OFFICIAL

KEI MUA TE RŌPU WHAKAMANA I TE TIRITI

BEFORE THE WAITANGI TRIBUNAL

WAI 1040
WAI 1673
WAI 2179
WAI 1722
WAI 862
WAI 1541
WAI 1681
WAI 179
WAI 1536
WAI 1380
WAI 1917
WAI 2071
WAI 1525
WAI 1956
WAI 2059
WAI 1657
WAI 2217
WAI 1842

RECEIVED
Waitangi Tribunal
17 May 2012
Ministry of Justice
WELLINGTON

I TE TAKE O **TE TURE I TE TIRITI O WAITANGI 1975**

ME

I TE TAKE O **TE PAPARAHI O TE RAKI INQUIRY**

ME

I TE TAKE O
TE KEREME O **CROWN CONCESSIONS IN RESPECT TO TE PAPARAHI O TE RAKI INQUIRY**

CLAIMANT COUNSEL SUBMISSION REGARDING THE DRAFT CROWN STATEMENT OF POSITION AND CONCESSIONS TĒNEI TE RĀ 17th HARATUA 2012

TIKA CHAMBERS
BARRISTERS
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MĒNĀ KA PAI KI TE RŌPU WHAKAMANA

MAY IT PLEASE THE TRIBUNAL

[1] These submissions follow on from Counsel's Memorandum dated 16 April 2012. (Wai 1040# 3.1.760) and are filed in response to the following documents:

a) Memorandum of Directions of the Presiding Officer Wai 1040 #3.1.722 which directed that parties file submission in response to the Draft Crown Statement of Position and Concessions.

b) Crown Memorandum Concerning Response to Questions of Clarification posed by claimant Counsel regarding Draft Crown Statement of Position and Concession, dated 9 May 2012, (Wai 1040, #3.1.768).

c) Crown Response to Questions of Clarification regarding Draft Crown Statement of Concessions and Position, dated 9 May 2012 (Wai 1040, #3.1.768(a).

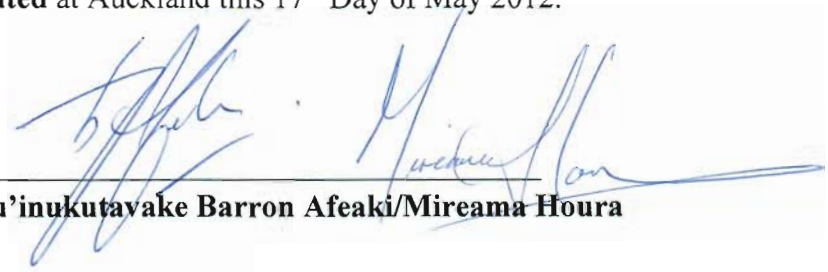
[2] In the Crown Memorandum of 9 May (responding) at para 6, the Crown sets out what it claims in effect are problems associated with the claimants' approach to questions seeking clarification about the meaning of any particular statement or potential ambiguity within the Crown's draft statement of position and concessions.

[3] What Counsel highlighted was the contestable nature of purported concessions from the Crown, which in the event, appear so highly qualified that they cannot be ranked as concessions. Further, the way in which the Crown appears at cross-purposes with the claimants' queries, such as in its interpretation of certain key terms, issues and phraseology, does not provide the clarification sought. It is acknowledged that there will be further chances to adduce evidence and legal arguments on many of these matters during hearing, but what Counsel were seeking was engagement and refinement at this earlier stage. The Crown's approach ought to, as much as possible consider and cater for the needs of the claimant community and also of course, the Tribunal in its process.

[4] In counsel's submission, the Tribunal is invited to consider a judicial conference with the Tribunal being involved to seek clarification

itself on concessions so that they might not only be heard *viva voce* but also so that points yet to be clarified can be resolved following discussion amongst Claimant and Crown counsel (Crown included) before the Tribunal and thereto officially recorded by the Tribunal itself.

Dated at Auckland this 17th Day of May 2012.



Tu'inukutavake Barron Afeaki/Mireama Houra

Claimant Counsel

To: The Registrar of the Waitangi Tribunal
To: Counsel for the Crown
To: Counsel for Claimants