trust board proposes a series of revised structures that rebalance weighting between Wai claimant representatives and other Ngāti Maniapoto interests. It meets with Te Kawau Mārō 14 times to develop those proposals.
- 3 February* The Maniapoto Māori Trust Board informs the Office of Treaty Settlements of its resolutions.
- 5 February* The Office of Treaty Settlements writes to the Maniapoto Māori Trust Board and Te Kawau Mārō separately, encouraging them to reach an agreement. The office informs Te Kawau Mārō that the proposals to address its concerns were inadequate.
- 9 February* The Office of Treaty Settlements holds a teleconference with the Maniapoto Māori Trust Board to discuss the situation between Te Kawau Mārō and the trust board.
- 12 February* Te Kawau Mārō receives a letter from the Crown Forestry Rental Trust advising it that Te Kawau Mārō will no longer be able to maintain approved client status due to the Maniapoto Māori Trust Board's withdrawal.
- 29 February* The Office of Treaty Settlements meets with the Maniapoto Māori Trust Board in Te Kūiti to discuss Ngāti Maniapoto's Treaty settlement negotiations.
- March–August* Crown facilitators Peter Douglas and Ken Mair attend six of the 14 hui between the Maniapoto Māori Trust Board and Te Kawau Mārō (18 March, 9 April, 10 June, 31 July, 7 August, and 27 August).
- 11 March* The Office of Treaty Settlements holds a teleconference with Te Kawau Mārō. Te Kawau Mārō disagrees with the Maniapoto Māori Trust Board's proposed amended structure for roughly equal representation and also notifies the office of its amended purpose in the draft mandate to accommodate multiple post-settlement governance entities.
- 14 March* The Office of Treaty Settlements emphasises to Te Kawau Mārō and the Maniapoto Māori Trust Board that it will not endorse any mandate strategy that has more than one negotiation, involves multiple post-settlement governance entities, does not provide for at least three-yearly trustee elections, does not meet accountability requirements, and is not a legal entity.
- 6 May* The Office of Treaty Settlements advises Te Kawau Mārō that it would be inappropriate to meet, as Te Kawau Mārō still needs to reach an agreement on representation.
- 13 June* Maniapoto ki te Raki writes to the Minister for Treaty of Waitangi Negotiations setting out its concerns about the Office of Treaty Settlements' engagement with Te Kawau Mārō.
- 3 July* The Maniapoto Māori Trust Board and Te Kawau Mārō agree to a 'first xv' structure for Te Kawau Mārō.
- 5 August* Te Kawau Mārō informs the Maniapoto Māori Trust Board that it is committed to its current mandate but is prepared to increase the number of trust board representatives from two to five.

Appendix

- 27 August Te Kawau Mārō and its supporters vote down the Maniapoto Māori Trust Board's mandate proposal.
- 7 September The Office of Treaty Settlements meets with the Maniapoto Māori Trust Board to outline the proposal for Ngāti Maniapoto to be considered a 'bold goals' iwi and to work towards a Crown-recognised mandate in a truncated timeframe.
- 8 September The Office of Treaty Settlements writes to Te Kawau Mārō confirming it is no longer working with it to progress the mandate.
- 9 September The Office of Treaty Settlements writes to the Maniapoto Māori Trust Board to invite it to participate in priority negotiations.
- 11 September The Maniapoto Māori Trust Board endorses a 'bespoke' 10-week mandating process.
- 12 September The Maniapoto Māori Trust Board accepts the offer of a 'bespoke' 10-week mandating process.
- 13 September The Office of Treaty Settlements seeks agreement from the Ministers for Treaty of Waitangi Negotiations and Māori Development on the 'Broadening the Reach' strategy.
- 15–16 September The Maniapoto Māori Trust Board writes to the Te Maru o Rereahu Trust and the Maniapoto Central Region representatives to invite them to a meeting to discuss the settlement process going forward. The trust board issues a media release setting out its intention to seek a mandate through the 'bespoke' process.
- 19 September The Ministers for Treaty of Waitangi Negotiations and Māori Development confirm their support for 'Broadening the Reach'.
- 23 September The Office of Treaty Settlements endorses the Maniapoto Māori Trust Board's mandate strategy.
- 24 September – 28 October The Office of Treaty Settlements notifies the Maniapoto Māori Trust Board's mandate strategy and invites submissions.
- 25 September The Maniapoto Māori Trust Board meets with the Te Maru o Rereahu Trust and the Maniapoto Central Region representatives, all of whom want the trust board to amend the mandate strategy to provide for hapū and whānau collective settlements.
- 27 September The Office of Treaty Settlements notifies Wai claimant representatives of the mandate strategy, submissions, and voting process.
- 7 October – 5 November Voting on the Maniapoto Māori Trust board's mandate strategy opens.
- 9–19 October The Maniapoto Māori Trust Board convenes 11 mandating hui.
- 17 October Cabinet approves the 'Broadening the Reach' strategy.
- 28 October The Maniapoto Māori Trust Board writes to the Minister for Treaty of Waitangi Negotiations stating that it favours a 'unified and comprehensive approach' to settlement.
- 2 November The Office of Treaty Settlements writes to submitters inviting them to meet in Wellington or Te Kūiti.
- 9–12 November The Office of Treaty Settlements holds hui and teleconferences with approximately 50 submitters to discuss mandate strategy submissions.
- 27 November The Maniapoto Māori Trust Board and the Te Maru o Rereahu Trust meet to draft the detail of their agreement to work together in negotiations.
- 28 November The Maniapoto Māori Trust Board meets to finalise its deed of mandate for submission to the Office of Treaty Settlements.
- 4 December The Maniapoto Māori Trust Board meets to approve the deed of mandate, the negotiation team's appointment process, and the negotiation team protocol.

5 December The Maniapoto Māori Trust Board submits its deed of mandate to the Office of Treaty Settlements.

14 December The Ministers for Treaty of Waitangi Negotiations and Māori Development formally recognise the Maniapoto Māori Trust Board's deed of mandate.

17 December The Office of Treaty Settlements and the Maniapoto Māori Trust Board sign the terms of negotiation.

2017

January–August The Maniapoto Māori Trust Board advises the Office of Treaty Settlements that it held three rounds of hui with its community. The trust board reports indicate that board members, Strategic Negotiations Advisory Team members, and the negotiating team attended approximately 37 hui during this time.

2 February–14 August The Waitangi Tribunal receives nine urgency applications: Wai 2598 (2 February), Wai 2597 (7 February), Wai 2596 (23 February), Wai 2611 (9 March), Wai 2614 (13 March), Wai 2620 (13 April), Wai 2621 (13 April), Wai 2656 (8 May), and Wai 2663 (14 August).

15 August The Office of Treaty Settlements and the Maniapoto Māori Trust Board sign an agreement in principle.

2018

5 September Parts 1 and 11 of the Waitangi Tribunal's report *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* are released.

16 November The Waitangi Tribunal grants the urgency applications.

2019

8 March The Maniapoto mandate inquiry holds a judicial conference.

18 March The Waitangi Tribunal receives its tenth urgency application (Wai 2879).

29 March The Maniapoto Māori Trust Board and Te Arawhiti (previously the Office of Treaty Settlements) agree to pause substantive negotiations for two months.

2–3 May Mediation is carried out between the 10 claimants and the Maniapoto Māori Trust Board.

4 June Part 111 of the Waitangi Tribunal's report *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* is released.

10–12 July The first Maniapoto mandate inquiry hearing is held in Hamilton.

17–19 July The second Maniapoto mandate inquiry hearing is held in Hamilton.

18 September Te Arawhiti resumes negotiations with the Maniapoto Māori Trust Board.

19–20 September The Maniapoto mandate inquiry hears closing submissions in Wellington.

APPENDIX III

SELECT INDEX TO THE RECORD OF INQUIRY

RECORD OF HEARINGS

TRIBUNAL MEMBERS

The Tribunal constituted to hear the Maniapoto mandate urgent claims comprised Judge Sarah Reeves (presiding), Dr Aroha Harris, and Professor Pou Temara.

HEARINGS

The first hearing was held at the Narrows Landing, Hamilton, from 10 to 12 July 2019. The second hearing was held at the Narrows Landing, Hamilton, from 17 to 19 July 2019. Closing submissions were heard at the Waitangi Tribunal office, Wellington, on 19 and 20 September 2019.

RECORD OF PROCEEDINGS

1. STATEMENTS

1.1 Statements of claim

1.1.1 *Wai 2598*

Te Kani Williams and Alana Thomas, statement of claim on behalf of Harold Maniapoto, Roy Haar, Tame Tuwhangai, Thomas Maniapoto, Dana Moala-Maniapoto, Maria Maniapoto, Joana Johnston, Winston Maniapoto, Sonya Parangi, Rovina Maniapoto-Anderson, and Jack Tahana concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 2 February 2017

1.1.2 *Wai 2597*

Te Kani Williams and Alana Thomas, statement of claim on behalf of Thomas Tuwhangai, Wayne Houppapa, Tame Tuwhangai, Abra Matena, Terry Turu, Rangi Te Ruruku, Hoane Wi, Pauline Stafford, Hone Turu, Mere McGee, Tame Tuwhangai, Raymond Wi, Donna Tuwhangai, Mere McGee, Evelyn Kereopa, Greg Keenan, and Les Howe concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 3 February 2017

1.1.3 *Wai 2596*

Tom Bennion and Emma Whiley, statement of claim on behalf of Jenny Charman, Stephen Laing, and Te Apakura Rūnanga Trust concerning Crown actions in respect of Maniapoto mandating process, 23 February 2017

Appendix**1.1.3 Wai 2596—continued**

(a) Tom Bennion and Emma Whiley, amended statement of claim on behalf of Jenny Charman, Stephen Laing, and Te Apakura Rūnanga Trust concerning Crown actions in respect of Maniapoto mandating process, 5 June 2019

1.1.4 Wai 2611

John Kahukiwa, statement of claim on behalf of Hardie Peni concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 3 March 2017

1.1.5 Wai 2614

Tu'inukutavake Afeaki and Neuton Lambert, statement of claim on behalf of Jack Te Reti concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 13 March 2017

1.1.6 Wai 2620

Annette Sykes and Jordan Bartlett, statement of claim on behalf of Robert Te Huia, Jock Roa, Samuel Roa, Raymond Wokau, Kaawhia Te Muraahi, Maehe Muraahi, Lee Ann Head, the late Reu Te Huia, Napa Otim, Dave Patea, the late Rangimamae Johnson, Harriet Chase, Pania Roa, Mei McGuire, and Kelly Johnson concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 13 April 2017

1.1.7 Wai 2621

Dr Bryan Gilling and Josey Lang, statement of claim on behalf of Gordon Thomson, John Thomson, and June Elliot concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 13 April 2017

1.1.8 Wai 2656

Dr Bryan Gilling and Josey Lang, statement of claim on behalf of Rawiri Bidois and George Searancke concerning Crown recognition of Maniapoto Māori Trust Board deed of mandate, 8 May 2017

1.1.9 Wai 2663

Tom Bennion and Lisa Black, statement of claim on behalf of Jane Tūhoro and Joseph Tūhoro concerning Crown actions in respect of Maniapoto mandating process, 8 August 2017

1.4 Statements of issues

1.4.1 Waitangi Tribunal, statement of issues for Maniapoto mandate inquiry, [1 April 2019]

2. TRIBUNAL MEMORANDA, DIRECTIONS, AND DECISIONS**2.5 Pre-hearing stage**

2.5.1 Chief Judge Wilson Isaac, memorandum consolidating records of inquiry for claims Wai 2596, Wai 2597, Wai 2598, Wai 2611, Wai 2614, Wai 2620, Wai 2621, Wai 2656, and Wai 2663 under Wai 2858, 6 December 2018

2.5.8 Judge Patrick Savage, memorandum inviting submissions about numbers and availability of alternative remedy, 14 September 2017

2.5.22 Judge Patrick Savage, memorandum granting applications for urgency, 16 November 2018

2.5.23 Chief Judge Wilson Isaac, memorandum appointing Deputy Chief Judge Caren Fox presiding officer and Dr Aroha Harris and Professor Pou Temara panel members of Maniapoto mandate inquiry, 25 January 2019

2.5.25 Deputy Chief Judge Caren Fox, memorandum recusing herself from Maniapoto mandate inquiry, 8 February 2019

2.5.26 Chief Judge Wilson Isaac, memorandum appointing Judge Sarah Reeves presiding officer of Maniapoto mandate inquiry, 12 February 2019

2.5.33 Judge Sarah Reeves, memorandum consolidating Wai 2879 claim into inquiry, 18 April 2019

2.5.34 Judge Sarah Reeves, memorandum concerning mediation and extension requests, 18 April 2019

3. SUBMISSIONS AND MEMORANDA OF PARTIES

3.1 Pre-hearing represented

3.1.120 Matanuku Mahuika, Matewai Tukapua, Tara Hauraki, and Estelle Prado, joint memorandum concerning impact of mediation and facilitated discussions on settlement negotiations, 28 March 2019

3.1.157 Geoffrey Melvin, memorandum updating Tribunal on status of Crown negotiations with Maniapoto Māori Trust Board, 27 May 2019

3.2 Hearing stage

3.2.30 Craig Linkhorn, memorandum notifying Tribunal of intention of Crown to resume negotiations with Maniapoto Māori Trust Board, 18 September 2019

3.3 Opening, closing, and in reply

3.3.6 Craig Linkhorn and Rachael Ennor, opening submissions for Crown, 5 July 2019

3.3.9 Tu'inukutavake Afeaki, Moana Tuwhare, and Siaoosi Tofi, opening submissions for Wai 2614, 5 July 2019

3.3.17 Dr Bryan Gilling and Sophie Dawe, closing submissions for Wai 2656, 13 September 2019

3.3.18 Tom Bennion and Emma Whiley, closing submissions for Wai 2596, 13 September 2019

3.3.21 James Hope, closing submissions for Wai 2879, 13 September 2019

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3.3.22 Te Kani Williams and Raewyn Clark, closing submissions for Wai 2597, 13 September 2019

3.3.23 John Kahukiwa and Julia Harper-Hinton, closing submissions for Wai 2611, 13 September 2019

3.3.24 Annette Sykes, Rebekah Jordan, and Jordan Bartlett, closing submissions for Wai 2621, 13 September 2019

3.3.25 Te Kani Williams and Neuton Lambert, closing submissions for Wai 2598, 13 September 2019

3.3.26 Annette Sykes, Rebekah Jordan, Jordan Bartlett, and Kalei Delamere-Ririnui, closing submissions for Wai 2620, 13 September 2019

3.3.27 Matanuku Mahuika, Ngaroma Tahana, Matewai Tukapua, and Tara Hauraki, closing submissions for Maniapoto Māori Trust Board, 13 September 2019

3.3.28 Tom Bennion and Lisa Black, closing submissions for Wai 2663, 13 September 2019

3.3.30 Tu'inukutavake Afeaki, Moana Tuwhare, and Siaosi Tofi, closing submissions for Wai 2614, 16 September 2019

3.3.31 Rachael Ennor, closing submissions for Crown, 16 September 2019

3.3.37 Annette Sykes, Rebekah Jordan, Jordan Bartlett, and Kalei Delamere-Ririnui, submissions in reply for Wai 2620, 30 September 2019

3.3.38 Tom Bennion and Emma Whiley, submissions in reply for Wai 2596, 30 September 2019

3.3.40 Dr Bryan Gilling and Sophie Dawe, submissions in reply for Wai 2656, 27 September 2019

3.3.43 Tom Bennion and Lisa Black, submissions in reply for Wai 2663, 30 September 2019

4. TRANSCRIPTS AND TRANSLATIONS

4.1 Transcripts

4.1.1 National Transcription Service, transcript of first hearing, Narrows Landing, Hamilton, [30 August 2019]

4.1.2 National Transcription Service, transcript of second hearing, Narrows Landing, Hamilton, [30 August 2019]

4.1.3 National Transcription Service, transcript of closing submissions, Waitangi Tribunal Offices, Wellington, [17 October 2019]

RECORD OF DOCUMENTS

A. DOCUMENTS FILED UP TO COMPLETION OF CASEBOOK

A1 Harold Maniapoto, brief of evidence, 2 February 2017

(a) Supporting documents to document A1, various dates

pp 220–223 Maniapoto Māori Trust Board, 'Strategic Negotiations Advisory Team Terms of Reference', December 2016

A3 Barney Manaia, affidavit, 14 February 2017

(a) Supporting documents to document A3, various dates

pp 46–51 Te Kawau Mārō Maniapoto Mandate Body, 'Minutes of Te Kawau Mārō on Wednesday 8th July 2015 Commencing at 9.45am at Matawhaiora Board Room, 49 Taupiri Street, Te Kuiti', meeting minutes, no date

A4 Hardie Peni, brief of evidence, 3 March 2017

A5 Keith Ikin, brief of evidence, 14 March 2017

(a) Supporting documents to document A5, various dates

pp 2–21 Maniapoto Māori Trust Board, 'Deed of Mandate', printout, 5 December 2016

pp 183–184 Janise H Eketone to Harold Maniapoto, letter concerning service level agreement between Te Kawau Mārō and Maniapoto Māori Trust Board, 14 January 2016

pp 186–187 Genevieve Meyer to Sonya, printout of email concerning mandate of Te Kawau Mārō, 21 January 2016

pp 187 Genevieve Meyer to Sonya and Harold Maniapoto, printout of email acknowledging receipt of 13 November 2015 letter, 23 December 2015

pp 187–188 Sonya to Genevieve Meyer and Emily Owen, printout of covering email to letter from Harold Maniapoto, 16 November 2015

pp 196 R Tiwha Bell to Emily Owen, letter concerning resolutions adopted by Maniapoto Māori Trust Board, 3 February 2016

pp 200–203 Janise H Eketone, 'Hui Outcomes Paper', minutes of Big Apple meeting, 3 July 2016

pp 205–206 Harold Maniapoto to Tiwha Bell, letter concerning change to representative structure in mandate strategy, 5 August 2016

pp 240–206 Maniapoto Māori Trust Board, 'Strategic Negotiations Advisory Team Terms of Reference', printout, December 2016

A7 Emily Owen, affidavit, 15 March 2017

(a) Emily Owen, comp, supporting documents to document A7, 14 March 2017

pp 55–56 Te Kawau Mārō/Maniapoto Mandate Body, 'Summary of Regional Appointments Hui Held to Appoint 2 Representatives Each to Te Kawau Maro', table, no date

pp 76–78 Lil Anderson to Tiwha Bell, letter concerning Crown 2017 negotiation priorities, 9 September 2016

pp 96–115 Maniapoto Māori Trust Board, 'Deed of Mandate', table, 5 December 2016, *pp 1–20*

pp 148 R Tiwha Bell to Te Maru o Rereahu Iwi Trust, letter advising acceptance of suggested changes to draft deed of mandate, 5 December 2016

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A10 Harold Maniapoto, brief of evidence, 3 April 2017

A16 Darron Reti, brief of evidence, 28 April 2017

A18 Paul Meredith, brief of evidence, 4 May 2018

A21 Samuel Roa and Jock (John) Roa, joint affidavit, 17 May 2017

A25 Janette Thompson, brief of evidence, 9 August 2017

A35 James Mitchell, affidavit, 17 October 2017

A38 Lorraine Anderson, brief of evidence, 17 May 2019

(a) Lorraine Anderson, comp, supporting documents to document A38, 17 May 2019

(b) Lorraine Anderson, brief of evidence in reply, 27 June 2019

A39 Hardie Peni, brief of evidence, 5 June 2019

(a) Hardie Peni, comp, supporting documents to document A39, 5 June 2019

pp 2–4 Timeline, no date

pp 471–479 Doris Johnston and Jaclyn Williams, ‘Maniapoto: Bespoke Mandate Process’, report to Minister for Treaty of Waitangi Negotiations, OTS2016/2017-177, 13 September 2016

A40 Dr Robert Joseph, Moepatu Borell, and Harry Maki-Midwood, joint brief of evidence, 5 June 2019

A41 Stephen Laing, brief of evidence, 5 June 2019

(a) Stephen Laing, comp, supporting documents to document A41, no date

pp 7–8 Te Kawau Mārō/Maniapoto Mandate Body, agenda item concerning Crown endorsement of draft Maniapoto mandate strategy, 9 November [2015]

pp 11–13 Tessa Buchanan to Tom Bennion and Emma Whiley, printout of email concerning Crown endorsement of Waikato-Tainui remaining claims mandate strategy, 19 March 2019

A42 Janette Thompson, brief of evidence, 5 June 2019

(a) James Mitchell to Tūhoro whānau, letter concerning large natural group policy, claimant definition, Crown apology, and matters for negotiation, 3 October 2017

A44 Taohua (Robert) Te Huia, brief of evidence, 5 June 2019

A45 Gordon Thomson and John Thomson, joint brief of evidence, 5 June 2019

A46 Harold Maniapoto, brief of evidence, 5 June 2019

(a) Harold Maniapoto, comp, supporting documents to document A46, no date

pp 60–61 Unknown to Emily Owen, letter concerning role and responsibility of taurahere group member and annual review of representatives, 29 January 2016

- pp 97* R Tiwha Bell, Keith Ikin, and Weo Maag to Janise Eketone, notice of motion to revoke or alter Maniapoto Māori Trust Board resolutions, 24 March 2016
- pp 98* R Tiwha Bell to Rama Rewi, letter advising of passing of resolutions by Maniapoto Māori Trust Board, 4 March 2016
- pp 105–106* Harold Maniapoto to Tiwha Bell, letter expressing willingness of Te Kawau Mārō to amend representative structure in mandate strategy, 5 August 2016
- pp 107* Keith Ikin to Emily Owen, printout of email concerning 6–5–4 representation model, 11 August 2016
- pp 110* Emily Owen to Jaclyn Williams, printout of email concerning proposed streamlined process for mandating, 8 September 2016
- pp 120–121* Lil Anderson to Christopher Finlayson, ‘Cabinet Paper for Lodging: Broadening the Reach of Historical Treaty of Waitangi Settlements’, aide memoire, 2016/2017–231, 4 October 2016
- pp 122–145* Office of the Minister for Treaty of Waitangi Negotiations, ‘Broadening the Reach of Historical Treaty of Waitangi Settlements’, paper for Cabinet Committee on Treaty of Waitangi Settlements, [2016]
- pp 184* Emily Owen to Jennifer Hale and Fern Woolridge-Hyett, printout of email concerning ministerial meetings with dissenting groups, 13 September 2016
- pp 218–220* Sonya to Genevieve Meyer, Emily Owen, Ryan Bogardus, and Leah Campbell, printout of email concerning submissions hui, 26 May 2015
- pp 226–227* Peter Douglas to Emily Owen, ‘Hui between Maniapoto Maori Trust Board and Te Kawau Maro: Te Kauae Marae 18 March 2016’, memorandum, 21 March 2016
- (b)** Harold Maniapoto, brief of evidence in reply, 27 June 2019

A50 Antonio Tipene, brief of evidence, 15 May 2019

A55 Pani Paora-Chamberlin, affidavit, 14 June 2019

A56 Emily Owen, brief of evidence, 14 June 2019

(a) Supporting documents to document A56, various dates

- pp 29–40* Peter Galvin to Christopher Finlayson and Pita Sharples, ‘Large Natural Group Recognition for All Remaining Groups’, briefing paper for Minister for Treaty of Waitangi Negotiations, OTS2012/2013-103, 9 August 2012
- pp 41–86* Te Kawau Mārō, ‘Maniapoto LNG Mandate Strategy: For Mandate to Enter into Negotiations with the Crown for the Comprehensive Settlement of the Historical Maniapoto LNG Treaty of Waitangi Claims – Final’, printout, 15 December 2014
- pp 109–112* Kevin Kelly to Tiwha Bell, letter offering iwi and large natural groupings opportunity to purchase shares in Government share offer companies, 17 October 2012
- pp 142–143* Trevor Himona to Office of Treaty Settlements Negotiations Forum, memorandum concerning possible Maniapoto mandate strategy, CLADVO49-02-01, 7 May 2013
- pp 144–146* Tim Townsend to Harold Maniapoto, letter concerning Crown policy on shared interests, West Coast harbours, and parallel processes, 7 August 2013
- pp 148* Harold Maniapoto to Christopher Finlayson, letter concerning achievement of mandate and mandate strategy, 19 November 2013
- pp 149* R Tiwha Bell to Christopher Finlayson, letter expressing endorsement of Maniapoto mandate strategy by Maniapoto Māori Trust Board, 19 November 2013

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(a)—continued

- pp 150–222 Maniapoto Mandate Strategy Steering Group, ‘Maniapoto Mandate Strategy: For Mandate to Enter into Negotiations with the Crown for the Comprehensive Settlement of the Historical Maniapoto Treaty of Waitangi Claims’, printout, 13 November 2013
- pp 309–330 Giselle Larcombe to Tim Townsend, memorandum concerning groups within Maniapoto and Waikato-Tainui large natural groups, 17 March 2014
- pp 352–353 ‘Summary of Meeting’, minutes of 26 September 2014 meeting between Office of Treaty Settlements and Te Maru o Rereahu Trust, no date
- pp 354–355 ‘Note of Meeting’, minutes of 26 September 2014 meeting between Office of Treaty Settlements and Maniapoto Mandate Strategy Steering Group, Ngāti Apakura, Ngāti Hikairo, and Ngāti Te Wehi, no date
- pp 359–360 Weo Maag to Christopher Finlayson, letter confirming withdrawal of Maniapoto Central Region from mandating process of Maniapoto Mandate Strategy Steering Group and Te Kawau Mārō and advising formation of Te Nehenehenui Collective, 10 November 2014
- pp 370–374 Genevieve Meyer, Neil Robbins, Ryan Bogardus, and Erin Keenan to Tim Townsend, memorandum concerning Crown endorsement of mandate strategy of Maniapoto Mandate Strategy Steering Group, OTS2014/2015-167, 15 December 2014
- pp 811–829 ‘Summary of Submissions Received on Te Kawau Mārō Deed of Mandate as at 12 February 2015’, table of submitters, positions, and key issues, no date
- pp 831–833 ‘Te Kawau Mārō 18 February 2015: Note of Meeting’, minutes of 18 February 2015 meeting between Office of Treaty Settlements and Te Kawau Mārō, no date
- pp 834–835 Office of Treaty Settlements, ‘Meeting with Te Kawau Mārō’, notes for meeting between Office of Treaty Settlements and Te Kawau Mārō, 18 February 2015
- pp 875–876 Harold Maniapoto to Brian Stanley, letter advising response of Te Kawau Mārō to submissions of Te Maru o Rereahu Iwi Trust, 1 May 2015
- pp 886–889 Harold Maniapoto to Emily Owen, letter concerning proposed amendment to draft mandate strategy, vacant positions on Te Kawau Mārō, claimant definition, engagement hui, correspondence and engagement, and legal body status, 17 June 2015
- pp 890–894 Doris Johnston to Christopher Finlayson, ‘Maniapoto and Rereahu: Te Kawau Mārō Response to Submissions’, aide memoire for Minister for Treaty of Waitangi Negotiations, OTS2014/2015-737, 26 June 2015
- pp 908–909 Emily Owen to Harold Maniapoto, letter concerning claimant definition in draft mandate strategy of Te Kawau Mārō, Ngāti Hikairo, and Ngāti Apakura, 5 August 2015
- pp 910–958 Te Kawau Mārō, ‘Maniapoto LNG Mandate Strategy: For Mandate to Enter into Negotiations with the Crown for the Comprehensive Settlement of the Historical Maniapoto LNG Treaty of Waitangi Claims – Final Draftv1’, printout, 9 September 2015
- pp 1015–1019 Emily Owen to Christopher Finlayson, ‘Information in Advance of Your Meeting with Maniapoto Māori Trust Board on Friday, 11 December 2015’, aide memoire for Minister for Treaty of Waitangi Negotiations, OTS2015/2016-407, 9 December 2015
- pp 1025–1026 Harold Maniapoto to Emily Owen, letter concerning role and responsibility of Ngāti Apakura taurahere group member, annual review of representatives, and request for additional seats, 29 January 2016
- pp 1027 R Tiwha Bell to Emily Owen, letter concerning adoption of resolutions by

Maniapoto Māori Trust Board and lack of support for approach of Te Kawau Mārō,
3 February 2016

pp 1029–1030 Emily Owen to Harold Maniapoto, letter concerning lack of appropriate level of accountability of Te Kawau Mārō to Maniapoto claimant community and resolutions passed by Maniapoto Māori Trust Board, 5 February 2016

pp 1044–1045 File note listing key points of teleconference between Office of Treaty Settlements and Te Kawau Mārō (representation, additional seats for claimant community, and multiple settlements and post-settlement governance entities), 11 March 2016

pp 1137–1138 Peter Douglas to Lil Anderson, report concerning progress between Maniapoto Māori Trust Board and Te Kawau Mārō, 29 August 2016

p 1139 Patrick Southee to Ken Mair, printout of email concerning draft strategy, 7 September 2016

p 1140 Emily Owen to Genevieve Meyer, printout of email concerning starting work on mandate document, 7 September 2016

p 1141 Emily Owen to Harold Maniapoto, letter advising of Crown decision not to continue working with Te Kawau Mārō, 8 September 2016

pp 1142–1150 Doris Johnston and Jaclyn Williams to to Christopher Finlayson, ‘Maniapoto: Bespoke Mandate Process’, report to Minister for Treaty of Waitangi Negotiations, OTS2016/2017-177, 13 September 2016

p 1486 Emily Owen to Sonya Maniapoto, letter of invitation to meeting to discuss submission on Maniapoto Māori Trust Board mandate proposal, 2 November 2016

pp 1530–1531 Office of Treaty Settlements, ‘Note of Meeting’, notes of 10 November 2016 meeting between Office of Treaty Settlements and Tūhoro whānau, no date

pp 1553–1574 Emily Owens and Jaclyn Williams to Christopher Finlayson, ‘Maniapoto: Recognition of Mandate’, report to Minister for Treaty of Waitangi Negotiations, OTS2016/2017-379, 5 December 2016

(d) Bundle of documents for cross-examination of all Crown and Maniapoto Māori Trust Board witnesses, 9 July 2019

p 25 Ryan Bogardus to Genevieve Meyer, printout of email concerning inclusion of Ngāti Apakura, Ngāti Tuirirangi, and Wai 2273 in Ngāti Maniapoto mandate strategy, 17 February 2015

pp 95–116 Jessie Annett-Wood to Claimant Definition Oversight Group, memorandum concerning Ngāti Maniapoto claimant definition, 20 July 2017

(e) Second bundle of documents for cross-examination for all Crown and Maniapoto Māori Trust Board witnesses, 9 July 2019

p 5 Paul Meredith to Matthew Wynyard, printout of email concerning Ngāti Maniapoto hapū, 13 December 2016

p 6 Matthew Wynyard to Paul Meredith, printout of email concerning claimant definition, 8 December 2016

A57 James Mitchell, brief of evidence, 14 June 2019

(a) James Mitchell, comp, supporting documents to document A57, 14 June 2019

pp 169–296 Maniapoto and the Crown, ‘Te Huatahi: Agreement in Principle to Settle Historical Claims’, 15 August 2017

pp 335–341 ‘Mandate Maintenance Table – Maniapoto Māori Trust Board (“ММТВ”); table, 30 November 2017

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(b) James Mitchell, comp, supporting documents to document A57, 14 June 2019
p360 Leah Campbell to Mook Hohneck and Glenn Tootill, letter concerning inclusion of
Ngāti Apakura in Ngāti Maniapoto Treaty settlement, 4 February 2019

A58 Lilian Anderson, brief of evidence, 14 June 2019

(a) Lilian Anderson, comp, supporting documents to document A58, 14 June 2019
p1 'Key Questions in Assessment of Potential 2017 Priority Groups' table, no date

A60 Paul Meredith, brief of evidence, 19 June 2019

A61 Keith Ikin, brief of evidence, 20 June 2019