

*The
Pakakohi and Tangahoe
Settlement Claims
Report*

THE
PAKAKOHI AND TANGAHOE
SETTLEMENT CLAIMS
REPORT

WAI 758, WAI 142

WAITANGI TRIBUNAL REPORT 2000

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

A Waitangi Tribunal report

ISBN 1-86956-257-7

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Produced by the Waitangi Tribunal

Published by Legislation Direct, Wellington, New Zealand

Printed by Manor House Press Limited, Wellington, New Zealand

Set in Adobe Minion and Cronos multiple master typefaces

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ABBREVIATIONS

doc	document
fol	folio
inc	incorporated
J	justice
MB	minute book
n	note
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
ROI	record of inquiry
s	section
TPK	Te Puni Kokiri
v	and

'Wai' is a prefix used for Waitangi Tribunal claim numbers



The Waitangi Tribunal
Wellington

The Honourable Parekura Horomia
Minister of Maori Affairs

and

The Honourable Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations
Parliament Buildings
Wellington

14 November 2000

Tena korua

Enclosed is the Pakakohi and Tangahoe Settlement Claims Report, prepared on an urgent basis following a hearing in Wellington on 1, 2, and 3 November 2000.

The claimants are Rita Bublitz, Aroha Houston, and Waveney Stephens for and on behalf of Te Iwi o Tangahoe Incorporated and Huia Rei Hayes for and on behalf of herself and Te Runanganui o Te Pakakohi Trust Incorporated. The claims related to a decision by the Crown to accept the mandate of the Ngati Ruanui Muru me te Raupatu Working Party to settle all the historical claims of Ngati Ruanui, including those of Pakakohi and Tangahoe. The claimants argued that they should have been given an opportunity to negotiate and settle their own claims with the Crown in their own right.

We were mindful of the nature of the dispute which gives rise to this claim and the need to tread carefully in matters relating to mandate in Treaty claims. But we were also mindful of the unparalleled importance of this matter to the future of Ngati Ruanui, Pakakohi, and Tangahoe. With this in mind, we developed four questions to assist in answering the issues raised by these claims. The questions and our answers to them are set out below:

1. Does tikanga or early colonial history (or both) recognise Pakakohi or Tangahoe (or both) as a cultural and political entity distinct from Ngati Ruanui?

We answered this question in the affirmative for both claimant groups.

2. Do Pakakohi or Tangahoe (or both) have claims which are distinct from those of Ngati Ruanui?

We considered that Tangahoe did not have claims which were distinct from those of Ngati Ruanui, but that Pakakohi's claims were distinctive.

3. Is there sufficient evidence of support for a separate settlement in favour of Pakakohi Inc (the Pakakohi claimants) or Tangahoe Inc (the Tangahoe claimants) (or both) to warrant the Tribunal taking a hard look at the Crown's handling of the Ngati Ruanui working party mandating process?

After carefully assessing this matter, we concluded that the evidence was insufficient to warrant the Tribunal taking a 'hard look' in respect of either claimant group.

4. If there is sufficient evidence to warrant a 'hard look' at the matter, were there flaws in the Crown's handling of that matter of sufficient severity to warrant the Tribunal considering that the Crown's acceptance of the working party's mandate to settle on behalf of Pakakohi or Tangahoe or both is unsafe?

As a result of our answer to question 3, it became unnecessary to consider question 4.

In the result, having heard the evidence and arguments for all parties, we were not prepared to recommend a halt to the Ngati Ruanui settlement. Nor were we prepared to recommend that the approach to settlement adopted by the Crown and the working party should be changed. We do, however, express in strong terms our hope that the discussions which commenced between the claimants, the working party, and the Crown during the course of the earlier Tribunal-facilitated mediation process should be continued. We take this view because we believe it is important to ensure that the integrity of the Pakakohi and Tangahoe tradition within Ngati Ruanui is maintained in the settlement between the working party and the Crown. Our reasons for reaching this conclusion are set out more fully in the last section of our report.

Heoi ano e nga rangatira, koiane nga whakaaro ka pupuu ake i te hinengaro o te Roopu Whakamana i te Tiriti o Waitangi hei taataranga, hei waananga ma korua.

Naku noa



na Joe Williams
Chief Judge
Deputy Chairperson

1. THE PARTIES AND THE PATH TO THE URGENT HEARING OF THE CLAIMS

1.1 INTRODUCTION

On 20 April 1998, Cabinet accepted the mandate of the Ngati Ruanui Muru me te Raupatu Working Party (the working party) to settle the historical claims of Ngati Ruanui. The working party represented and the Crown accepted that Ngati Ruanui include for the purposes of the settlement the traditional kin groups known as Tangahoe and Pakakohi. On 7 September 1999, the Crown and the working party entered into a heads of agreement on that basis. Within the next few weeks, the parties intend to initial a final deed of settlement giving effect to agreements in the heads of agreement. The two claims the subject of this report relate to the Crown's decision to accept the mandate of Ngati Ruanui to settle the claims of Pakakohi and Tangahoe. The claims are all located in south Taranaki in the vicinity of Hawera and Patea.

1.2 THE CLAIMANTS

The claims were made by:

- ▶ Rita Bublitz, Aroha Houston, and Waveney Stephens for and on behalf of Te Iwi o Tangahoe Incorporated; and
- ▶ Huia Rei Hayes for and on behalf of herself and Te Runanganui o Te Pakakohi Trust Incorporated.

The first of those claims was in fact filed with the Tribunal in mid-1990 and was allocated the Tribunal's claim number Wai 142. It was originally one of 21 claims that were the subject of the Tribunal's interim *Taranaki Report: Kaupapa Tuatahi*, issued in mid-1996 after five years of Tribunal hearings. In the decade since 1990, the Wai 142 claimants have amended their statement of claim several times. The most recent amendment, made on 18 April 2000, raised issues that are the subject of this report.

The second of the claims was filed with the Tribunal in November 1998 and was allocated the Tribunal's claim number Wai 758. Although it post-dates the *Taranaki Report*, there is a close relationship between this claim and one made in 1989 by Piki Parker for Te Pakakohi (Wai 99). The

Wai 99 claim was also one of the 21 claims that were the subject of the Tribunal's interim *Taranaki Report*.

It will be seen that these claims reflect a significant difference of opinion between the two claimant groups on the one hand, and the Crown and the working party on the other, as to who (or what modern legal entity) represents the traditional kin groups known as Pakakohi and Tangahoe. This raises a significant matter of terminology. It is necessary to distinguish between the claimant groups represented at the urgent hearing of their claims and the hapu groupings traditionally known as Tangahoe and Pakakohi. The terminology we have adopted is this. When we refer specifically to one or both of the claimant groups, we use phrases such as 'the Tangahoe claimants' and 'the Pakakohi claimants' or 'Tangahoe Inc' and 'Pakakohi Inc' – which highlight the groups' modern day structures and membership. By contrast, when we are referring to the traditional groups of hapu, we simply use the names Tangahoe and Pakakohi. It is essential to keep these distinctions in mind.

1.3 THE CROWN AND THE WORKING PARTY

The Crown decisions that are the subject of the present claims have been made by Cabinet on the advice of Cabinet Strategy (now Policy) Committee and, more particularly, the Minister in Charge of Treaty of Waitangi Negotiations. The Minister, in turn, is advised by the Office of Treaty Settlements (OTS). That office obtains input to its policy advice, and to its development of processes to implement Crown policy, from other Crown agencies (most notably Te Puni Kokiri (TPK) – the Ministry of Maori Development) as well as from Maori communities.

The Crown's decision to recognise the working party as having the mandate to settle the historical claims of Ngati Ruanui including Pakakohi and Tangahoe was made after lengthy consideration of the issues and risks involved. The nature of those issues and risks emerged during the five years of the Waitangi Tribunal's hearing of the Taranaki raupatu claims. In those proceedings, the arguments and evidence presented by the Pakakohi and Tangahoe claimants made it plain that they would very likely oppose later claims by an entity such as the working party to represent their interests. Further, in the interim *Taranaki Report*, the Tribunal stated its view that, in addition to the eight hapu aggregations

[2]

(including Ngati Ruanui) which are represented on the Taranaki Maori Trust Board, Pakakohi and Tangahoe are 'distinctive and viable entities deserving separate consideration'.¹ The Crown had ample warning, therefore, when it publicised its intention to settle the Taranaki raupatu claims that the Pakakohi and Tangahoe claimant groups would very likely petition it to enter settlement negotiations with each of them, separate from any that might be conducted with Ngati Ruanui.

Influential in the Crown's 1998 decision to recognise the mandate of the working party was the evidence presented to it by the working party itself about the basis and strength of its authority to represent Pakakohi and Tangahoe. Yet the Crown did not merely recognise that the working party as it was originally composed could properly represent Pakakohi and Tangahoe. Instead, it recognised the working party's mandate only on condition that there be introduced onto the working party an additional place for a further representative of Ngatiki Marae, which is closely affiliated to Tangahoe, and that the two places reserved for Te Takere Marae (known to the Pakakohi claimants as Manutahi, and hereafter referred to as such in this report), which is closely affiliated to Pakakohi, be kept available.

Once the working party's mandate was recognised on those conditions – and even though the conditional places were not taken up – the Crown's assessment of the mandate situation inevitably became highly dependent on the working party's own assessment of it. With the Crown's mandate conditions fulfilled by keeping available the places on the working party, and the working party's firm view that opposition to its mandate came only from dissenting groups within Pakakohi and Tangahoe, it remained confident of its authority to negotiate the settlement of the historical claims of Ngati Ruanui including Pakakohi and Tangahoe. As the negotiations progressed, and the working party kept the Crown informed about its efforts to alleviate the mandate problems, the views of the Crown and the working party on the mandate issue, at least in the eyes of the claimant groups, became very closely merged.

In the result, while the Crown is the party against whom the present claims are made (and must be in Tribunal proceedings), many of the claimants' allegations are equally targeted at the views and conduct of the working party. Accordingly, while Crown counsel represented the Crown to oppose the claims at the Tribunal's urgent hearing, the working party

1. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 315

also sought and obtained leave to be represented in the proceedings, and its counsel made submissions in support of the Crown's position.

1.4 BACKGROUND TO THE URGENT HEARING OF THE CLAIMS

It was as recently as 25 October 2000 that the Waitangi Tribunal granted an urgent hearing to the claims. The hearing then took place on 1, 2, and 3 November 2000. The speed with which the Tribunal proceeded to hear the claims reveals that the claimants and the Crown were prepared for that event – even if they did not welcome it.

The parties' preparedness for hearing reflects the fact that the issues raised by the claims have been pursued, and sought to be resolved, over a lengthy period of time. In the remainder of this chapter, we provide an outline of the events which, with the benefit of hindsight, can be seen to have been milestones along the present claims' path to their urgent hearing. The purpose of this outline is to alert readers very quickly to the recent history of the claims. Accordingly, the more significant of the matters mentioned here are explored in greater detail in later chapters.

1.5 THE TARANAKI REPORT

As has been noted, the Taranaki raupatu claims – including those of Ngati Ruanui, Tangahoe, and Pakakohi – were reported on by the Waitangi Tribunal in an interim report released in June 1996. It was because of the *Taranaki Report's* interim nature that the Tribunal recorded, in the preface, that leave was reserved to all parties to seek further hearing of their claims if the proposed settlement negotiations were unsuccessful or would benefit from further consideration of particular matters.² The present urgent hearing of the Wai 758 and Wai 142 claims has its origins in that reservation.

With a view to claim settlement, the Taranaki Tribunal noted that eight hapu aggregations are represented on the Taranaki Maori Trust Board, and that two others – Pakakohi and Tangahoe – had also demonstrated that 'they exist today as distinctive and viable entities deserving separate consideration'.³ The Tribunal clearly hoped that the matter of settlement apportionment among the 10 groups could be agreed without its further

2. *The Taranaki Report*, p xi

3. *Ibid*, p 315

input. With regard to the southern region, however, the Tribunal stated its view that Pakakohi and Tangahoe seemed not to be entitled to share equally with Nga Ruahine, Ngati Ruanui, and Nga Rauru, with whom they variously overlapped.⁴ We reproduce here figure 4 from the *Taranaki Report*, which was presented to that Tribunal as depicting the locations of the various tribal groupings as seen by those groups at that time. However, the reproduction of this map in the present report should not be taken to mean that we accept or confirm the accuracy of the boundaries depicted therein. We will return to the *Taranaki Report* in more detail in the following chapter.

1.6 THE CROWN'S RECOGNITION OF THE WORKING PARTY'S DEED OF MANDATE

In July 1997, as part of the claims settlement process, the working party submitted its deed of mandate to the Crown for recognition so that negotiations between the parties could commence. In the written submissions process that followed, 11 submissions were received opposing the working party's mandate – three from the Pakakohi claimants and eight from the Tangahoe claimants.

In April 1998, after analysing the situation and imposing conditions to promote better representation of Pakakohi and Tangahoe, the Crown recognised the working party's deed of mandate to represent Ngati Ruanui, including Pakakohi and Tangahoe, in the negotiations for the settlement of their historical grievances. The Minister in Charge of Treaty of Waitangi Negotiations subsequently informed the claimant groups that the Crown would not enter into separate negotiations with them. In August 1998, the Crown and the working party signed the terms of their negotiations.

1.7 THE FIRST APPLICATION FOR AN URGENT TRIBUNAL HEARING

The Wai 758 claim, filed on 3 November 1998 by Huia Rei Hayes, challenged two matters:

- ▶ the Crown's recognition of the working party's deed of mandate;
- and

4. *Ibid*, p316

- ▶ the Crown's decision not to enter into separate negotiations with Pakakohi.⁵

The claimants requested an urgent hearing of the claim by the Tribunal and filed an affidavit by Piki Parker in support of the request.⁶

1.8 THE CROWN'S OPPOSITION

On 25 February 1999, Crown counsel filed submissions opposing the Pakakohi claimants' request for urgency and affirming the Crown's views that the working party could represent Pakakohi (and Tangahoe) in the settlement negotiations. Emphasis was placed upon the careful steps that had been taken by the Crown before recognising the working party's mandate. These included the public submissions process and two analyses of the situation by TPK and OTS.

Crown counsel explained that the opposition to the working party's mandate caused Cabinet approval to be given only on the basis that additional provision be made for Tangahoe representation (through an extra place on the working party for Ngatiki Marae) and that continued provision be made for Pakakohi through the representatives of Manutahi Marae. Cabinet hoped, however, that its recognition of the working party's deed of mandate would 'send a clear signal to those individuals who identify exclusively as Tangahoe and Pakakohi that the Crown intends to address their claims under a Ngati Ruanui umbrella'.⁷

1.9 THE CLAIMANTS' RESPONSE

At that stage, at the request of counsel for the Wai 758 claimants, a conference to consider the application for urgency was adjourned several times. In March 1999, claimant counsel advised the Tribunal that 'significant developments' had occurred which might 'obviate the need for urgency'.⁸ Nothing came of discussions between the parties, however, and on 21 April 1999 counsel filed a substantive reply to the Crown's submissions.

Claimant counsel asserted in that reply that, in May 1998, Pakakohi Inc had been offered a place on the working party but, having now decided to take it up, the claimant group had been informed that the offer had been withdrawn. The current representation of the Pakakohi claimants on the

5. Claim 1.1

6. Paper 2.4, p3

7. Paper 2.5, pp 8–11

8. Paper 2.8(a)

working party was objected to, as was the fact that TPK and OTS had formed their views on the working party's deed of mandate without consulting the claimants. Counsel concluded that Pakakohi were in danger of either being 'swamped by Ngati Ruanui' or being 'shut out' of the negotiation process entirely.⁹

1.10 THE TRIBUNAL'S FIRST DECISION ON URGENCY

After a judicial conference on 21 April 1999, the Tribunal declined the application for an urgent hearing. The presiding officer, Deputy Chief Judge Norman Smith, did not accept that a refusal to grant urgency would lead to irreparable loss to the claimants – which is one of the criteria the Tribunal has regard to in deciding urgency applications. The judge reasoned that the measure of Pakakohi's loss would not be known until the negotiations were concluded and, at that point, there were still safeguards that the claimants could rely on, both in the settlement ratification process and in the Tribunal's reservation of leave to seek a further hearing.¹⁰

1.11 THE SECOND APPLICATION FOR URGENCY

On 7 September 1999, the Crown and the working party signed a heads of agreement which stated that the parties would settle the Wai 99 Pakakohi raupatu claim. Piki Parker then filed her second affidavit with the Tribunal, dated 26 October 1999, asserting that Pakakohi would suffer significant prejudice if the heads of agreement became binding. For example, she asserted, land returns in the Pakakohi rohe were to be made specifically to Ngati Ruanui and the draft apology was for incidents which happened directly to Pakakohi, not Ngati Ruanui. In sum, Mrs Parker argued that Pakakohi were in danger of suffering 'irreparable loss' and that the Crown was creating new grievances in settling old ones.¹¹

1.12 THE TRIBUNAL'S DIRECTION

On 2 December 1999, the Tribunal's chairperson, the Honourable Justice ETJDurie, sought confirmation from the Crown as to whether it

9. Paper 2.12, pp 3, 6, 9, 10, 19

10. Paper 2.15, p 3

11. Paper 2.16

intended to settle Wai 758 at the same time as settling Wai 99. He also sought an assurance that the Wai 99 and Wai 758 claimants were being represented in the negotiations to settle those two claims. He invited a quick response from the Crown and noted that the Tribunal would consider an application for an urgent hearing in the event that parties could not agree to a negotiations process to settle Wai 99 and Wai 758.¹²

1.13 THE CROWN'S RESPONSE

On 11 January 2000, after the new Minister in Charge of Treaty of Waitangi Negotiations had been briefed on the matter, Crown counsel confirmed that it was the Crown's intention that Wai 758 would be brought to an end by the implementation of the settlement of Ngati Ruanui's historical claims. On the second matter, it was stated that Pakakohi representation had been provided for through the ongoing availability on the working party for representation from Manutahi Marae. Crown counsel submitted that, although that marae had not taken up the position, Pakakohi representation remained provided for by the fact that a number of the working party members affiliated with Pakakohi.¹³ Counsel also observed that the Pakakohi claimants would have the opportunity to participate in both the deed of settlement ratification process and the legislative (select committee) process that would be needed to make the settlement binding.¹⁴

1.14 THE CLAIMANTS' RESPONSE

In a response of 3 February 2000, claimant counsel argued that it would be a dangerous precedent, and contrary to the principles of natural justice and the Treaty of Waitangi, for the Crown to include Wai 758 in any settlement with Ngati Ruanui. Counsel took strong issue with what he perceived as the Crown's position that 'the mere provision of this *opportunity* for representation [through Manutahi Marae] is sufficient' (emphasis in original).¹⁵

12. Paper 2.17

13. Note that the record is inconsistent as to how many places were to be reserved for Manutahi Marae: see p 63, n 8.

14. Paper 2.21

15. Paper 2.22, para 9.2

1.15 TANGAHOE AMENDED STATEMENT OF CLAIM

As noted above, the Wai 142 Tangahoe raupatu claim was originally filed in 1990 and amended in 1995. In January 2000, the Tangahoe claimants applied for an urgent hearing of their claim. Then, on 18 April 2000, their statement of claim was further amended to cover the same issues as were raised in Wai 758.

1.16 JUDICIAL CONFERENCE TO CONSIDER APPLICATIONS FOR URGENCY

At a judicial conference on 22 May 2000, counsel for the Pakakohi claimants reiterated his earlier arguments and raised the concern that there was no stipulation in the heads of agreement as to how the \$41 million settlement moneys were to be spent. Counsel felt that there was no guarantee that any of the amount would go to Pakakohi, despite the fact that a reasonable proportion of the sum would be going towards settling Pakakohi grievances.

Counsel also objected to the way the heads of agreement provided for Ngati Ruanui, and not Pakakohi, to be consulted over such things as natural resources and place name changes. In sum, he asserted that the Crown settling Wai 758 without dealing with his clients would breach the natural justice requirements of section 27(1) of the New Zealand Bill of Rights Act 1990, as well as the principles of the Treaty of Waitangi.¹⁶

The Crown opposed the applications, reiterating its position on the propriety of the mandating process and the adequacy of the safeguards protecting Pakakohi and Tangahoe interests. Also reiterated was the Crown's submission that an 'undesirable precedent' would be established should the Tribunal grant urgency to the claims, because objectors to mandating decisions could be encouraged to challenge them in the Tribunal rather than working with the mandated negotiators.¹⁷

1.17 JUDICIAL CONFERENCE LEADS TO MEDIATION

At the judicial conference, the Tribunal invited the Crown to suspend its negotiations with the working party for 21 days to allow a Tribunal-facilitated mediation between the parties to proceed. The Crown did not agree

16. Paper 2.24

17. Paper 2.25

to suspend the negotiations but confirmed that no deed of settlement would be initialled during the 21-day process and that it had no objection to the mediation taking place.¹⁸

The mediation period was subsequently extended until 23 June 2000, and discussions continued between the parties after that date. On 26 July 2000, in response to a request from Wai 758 counsel (assented to by the other parties), the Tribunal agreed to suspend the application for urgency *sine die*, on the proviso that it could be revived at three days' notice.¹⁹

1.18 THE THIRD APPLICATION FOR URGENCY

On 16 October 2000, claimant counsel (now acting for the Wai 758, Wai 99, and Wai 142 claimant groups) requested that the urgency application be revived. Counsel explained that the mediation had not been successful but that the parties had continued their discussions thereafter. He submitted that the Crown had agreed not to initial a deed of settlement or to expedite progress towards one while the discussions were ongoing. However, the discussions had not led to any agreement and the claimants had just learned that the Crown and the working party intended to initial a deed of settlement in mid-November. This was asserted to be in breach of the Crown's earlier undertaking and so, once more, an urgent hearing was sought.²⁰

1.19 THE CROWN'S POSITION

By submission of 20 October 2000, Crown counsel opposed the application for urgency. It was said that claimant counsel's statement that discussions had broken down over 'fundamental issues' was correct in so far as it meant that the Crown was not prepared to recognise separate iwi status for Tangahoe or Pakakohi. It was disputed that the Crown had agreed, after the mediation period had expired, to continue its undertaking that a deed of settlement would not be initialled. Further, Crown counsel confirmed that Cabinet approval of the deed of settlement was being sought on 6 November 2000.²¹

18. Paper 2.26

19. Paper 2.29

20. Paper 2.34

21. Paper 2.35

1.20 EVIDENCE OF EVENTS SINCE MEDIATION

With Crown counsel's submissions was filed a statement from Andrew Hampton (a manager at OTS with responsibility for settling Taranaki claims) summarising developments since the mediation.²² Mr Hampton referred to a Crown offer to fund the Tangahoe and Pakakohi claimants to enter discussions with the working party aimed at accommodating the claimants' concerns about the settlement and the tight timeframe planned for its initialling and ratification. He said the amount of \$5000 had been released to each claimant group in late August and early September 2000 and some progress was made early in October, which was after the Crown had informed the Tangahoe and Pakakohi claimants that the working party and the Crown were working towards initialling a deed of settlement within two months. In particular, a 'constructive' meeting had been held on 9 October 2000 between OTS, counsel for the Wai 758 claimants, and counsel for the working party. However, on 13 and 17 October, Pakakohi and then Tangahoe withdrew from discussions and notified their intention to reapply for urgency.

Mr Hampton expressed surprise at recent comments by the claimants that the discussions failed because the fundamental matters of their status as iwi and their wish to enter into separate negotiations with the Crown could not be addressed. His own understanding was that the discussions agreed to after the mediation did not include those matters. In his view, the Crown had been willing to explore practical ways of accommodating the claimants' concerns. Indeed, OTS had already agreed, subject to the working party's confirmation, to certain changes in the settlement document, even though the claimants had now withdrawn from discussions.

The changes agreed to by OTS related to:

- ▶ direct reference to the Waitangi Tribunal's findings regarding the status of Tangahoe, Pakakohi, and Ngati Ruanui;
- ▶ greater prominence to Tangahoe and Pakakohi in the claimant group definition; and
- ▶ specific reference to Pakakohi prisoners in the Crown's apology.

Mr Hampton also noted other areas in which OTS and the working party were prepared to consider specific proposals from the claimants, including place name changes and the acknowledgement of traditional taonga species. Further, the working party had agreed to seek the wider

22. Paper 2.35(a)

claimant community's view on a proposal for 'direct Tangahoe and Pakakohi representation on the proposed post-settlement governance entity'.²³

Finally, Mr Hampton confirmed that the Crown was aiming to initial a deed of settlement by mid-November and have the deed ratified by the end of the year. He pointed out that any delay would prejudice those members of Pakakohi and Tangahoe who supported the working party.

1.21 THE TRIBUNAL'S SECOND DECISION ON URGENCY

The Tribunal considered the revived application for urgency at a judicial conference on 25 October 2000. In an oral decision, Chief Judge Joseph Williams summed up the issue as involving the essential question of whether Pakakohi and Tangahoe were sufficiently viable and functioning communities in their own right to deserve to be negotiated with separately over the raupatu grievance. Two matters required consideration, he said, before a decision on the application could be made:

- ▶ whether there was a genuine argument about that question; and
- ▶ if so, whether the opportunity to argue it would be lost if the Crown and the working party went ahead as planned and signed a deed of settlement.

Judge Williams considered that the answer to the first question was 'yes' because the case for the application had been both firmly put and firmly rejected. Since the answer to the second question was also 'yes', the application for urgency was granted – but on two conditions. The first was that the hearing concern only Wai 758 and the equivalent aspects of Wai 142. The second was that the Tribunal's hearing and reporting process not disrupt the tight timeframe for Cabinet to consider the deed of settlement on 6 November.

Accordingly, the hearing of the urgent claim was set down for 1 and 2 November, with the intention that the Tribunal would issue its report on Friday 3 November. As it transpired, however, the hearing continued into 3 November, and Crown counsel advised that day that Cabinet's consideration of the deed of settlement was to be slightly delayed to allow the Tribunal further time to consider and write its report.

23. Paper 2.35(a), para 9

2. KEY EVENTS AND DOCUMENTS

The following is a chronological record of the key events, documents, and decisions from the mid-1990s to the Crown's recognition of the working party's deed of mandate in 1998.

2.1 1995

2.1.1 April: trial team commissioned

In April 1995, the Tribunal commissioned Taranaki Maori Trust Board counsel Phillip Green to utilise a subcommittee of the board known as the 'trial team' (comprising representatives of each of the eight tribes on the board) to:

investigate, and to consult with appropriate bodies, on the optimum method for negotiating a settlement of the Taranaki claims, and . . . to file a report thereon with the Tribunal, with copy to Crown Law Office and Office of Treaty Settlements.¹

2.1.2 November – June 1997: working party mandating hui

From November 1995 to June 1997, a series of consultation and mandating hui were held at a number of local marae to elect working party delegates to represent Ngati Ruanui hapu.

2.2 1996

2.2.1 April: trial team report completed

In April 1996, the trial team, now known as the Taranaki Muru me te Raupatu Coordination Team, submitted its report to the Tribunal. In it, the team identified the extent to which the eight Taranaki iwi had stable and representative structures which could claim a legitimate mandate to represent the interests of tribal members in settlement negotiations. The Ngati Ruanui Tahua (or trust board) was named by the team as an

1. Wai 143 ROI, paper 2.94, pp3-4
(quoted in doc A3, p1)

authority that still had work to do to improve its mandate and its reporting processes.² The report noted that iwi (such as Ngati Ruanui) with ‘non-participating hapu’ might have to ‘formalise an agreement about how their interests are to be handled in negotiations’.³

More specifically, the team reported that:

Ngati Ruanui has some unresolved representation issues. The extent to which one body has the mandate to speak and interact on matters dealing with the Muru Raupatu Claim is clear except for the Tangahoe and Pakakohi issue. The Ngati Hawe hapu has not made a decision on whether Tangahoe or Ngati Ruanui represent their interests. Ngati Ruanui are also waiting on Ngati [Takou] to resolve their situation as to whether they are joining Pakakohi or Ngati Ruanui. . . .

The issue of mandate is complicated by Pakakohi and Tangahoe’s quest for iwi status. In the last few years they have claimed iwi status, and their relationship with Ngati Ruanui has yet to be resolved.⁴

The report noted that Pakakohi counterclaims had also impacted on Nga Rauru, although Ngati Ruanui and Nga Rauru had amicably resolved issues of overlap between them. The report’s authors stated their belief that:

the position of Pakakohi in relation to the Nga Rauru claim will take much longer to resolve as it is complicated by very close whakapapa ties and internal family divisions. Nga Rauru acknowledges the existence of Pakakohi as a historically recognised grouping but in the last few years have had some difficulty establishing a non-confrontational formal relationship with those claiming to be the ‘Authority’. We continue to have hopes that the issue will eventually be settled amicably but have some concerns that fragmentation within Pakakohi will delay this process.⁵

2.2.2 May: OTS Crocker report

In May 1996, Therese Crocker, a historian at OTS, completed an internal historical research report entitled ‘Historical Assessment of South Taranaki – Ngati Ruanui, Pakakohi, and Tangahoe’.⁶ The report was undertaken to assess the validity of the claims of Pakakohi Inc and Tangahoe Inc that Ngati Ruanui were not a true iwi but a missionary-created and

2. Document A3, pp 1–2

3. Ibid, p 12

4. Ibid, p 23

5. Ibid, p 26

6. Document A13, vol 1(26)

Crown-legislated group of liberated slaves who had usurped the other two groups from their position as tangata whenua in south Taranaki. It was also intended to ascertain the extent to which Pakakohi and Tangahoe had traditionally been independent of Ngati Ruanui.

Crocker found no evidence to support the arguments about Ngati Ruanui's origins made by the other two groups. She was more equivocal on whether Pakakohi were traditionally regarded as an iwi in their own right or as a hapu of Ngati Ruanui. She recommended that further research be undertaken on the matter, which she also recommended in respect to Tangahoe, about whom she could find very little information.

2.2.3 June: *Taranaki Report* released

As we have already outlined in chapter 1, the Taranaki raupatu claims – including those of Ngati Ruanui, Tangahoe, and Pakakohi – were reported on by the Waitangi Tribunal in an interim report released in June 1996. In terms of hapu representation, that report suggested that the claims not be dealt with by one single Taranaki settlement but by settlements with the main hapu aggregations. The Taranaki Tribunal pointed out that these would by necessity be the main hapu aggregations that exist today, rather than those that have existed throughout history. The Tribunal noted that eight such groupings – namely Ngati Tama, Ngati Mutunga, Ngati Maru, Te Atiawa, Taranaki, Nga Ruahine, Ngati Ruanui, and Nga Rauru – were represented on the Taranaki Maori Trust Board and that most speakers before the Tribunal presumed that these were the only such groupings. However, the Tribunal concluded that, on the basis of ‘their regular appearances and submissions at hearings spread over the last five years’, Pakakohi and Tangahoe had also demonstrated that ‘they exist today as distinctive and viable entities deserving separate consideration’. Any other groups which appeared, the Tribunal wrote, seemed ‘to fall within the [10] umbrella groups named’.⁷

In terms of settlement apportionment between the 10 groups, the Tribunal cautioned that it was not sufficient to quantify land loss, for example, as the basis on which to calculate redress. This was because ‘there was not one hectare of the land of any hapu that was not deleteriously affected in some way’. The Tribunal also reasoned that neither was population basis helpful, ‘because population is conditioned by land loss’. The Tribunal

7. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 315

was hopeful that apportionment could be agreed upon amongst the hapu, in three regional settlements, without its further input. It did state its view, however, that:

although we recognise Pakakohi and Tangahoe as functioning entities of distinctive tradition, they have not had an exclusive occupation of territory nor have they established to our satisfaction that they have asserted such pre-eminence either formerly or today as might entitle them to share equally with Nga Ruahine, Ngati Ruanui, and Nga Rauru.⁸

The Tribunal also stated in the preface to the report that it granted leave to the parties 'to seek further hearing on the whole or any aspect of the claims or this report, if the proposed negotiations are unsuccessful or would benefit from further consideration of particular items'.⁹

2.3 1997

2.3.1 March–November: Pakakohi mandating hui

Three Pakakohi mandating hui were held in March, May, and November 1997 in Levin, Gisborne, and Patea respectively (the latter at the Patea Old Folks Hall). Twelve people were present at the Levin hui, 42 at Gisborne, and 34 at Patea.¹⁰

2.3.2 June: submission of working party deed of mandate

The coordinator of the working party, Te Huirangi Waikerepuru, submitted the working party's deed of mandate to the Minister in Charge of Treaty of Waitangi Negotiations on 25 June 1997.¹¹ Mr Waikerepuru referred to those identifying specifically as Pakakohi and Tangahoe and stated that 'all of those persons are also Ngati Ruanui and we have an obligation to ensure that they are able to benefit from any settlement'. He added that there were 'matters to resolve with groups claiming Tangahoe and Pakakohi status'. He also attached documents showing the names of the mandated hapu representatives on the working party from hui held at Ngatiki, Taiporohenui, Wharepuni, Whakaahurangi, Pariroa, and Mere-mere Marae between November 1995 and June 1997.

8. *The Taranaki Report*, p 316

9. *Ibid*, p xi

10. See docs A18, A27

11. Document A13, vol 1(15)

2.3.3 August: OTS memorandum to Minister; Minister's letter to working party

On 21 August 1997, the Minister in Charge of Treaty of Waitangi Negotiations was briefed in a memorandum by OTS officials on possible approaches for progressing the settlement of the claims of Ngati Ruanui, Tangahoe, and Pakakohi.¹² Officials noted that the Crown would have to decide whether it would negotiate separately with Tangahoe and Pakakohi, adding that 'The claimant mandating process may serve as a catalyst for resolving the issue, or will at least allow the Crown to assess the support base of each group'.¹³ The Minister was then provided with three options:

- ▶ First, and the Crown's preference, was for Tangahoe and Pakakohi to come to an arrangement with Ngati Ruanui whereby their claims could be negotiated collectively. Officials considered this outcome unlikely because of the 'seemingly intractable positions expressed by representatives of the various parties'.¹⁴
- ▶ The second option was for the Crown to conduct three separate sets of negotiations. Officials noted that this would not be the Crown's preference, but that it 'could be justified on the basis that the Tribunal has recognised that Tangahoe and Pakakohi are distinct entities and therefore deserve separate consideration'.¹⁵
- ▶ The third option was to recognise the Ngati Ruanui deed of mandate and not negotiate separately with Tangahoe and Pakakohi, on the basis that neighbouring iwi do not recognise them as iwi. Officials noted that this approach 'would go against the findings of the Tribunal and is likely to be strongly opposed by the Tangahoe and Pakakohi representatives'. However, officials added that:

Such an approach could be justified . . . if the mandate evaluation process found that there was wide support for a Ngati Ruanui Deed of Mandate and little support for Deeds of Mandates submitted by Tangahoe and Pakakohi.¹⁶

Another potential justification for this approach was the suggested requirement for Ngati Ruanui 'to make provision for the representation of Tangahoe and Pakakohi interests on the negotiating body'.¹⁷

The memorandum stated that six of the 10 Ngati Ruanui marae supported the working party (that is, those listed in the working party deed

12. Document A16(a)

13. *Ibid*, para 9

14. *Ibid*, para 11

15. *Ibid*, para 12

16. *Ibid*, para 16

17. *Ibid*, para 17

of mandate application), but conceded that mandate issues were not completely resolved at Ngatiki Marae. Officials added that two other marae (Wai-o-Turi and Whenuakura) appeared likely to go with Nga Rauru and another (Ngarongo) had opted to go with Nga Ruahine. Furthermore, it seemed that Manutahi Marae had chosen to go with Pakakohi, although this had not yet been communicated to the Crown.¹⁸

The memorandum concluded by stating that officials did not consider it necessary:

for the Crown to come to a final decision on how to approach the issue of Tangahoe and Pakakohi recognition prior to the publicising of the Working Party's Deed of Mandate. Rather, the submissions process will allow the Crown to assess the relative support of these groups and the extent to which their interests can be included within a wider Ngati Ruanui mandate.¹⁹

On 22 August 1997, the Minister in Charge of Treaty of Waitangi Negotiations wrote to Mr Waikerepuru to inform the working party that the Crown intended to call for public submissions on the party's deed of mandate. The Minister added:

The Crown has yet to come to a position on the status to be accorded Tangahoe and Pakakohi in the negotiation process, and would prefer it if the groups themselves resolved this issue. If this is not possible, the Crown will await the outcome of the public submission process on the Working Party's Deed of Mandate before making its decision. The submission process will allow the Crown to assess the size of the Tangahoe and Pakakohi interests and the extent to which they can be represented within the Working Party's Deed of Mandate.²⁰

The letter was copied to Waveney Stephens of Tangahoe and Piki Parker of Pakakohi.

2.3.4 October–November: submissions process

During October and November 1997, submissions were filed on the working party's deed of mandate. Eleven objecting submissions were filed, as listed here. For Tangahoe:

- ▶ Rita Bublitz, Aroha Houston, Waveney Stephens, Andrea Williams, and Barry Bublitz on behalf of themselves;

18. Document A16(a), paras 20–21

19. *Ibid.*, para 24

20. Document A16(b), pp 1–2

- ▶ Rita Bublitz, as chairperson of Te Iwi o Tangahoe Inc and Tribal Trust;
- ▶ Waveney Stephens in her capacity as secretary of Ngatiki Marae; and
- ▶ Ken Horner, as legal counsel for Rita Bublitz, Aroha Houston, and Waveney Stephens.

For Pakakohi:

- ▶ Piki Parker, as tribal coordinator of Te Runanganui o te Pakakohi Trust Inc; and
- ▶ Huka Kahukuranui and Rongo Kahukuranui on behalf of themselves.

According to the TPK summary of these submissions, they were predominantly focused on the allegation that Ngati Ruanui were created by the Crown last century and were not the true tangata whenua of south Taranaki.²¹ Mr Horner asked that questions of iwi identity and tangata whenua status be resolved before negotiations with Ngati Ruanui began and submitted that Tangahoe required research funding. Mrs Parker also noted that a Pakakohi tribal mandate hui of 1 November 1997 had resolved to object to the Ngati Ruanui claim to Pakakohi lands.

2.3.5 November: working party response to mandate submissions

On 26 November 1997, the chair of the working party submitted a bundle of papers and a summary to OTS disputing the allegations made in the Tangahoe and Pakakohi submissions.²² These included papers on the status of Pakakohi and Tangahoe that had already been forwarded to the Tribunal in September 1997. The working party stated that Rita Bublitz's father had been Ngati Ruanui's elected representative on the Taranaki Maori Trust Board. It also stated that Mrs Bublitz, formerly the treasurer of the Ngati Ruanui Tahua Iwi Authority, had fallen out with the tahua with the result that the claim was 'driven by malice rather than by any concern for historical accuracy'.

The working party then noted the close familial ties to Mrs Bublitz of three of the other Tangahoe objectors. It described as 'patently false' the allegation of Aroha Houston that Ngati Ruanui had not been present in Taranaki until after 1840. It rejected the significance of the name of the 'Tangahoe Tribal Trust', stating that the trust had been set up to administer a small block of land in Hawera and that those who had established it in no way intended to imply that Tangahoe was a tribe distinct from Ngati

21. Document A22, p 13

22. Document A13, vol1(19)

Ruanui. It also implied that the Pakakohi mandate hui on 1 November 1997 was not in accordance with Maori tikanga, as it had not been held on a marae.

The working party commented that there was a ‘rich irony’ that the objectors made so much of the occasional comment by colonial Pakeha officials that Tangahoe and Pakakohi were ‘tribes’. These officials, it said, ‘were intent on alienating the land from our ancestors and . . . were completely indifferent to the semantics of “tribe” and “sub-tribe”, “iwi” and “hapu”’. The working party professed astonishment that ‘Tangahoe and Pakakohi base their case on the few words of the very men that took away our land’.

2.3.6 December: TPK risk analysis

TPK completed its assessment of the risk to the Crown of recognising the working party’s deed of mandate on 22 December 1997.²³ As part of that assessment, an analysis was done of the submissions made on the deed of mandate.

The working party, TPK noted, had developed its mandate through a ‘bottom up’ process, ‘whereby sub-groups selected delegates to form a representative body’.²⁴ Four of the 10 Ngati Ruanui marae were identified as supporting the working party’s mandate. Three others had chosen to affiliate with Nga Ruahine or Nga Rauru. Of the other three, two were regarded as ‘experiencing some internal dissent’. Ngatiki Marae had given support to the working party through the marae chair, but ‘a faction from the marae has informed the Crown that the marae does not support the Deed of Mandate’, and Taiporohenui Marae delegates had not supported the new chair of the working party after Te Huirangi Waikerepuru was replaced in November 1997.²⁵ Manutahi Marae appeared to wish to affiliate with Pakakohi.

TPK noted that Te Iwi o Tangahoe Inc and Te Runanganui o te Pakakohi Trust Inc had both submitted that they were the true tangata whenua of the area and that Ngati Ruanui were not a traditional iwi but rather a tribe created by the Crown last century. It also noted that the working party strongly disputed this and had supplied extracts from ‘historical documents’ to disprove it. TPK believed that the Tangahoe and Pakakohi opposition might be seen as either:

23. Document A22

24. Ibid

25. Ibid, p 1

1. a cross-claim by iwi seeking to ensure their legitimate claim is not usurped by another iwi; or
2. a mandate challenge by dissenting groups within one claimant community.²⁶

The Tangahoe submissions, TPK felt, had been made by a few members of the same extended family and were not ‘based on interests across the broader spectrum of the claimant community’. Furthermore, Mrs Bublitz and her family had previously held strong connections to Ngati Ruanui but had fallen out with the *tahua* for various reasons. TPK also found it ‘telling’ that the Pakakohi submissions had not been developed from meetings held on *marae*, and added that the one *marae* (Manutahi) that apparently wished to affiliate with Pakakohi did not file a submission or give ‘any formal indication of their stance on these issues’. TPK was of the view that both sets of submissions had ‘limited support’.²⁷

TPK concluded that, since there was not strong evidence that Tangahoe and Pakakohi were iwi in their own right, the submissions from those purporting to represent them would be ‘treated as arising from a minority interest within Ngati Ruanui’.²⁸ They did not, said TPK, have ‘the right to negotiate exclusively with the Crown to settle historical grievances’ and should ‘approach the Crown in conjunction with the claimant groups with whom they historically shared occupation of territory’.²⁹ However, TPK recommended that the Crown require the working party to provide for Pakakohi and Tangahoe interests by designating one place on the working party for a Tangahoe representative from Ngatiki *Marae* and ‘at least two places’ for delegates from Manutahi *Marae*.³⁰

2.4 1998

2.4.1 March: OTS risk assessment; Pakakohi notice of intention to submit deed of mandate; Cabinet Strategy Committee decision

In March 1998, OTS completed its own assessment of the risks to the Crown of accepting the deed of mandate submitted by the working party.³¹ OTS concluded that the working party had the mandate to negotiate the settlement of Ngati Ruanui’s historical claims ‘on behalf of the entire claimant community’. The major risk identified to the Crown in recognising this mandate was the opposition of Tangahoe and Pakakohi

26. *Ibid*, p 2

27. *Ibid*, pp 7–9

28. *Ibid*, p 8

29. *Ibid*, p 3

30. *Ibid*, p 10

31. Document A13, vol 1(24)

affiliates. OTS stated that most of the Tangahoe objectors ‘had family or other links with other submitters and several appear to have links with Ngati Ruanui’, and also commented that ‘The fact that there [were] only three Pakakohi submissions objecting to the Working Party, even though Te Takere Marae has supposedly chosen to progress its claim [as] Pakakohi, is also significant’.³²

However, OTS recommended that the Crown require the working party to make greater provision for Tangahoe and Pakakohi representation on it. To this end, it suggested either:

- ▶ an additional place for Ngatiki Marae to represent Tangahoe interests and the holding open of a place for Manutahi Marae for Pakakohi interests; or
- ▶ guaranteed representation for Te Iwi o Tangahoe and Te Runanganui o te Pakakohi Inc.

Officials preferred the first option, since the second would ‘represent a move away from the marae-based approach to representation’ taken by the working party. OTS also thought it ‘unclear the extent to which these two organisations have a mandate from the communities they seek to represent’.³³

OTS also considered that, should the Tangahoe and Pakakohi representatives choose to exercise their right not to take up places on the working party, the Crown should not feel constrained from negotiating a settlement with the working party. This was because the working party had ‘predominant support from within Ngati Ruanui and has made provision for representation of the two dissenting groups’.³⁴

OTS also stated that:

The fact that Tangahoe and Pakakohi representatives have indicated they intend to submit their own Deeds of Mandate does not alter the conclusions of this assessment. Any Deeds of Mandate submitted to the Crown will be assessed on their merits, although as this assessment has found, neither Tangahoe or Pakakohi have so far presented strong enough cases for the Crown to entertain separate negotiations with them.³⁵

On 28 March, Waveney Stephens wrote to the Minister in Charge of Treaty of Waitangi Negotiations advising that Te Runanganui o te Pakakohi Trust Inc wished to meet with him to submit a deed of mandate.

32. Document A13, vol 1(24), p 8

33. Ibid, p 9

34. Ibid, p 9

35. Ibid, p 9

2.4.2 April: submission on Tangahoe deed of mandate; Cabinet decision; OTS briefing of Minister; Minister's confirmation of Cabinet decision

On 8 April 1998, the Cabinet Strategy Committee agreed to the recommendation of the Minister in Charge of Treaty of Waitangi Negotiations that Cabinet recognise the working party deed of mandate on condition that, *inter alia*:

- ▶ 'provision is made for the representation of Tangahoe interests through an additional Ngatiki Marae representative on the Working Party'; and
- ▶ 'continued provision is made for Te Takere Marae representatives on the Working Party to represent Pakakohi interests'.³⁶

The committee made an additional note that:

recognising the Working Party's mandate on the terms referred to . . . above will send a clear signal to those individuals who identify exclusively as Tangahoe and Pakakohi that the Crown intends to address their claims under a Ngati Ruanui umbrella.³⁷

On 9 April, Te Iwi o Tangahoe Inc submitted its deed of mandate papers to OTS for consideration.

At its meeting on 20 April, Cabinet agreed to the Cabinet Strategy Committee's recommendations.

On 23 April, OTS recommended that the Minister in Charge of Treaty of Waitangi Negotiations sign letters to the chair of the working party and the principal Tangahoe and Pakakohi spokespeople advising them of Cabinet's decision.³⁸ The Minister was also invited to note that, in light of that decision, OTS did not intend to seek submissions on the recently received Te Iwi o Tangahoe Inc deed of mandate or the deed of mandate of Te Runanganui o te Pakakohi Inc that had not yet been submitted.

On 24 April, the Minister in Charge of Treaty of Waitangi Negotiations sent letters to working party chair Pat Heremaia, to Rita Bublitz and Piki Parker, and to the chairmen of both Ngatiki and Manutahi Marae advising them of Cabinet's decision.³⁹ The Minister stated that the Crown was not prepared to enter into separate negotiations with groups representing Pakakohi and Tangahoe. He recognised, though, that 'the Pakakohi or Tangahoe submitters may have some interests that are distinct from the wider Ngati Ruanui group', and he therefore noted the special conditions concerning representation from Ngatiki and Manutahi Marae.

36. Compare with the OTS paper of 5 March 1998, which referred to a representative.

37. Document A13, vol 1(27)

38. Document A13, vol 1(29)

39. Document A13, vol 1(30), (31)

2.4.3 June: Pakakohi deed of mandate completed but not submitted

On 4 June 1998, the deed of mandate papers of Te Runanganui o te Pakakohi Trust Inc were finalised, and a letter to accompany them was drafted to the Minister in Charge of Treaty of Waitangi Negotiations.⁴⁰ Counsel for the claimant group advised that the papers were not submitted, however, because of Cabinet's decision not to enter into separate negotiations with Pakakohi.

40. Document A13, vol 1(35)

3. THE CASE FOR WAI 758 AND WAI 142

3.1 INTRODUCTION

In the first instance, counsel for both the Wai 758 claimants and the Wai 142 claimants filed a précis of issues on 27 October 2000. This summarised the main arguments to be adduced at the urgent hearing. To the extent that the précis reiterated the claimants' well-established position, we need not record its detail here, other than to note that counsel sought the following recommendations from the Tribunal:

1. That any settlement purporting to apply to the claimants cease immediately.
2. That the Crown consider Deeds of Mandate from the claimants.
3. In the event that such Deeds are approved:
 - 3.1 then the Crown enter into direct negotiations with Pakakohi and Tangahoe;
 - 3.2.1 (Alternatively) that the Crown recognise the independent status of the claimants and ensure that that status and position of the claimants is properly reflected in any settlement of their claims.¹

From this point forward, Pakakohi Inc and Tangahoe Inc reverted to separate legal representation. We consider first the case put for Wai 758.

3.2 THE CASE FOR PAKAKOHI INC

Legal submissions were made for the Pakakohi claimants by John Upton QC. In his absence, James Johnston led submissions in reply.

Mr Upton began by describing the course of events during the last few years as having 'all the makings of a Greek tragedy'. He saw the process as having led inexorably to the obvious result, which was the urgent hearing itself.

We identified a number of key points in Messrs Upton and Johnston's case, which we list and then expand on below:

- ▶ the Pakakohi Inc mandating hui of 1997 gave unanimous support;
- ▶ Pakakohi Inc was prepared for 'side-by-side' negotiations;
- ▶ Pakakohi Inc had received no funding from the Crown;

1. Paper 2.39, pp 5-6

- ▶ the Pakakohi Inc register of names was a further indicator of support;
- ▶ a marae-based system of representation was inappropriate for Pakakohi;
- ▶ Pakakohi Inc was willing to put arguments about Ngati Ruanui's origins to one side;
- ▶ the territorial overlap with Nga Rauru meant that the settlement would split Pakakohi's rohe in two; and
- ▶ the Crown was wrong not to adopt the option suggested by officials in August 1997 of assessing claimant community responses to a Pakakohi Inc deed of mandate.

3.2.1 The Pakakohi Inc mandating hui of 1997

Mr Upton stated that Pakakohi had never been polled as part of the wider Ngati Ruanui group. In fact, he did not believe that Ngati Ruanui had ever had a poll at all. However, he did note that Pakakohi Inc had held three mandating hui in March, May, and November 1997 (both before and after the working party had submitted its own deed of mandate) in Levin, Gisborne, and Patea respectively. Mr Upton produced the minute book from those meetings, and copies were made available to the Tribunal.² As we have related in chapter 2, this book revealed that 12 persons had been present in Levin and 42 in Gisborne, and a separate list showed that 34 people had attended in Patea.³

Mr Upton explained that the Patea meeting – indeed, the only one held within the local vicinity – had been held at the Patea Old Folks Hall rather than at Manutahi Marae for purely practical reasons (namely, that the marae had a limited spring-fed water supply and could not accommodate a large hui). He pointed out that, for the same reason, the Taranaki Tribunal had been unable to sit at Manutahi during the course of the Taranaki hearings in the early 1990s. The point was important, said Mr Upton, because TPK had criticised Pakakohi Inc for not developing any of its submissions on the working party's deed of mandate from meetings held on marae. Mr Johnston later queried why TPK had not simply asked Pakakohi Inc why the meeting was not held at Manutahi.

2. Document A18

3. Document A27

3.2.2 Pakakohi Inc's preparedness for 'side-by-side' negotiations

Mr Upton explained, again in response to the TPK risk analysis, that Pakakohi Inc was not saying necessarily that it wished to negotiate exclusively of Ngati Ruanui but rather that it had a right to negotiate alongside its neighbours. We queried him as to whether this signaled a desire for 'togetherness', but Mr Upton preferred to describe it as 'separateness', which he felt did not preclude negotiating 'side by side'. He highlighted the fact that the chair of the working party had written in May 1998 offering the Pakakohi runanga a place on the working party – rather than simply a place for an elected representative of Manutahi Marae – but that this offer had later been withdrawn. In response to a question from the Tribunal, he confirmed that Pakakohi Inc was still open to such an offer being made.

We heard later from counsel for the working party that this offer was held open for the best part of a year before Pakakohi Inc made a counter-proposal for two places. At that point, the original offer was withdrawn (see s 4.2).

3.2.3 The lack of Crown funding for Pakakohi Inc

Mr Upton went on to explain the ongoing problem of funding for Pakakohi Inc. He contrasted this situation with that of the working party, whose negotiating costs, he said, had been funded by the Crown to the tune of hundreds of thousands of dollars. He noted that the Crown had eventually released \$5000 in September of this year to allow the discussions between the parties to continue, and had offered an additional \$10,000 on condition that both the application for an urgent Tribunal hearing and Wai 758 itself were withdrawn. His clients had refused to agree to these conditions, seeing their claims to the Tribunal as a necessary safeguard. However, no sooner had the \$5000 funding been used to prepare an options paper, Mr Upton said, than his clients received indirect confirmation that the Crown and the working party were aiming to initial a deed of settlement within little more than a month. At that point, the discussions broke down and the further application for urgency was made.

Both Crown counsel and counsel for the working party later rejected Mr Upton's implications concerning the Crown's funding of the working party.

3.2.4 The Pakakohi Inc register of names

Mr Upton adverted to a Pakakohi Inc register of supporters, which had been typed out and included within the bundle of supporting documents.⁴ He stated that a registration form had been filled out personally by each registrant and that it was his understanding that those affixing their names must have been under the impression that they were ‘throwing their lot in’ with Pakakohi Inc in terms of representation in the settlement negotiations.

Mr Upton explained that all 306 names on the register had been gathered in preparation for submitting the Pakakohi Inc mandate to the Crown for consideration. He said that, once his clients learnt that the Crown was not prepared to enter into separate negotiations with them, they put their mandate preparations on hold and ceased to gather names for the register. Mr Upton considered that the register had equated to the mandate that the Crown in fact required, but he pointed out that this matter had not been debated since the Crown had refused to take the matter any further once the working party’s mandate had been recognised.

The status of the register was later called into question by counsel for the working party (see s4.2). In submissions in reply for Wai 758, Mr Johnston acknowledged that the register of names was more in the nature of a list of people supporting ‘Pakakohi Inc’ than those supporting separate negotiations for Pakakohi. He explained that he was not so much claiming a mandate for his clients as claiming that the Crown’s mandate assessment process had been flawed.

3.2.5 The inappropriateness of a marae-based system of representation for Pakakohi

Mr Upton argued that the marae-based system of representation employed by the working party was disadvantageous to Pakakohi. Over 40 Pakakohi marae and pa sites had been destroyed by General Chute during his bush-scouring campaign of the wars of the 1860s, he said, and Manutahi was the only one left. He later conceded that not all the destroyed sites were in fact permanently inhabited, because some had been built by those fleeing the troops as Chute pursued Pakakohi across their land. He also acknowledged that the exact number was probably not

4. Document A13, vol2(67); see also doc A28

known, since there had not been sufficient research into the matter. However, he felt the point was still valid that Pakakohi had been dispersed among the marae of neighbouring hapu, and were thus more favourable to hapu-based rather than marae-based representation.

On a related point, Mrs Parker rejected the working party's claim that two Pakakohi marae (Meremere and Pariroa) supported its mandate. These marae, she stated, were not actually marae of the two named Pakakohi hapu but simply marae within the territory of those hapu.

3.2.6 The willingness to put to one side arguments about Ngati Ruanui's origins

In their submissions on the working party's deed of mandate, the Pakakohi claimants stressed that Ngati Ruanui were a missionary-created people originating from liberated slaves returning to Taranaki in the 1840s. While Mr Upton said that his clients did not resile entirely from this position, he did add that they were now more 'commonsense' about it and had come to realise that the matter was really little more than a distraction. He agreed that the presence of this argument must have played a large part in the Crown's assessment of the submissions, as well as the working party's attitudes to his clients after that point. He felt, however, that there was now some 'room for movement' on the matter. Mr Johnston also stressed that Ngati Ruanui's status had been recognised by his clients for a considerable period of time and was not an issue.

3.2.7 The territorial overlap

Mr Upton did not agree that the fact that Pakakohi and Ngati Ruanui shared territory meant they should be dealt with together in the same settlement. He observed that overlapping territorial interests were usual in traditional Maori society and gave the northern South Island as an example where eight groups shared a complex and completely overlapping tenure of land. Mr Upton felt a process had evolved which would settle Pakakohi Inc's claims without their consent and sever the Pakakohi rohe in two, leaving all Pakakohi claims settled but half their grievances undefined in the deed of settlement because of their overlap with Nga Rauru.

3.2.8 The Crown's rejection of the option suggested by officials in August 1997 of assessing claimant community responses to a Pakakohi deed of mandate

Mr Upton had recently received copies from the Crown of two documents mentioned in chapter 2. These were the 21 August 1997 OTS memorandum to the Minister in Charge of Treaty of Waitangi Negotiations, and the letter from the Minister to the coordinator of the working party, Mr Waikerepuru, which was also copied to Piki Parker and Waveney Stephens.⁵

Mr Upton noted the memorandum's comment that 'the claimant mandating process may serve as a catalyst for resolving the issue, or will at least allow the Crown to assess the support base of each group'. He stressed that such a comment was predicated on the basis that all deeds of mandate would be made available for analysis, and reiterated that the process had not been allowed to take place because his clients' mandate had never been assessed.

Mr Upton went on to note that the memorandum had set out for the Minister three alternatives for progressing the matter (see s 2.3.3). Importantly, stressed Mr Upton, OTS commented at paragraph 16 that negotiating with Ngati Ruanui alone 'could be justified . . . if the mandate evaluation process found that there was wide support for a Ngati Ruanui Deed of Mandate and little support for Deeds of Mandates submitted by Tangahoe and Pakakohi'. Mr Upton reminded the Tribunal that it was this mandate testing process that the Crown had eventually refused to undertake.

Finally, Mr Upton noted that OTS had advised at paragraph 24 of the memorandum that the Crown should wait to consider how to deal with Tangahoe and Pakakohi until after submissions had been received on the working party's deed of mandate. These submissions, it was felt, would allow the Crown to assess the three groups' relative strengths. The accompanying letter to Mr Waikerepuru advised the working party that public submissions on its deed of mandate would be called for, which would 'allow the Crown to assess the size of the Tangahoe and Pakakohi interests and the extent to which they can be represented within the Working Party's Deed of Mandate'. Mr Upton considered that, despite this letter being copied to Mrs Parker, Pakakohi Inc was preoccupied with its own mandating process at the time and did not see it as relevant to divert its attention to making submissions on the working party's mandate. As well, he said that

5. Document A16(a), (b)

the fact that it made only three submissions reflected its lack of organisation and funding, but he stressed that the quality of the submissions was more important than their quantity.

Mr Johnston argued that the momentum that was building for separate negotiations with Pakakohi Inc had been stopped in its tracks by the Crown's blunt refusal to entertain this prospect. He also made the point that the mere copying of the letter to Mrs Parker was an insufficient means of stressing to Pakakohi Inc the importance of submissions on the working party's mandate.

3.2.9 Conclusion

In sum, Mr Upton suggested that it would be better to stop the settlement process now, despite the inconvenience, and completely reconsider how matters should progress. Otherwise, he argued, the Crown would be rushing into a big mistake. While it would be a drastic step to halt the settlement process, he argued that there would have been no need to resolve matters under such eleventh-hour urgency if the Crown had been more deliberate in 1998. He confirmed that his clients were interested in advice to help them back into constructive discussions.

Mr Johnston stressed that the crucial matter for his clients was one of time. He said that he did not wish to hold up the settlement of the Ngati Ruanui claim but did wish to ensure that the Crown got matters right. The real issue was separateness, and to that end he cited what he saw as the separate history, grievances, traditions, whakapapa, place names, rohe, culture, and identity of Pakakohi. He denied that Pakakohi Inc's interests were adequately represented by the working party, noting his clients' lack of knowledge of the settlement process. They had not even seen the draft deed of settlement, he added. Neither did he feel they could have been adequately represented by a place at the table for Manutahi Marae. Overall, he felt that the Crown's system had been flawed and was manifestly unsafe. He asked only that the settlement be held up as it affected Pakakohi, and that his clients be allowed to submit their own deed of mandate for consideration.

Mr Johnston asked that the Tribunal be careful in considering the issue of relief, for if the matter were not adequately resolved, Pakakohi would end up arguing the same case in another legal forum in the future.

3.3 THE EVIDENCE FOR PAKAKOHI INC

Counsel for the Pakakohi claimants filed three affidavits and two bundles of supporting papers.

3.3.1 Affidavit of Piki Parker

Mrs Parker noted that this was the fourth affidavit that she had filed with the Tribunal on this matter.⁶ She explained that she had grown up believing herself to be Nga Rauru, but during a ‘personal voyage of discovery’ during the 1980s she had discovered that she in fact belonged to Pakakohi. This culminated in her filing of the Wai 99 claim on behalf of Pakakohi in 1989. She noted that Pakakohi had attended all 12 Tribunal hearings into the Taranaki claims between 1990 and 1995 and highlighted once again the Tribunal’s description of Pakakohi as a distinct and viable entity. After the release of the Tribunal’s report, Mrs Parker explained, Pakakohi Inc had attempted to gain wider recognition of the independent status that it felt the Tribunal had acknowledged. She and others of Pakakohi Inc met with OTS officials in August 1996 to discuss a mandating and negotiating process but were informed that there were matters to resolve before the properly mandated group in the ‘Ruanui districts’ could be identified.⁷

Undeterred, Mrs Parker then related how she and others of Pakakohi Inc had embarked upon the mandating process required by OTS but had been hampered by a lack of funding, which OTS told them was not available until a mandate had been recognised. Pakakohi Inc had been conscious, she said, that the working party was holding its own mandating hui in late 1996 and 1997, but she said that Pakakohi Inc had deliberately not attended these hui ‘as we were clear in our minds that these hui were not for us they were for Ngati Ruanui’. However, she said, on 25 June 1997 the working party submitted its deed of mandate to the Minister in Charge of Treaty of Waitangi Negotiations and claimed to represent Pakakohi, even though it noted that there were ‘matters to resolve’ with groups claiming Pakakohi and Tangahoe status.⁸

Mrs Parker said that submissions were called for on the working party’s deed of mandate but implied that Pakakohi Inc did not fully grasp the extent to which it encompassed them as well. On 4 November 1997, she advised the Minister in Charge of Treaty of Waitangi Negotiations that Pakakohi Inc was intending to submit its own mandate for assessment.

6. Document A10

7. Ibid, pp 2–5

8. Ibid, pp 5–6

She added that Rongo Kahukuranui also made a submission on 12 November 1997 objecting to the working party's mandate. Not long afterwards, on 28 March 1998, Mrs Parker said that she had written again to the Minister advising him that Pakakohi Inc wished to meet him to present its mandate. However, she discovered later that OTS and TPK had prepared their risk assessments by this time and that, on 6 April 1998, Cabinet had decided to recognise the working party's deed of mandate and not enter into separate negotiations with Pakakohi Inc. She said that the Pakakohi Inc deed of mandate had been completed by 4 June 1998 but was not sent to the Minister since at that stage there no longer seemed any point. That mandate, she said, had been gained by the unanimous support expressed at the hui held in 1997 in Levin, Gisborne, and Patea.⁹

Mrs Parker then related how the Wai 758 claim had been filed in November 1998 by Huia Hayes, Mrs Parker's mother, and that an urgent hearing of the claim had been requested.¹⁰

Mrs Parker noted that the Crown's recognition of the working party's deed of mandate had been conditional upon representation being made available to Manutahi Marae. She explained that the chair of the working party had later written to OTS in January 1999 to list the 'highlights' of the year in encouraging Pakakohi's participation, but dismissed the matters cited as little more than 'unsubstantiated statements'. While the Tribunal's consideration of the Pakakohi claimants' application for urgency was being adjourned in early March 1999, she said that Pakakohi Inc met with the working party and the Crown to try to reach an agreement. Pakakohi Inc asked to have two representatives on the working party, both to be chosen by Pakakohi Inc (one such place having been offered in May 1998). However, the working party refused this request, arguing that such representation of Pakakohi would be 'inappropriate' and that ongoing provision existed for Manutahi Marae to participate.¹¹

Mrs Parker referred next to the Tribunal's declining of the request for urgency in April 1999 and the heads of agreement being signed between the Crown and the working party in September. She then explained that urgency was reapplied for, and related the process that led to the mediation in June 2000 and the discussions that followed it. Mrs Parker noted that progress had been made in these discussions up to a point, but argued that the Crown and the working party had pressed ahead furtively with plans to initial a deed of settlement in November. She added that it was

9. *Ibid*, pp 7–11

10. *Ibid*, p 11

11. *Ibid*, pp 12–13

also clear that ‘the Crown would only support limited changes to the Heads of Agreement’. For these reasons, it had been necessary to reapply for an urgent hearing.¹²

3.3.2 Affidavit of Rongo Kahukuranui

Rongo Kahukuranui, a kaumatua of Pakakohi, asserted Pakakohi’s distinct identity from Ngati Ruanui.¹³ He described Pakakohi as an ancient people, who had lived in Aotearoa since before the time of the ‘so-called great migration’. He recited a Pakakohi pepeha and told of the unique Pakakohi place names for features such as Taranaki maunga and the Whenuakura River. He related some of the details of the ‘atrocities’ committed specifically against Pakakohi during the muru and the raupatu, including the incarceration of more than 70 Pakakohi men. He cited these events as having severely affected Pakakohi’s ability to maintain its oral traditions and local pre-eminence. However, he asserted that today Pakakohi have ‘re-grouped and regenerated’, noting that Wai 99 was filed with the Tribunal some eight months before the Ngati Ruanui claim Wai 140.

3.3.3 Affidavit of Dr Bryan Gilling

The affidavit of Dr Bryan Gilling was of a fundamentally different nature.¹⁴ Dr Gilling is an experienced historian based in Wellington and has presented evidence on several claims to the Waitangi Tribunal. In the past, he has been commissioned by the Tribunal, the Crown Law Office, OTS, and a number of claimant groups. His evidence on behalf of Pakakohi Inc in this claim brought some specialised knowledge to the inquiry by virtue of his having held the position of senior historian and historical team manager at OTS from 1995 to 1996, at a time when Taranaki tribal mandating issues first began to be canvassed. Dr Gilling also informed us that he had been the Crown’s principal negotiator for the historical recitals and Crown apology in both the Waikato raupatu settlement legislation and the Ngai Tahu deed of settlement and had dealt with historical and mandating issues from the Crown’s perspective for a number of claimant groups. He gave evidence on the quality of the Crown’s assessment of the working party’s deed of mandate and the Crown’s decision not to enter into separate negotiations with Pakakohi Inc and Tangahoe Inc.

12. Document A10, p 23

13. Document A11

14. Document A12

In short, Dr Gilling was highly critical of what he saw as the Crown's lack of thoroughness in assessing the working party's mandate. He understood the Crown's position to be based on a number of sources, namely:

- ▶ the Tribunal's *Taranaki Report*;
- ▶ the May 1996 OTS Crocker report;
- ▶ a number of papers produced by the working party on the status of Pakakohi and Tangahoe and forwarded to the Tribunal in September 1997;
- ▶ the December 1997 TPK risk analysis;
- ▶ the March 1998 OTS risk assessment; and
- ▶ a background paper submitted by the Minister in Charge of Treaty of Waitangi Negotiations to the Cabinet Strategy Committee, undated but presumably dating from around April 1998, which appeared to be based on the TPK and OTS risk analyses.¹⁵

Dr Gilling also noted that he had not seen the 21 August 1997 OTS memorandum to the Minister in Charge of Treaty of Waitangi Negotiations prior to the hearing. However, he read it during the course of the proceedings and through counsel stated that nothing in it altered his views at all.

(1) *The Tribunal's report*

Dr Gilling made the following points. First, he stated that the Taranaki Tribunal had been unambiguous in acknowledging Pakakohi and Tangahoe as 'functioning entities of distinctive tradition' and 'distinctive and viable entities deserving separate consideration'. He noted also that the Tribunal had commented that the two groups might not be entitled to receive as large a quantum in settlement as their neighbours (Nga Rauru, Nga Ruahine, and Ngati Ruanui). Dr Gilling then addressed the reference to the lack of exclusive territorial possession by Pakakohi and Tangahoe, and asserted his understanding that Maori land ownership was usually characterised by overlapping interests. Thus, he said, 'although there might well have been more than one group claiming ownership and/or use rights, this did not require that one of the competing groups was in some way inferior to or part of the other'.¹⁶

(2) *The 1996 OTS historical report*

Dr Gilling explained that the 1996 OTS historical report had been completed by a junior historian (Therese Crocker), who had reached tentative findings only and had correctly recommended that further research into

15. *Ibid*, pp 4–5

16. *Ibid*, p 11

the relationships between Pakakohi, Tangahoe, and Ngati Ruanui be undertaken. The purpose of this report had been to acquaint ORS policy officials with issues they would face in the negotiation process and was 'never intended to be a definitive statement'. Crocker had refused to be drawn absolutely on the independent status of Pakakohi and Tangahoe, confirming instead that they had been definitely identifiable groups at the time of the wars and the raupatu in the 1860s. She argued that a proper analysis should go well beyond the available (Pakeha-oriented) written sources.¹⁷ Dr Gilling considered that Crocker 'left the question open; she did not close it in favour of the dismissal of [Pakakohi Inc's and Tangahoe Inc's] claims to independence from Ngati Ruanui'.¹⁸

(3) The 1997 working party papers

Dr Gilling then observed that the working party papers of September 1997 successfully demonstrated Ngati Ruanui's existence prior to the 1860s but did not shed any more light on the status of Pakakohi and Tangahoe. He noted that the authors of those papers had cited historical material without any assessment of the writers' credibility. By contrast, he himself would not have credited the writings of Dieffenbach in 1842 and 1843 as a 'reliable authority'. Dr Gilling felt that all that the papers showed with respect to Pakakohi and Tangahoe was that the historical record was silent about them, which of itself proved nothing. He felt that the Tauranga example was instructive, where the almost exclusive mention in the European documentary record was of Ngai Te Rangi alone, because of their dominant position. This did not detract from Ngati Ranginui's unquestioned existence, with separate waka affiliations and whakapapa.¹⁹

(4) The TRK risk analysis

Dr Gilling was particularly scathing about the TRK risk analysis, which he described as 'trite, superficial and of no historical analytical value'. He pointed out that it was not based on any original research into tribal claims and interests and had 'used – and misused – a very limited and sometimes potentially biased range of sources'. The 'historical documents' used seemed to consist of a series of 'extracts' from sources which ORS had already identified in 1996 as being of questionable reliability. Moreover, these 'historical documents' seemed to consist of typescripts presented by the working party – in other words, they were not 'historical documents' at all 'but a collection of extracts selected, edited and typed by

17. Document A12, pp 6, 16

18. Ibid, p 19

19. Ibid, pp 6–7, 21–22

a modern author'. Dr Gilling also argued that TPK had misread the Taranaki Tribunal's report by arguing that the comments about apportionment indicated 'that the groups do not have the right to negotiate exclusively with the Crown to settle historical grievances'. Dr Gilling ventured that 'The Ministry therefore has founded its clear and definitive statement on an irrelevant basis and ignored the Tribunal's other clear opinion that the group[s] merited separate treatment'. He also found no justification for TPK's emphasis, without any analysis or questioning, on the non-recognition of Pakakohi and Tangahoe as iwi by their neighbouring Taranaki iwi and the Treaty of Waitangi Fisheries Commission.²⁰

Overall, Dr Gilling felt that TPK's assessment of the historical evidence:

appears to be procedurally unfair in dismissing the claims of Tangahoe and Pakakohi on the basis of this limited and prejudicially selective group of sources, gleaned according to its own account from the very bodies against whom the two groups are contending.²¹

(5) *The OTS risk assessment*

Dr Gilling then went on to consider the OTS risk assessment of March 1998. He observed that, while OTS noted that the historical research upon which it relied was 'preliminary' (the 1996 report), it then went on to exclude Pakakohi and Tangahoe from separate negotiations. He described OTS's movement from uncertainty about the two groups' status to making a decision about that status as 'without logic'. He felt that OTS's reaching of a firm conclusion 'seems presumptuous and without firm foundation', and he could ascribe 'such carelessness or presumption' only to the Crown's openly stated desire to negotiate solely with 'iwi'.²² He suggested that the Crown was 'visibly searching for the smallest number of pan-Maori groups with which it needs to devote time and resources to negotiating'. The Crown's own documents, he said, indicated 'a predisposition to downplay issues and inconveniences that cut across this preference', and he argued that the Crown's favoured policy pre-empted a 'full investigation and accommodation of alternative paradigms or tribal realities'.²³

(6) *The 1998 Cabinet paper*

Dr Gilling noted that the Cabinet paper relied on the OTS assessment and thus suffered the same flaws and was open to similar criticisms, although

20. *Ibid*, pp 7, 22, 23, 24

21. *Ibid*, p 7

22. *Ibid*, pp 7, 8

23. *Ibid*, pp 27, 28

he added that the paper compounded matters in places by ‘abbreviating and removing the qualifications from the earlier statements so that they appear more definite and unquestionable than is in fact the case’. He expressed his concern, too, that the differences of opinion in the TPK and OTS analyses were apparently resolved by discussions amongst officials. This was a ‘nonsense when historical facts and issues are concerned’, he argued, and would not ‘produce a correct result or determine “the truth”’. Dr Gilling stated that, as with other considerations of the issue by the Crown, the Cabinet paper relied on the Taranaki Tribunal’s observation that Pakakohi and Tangahoe had not held exclusive territorial possession to imply that they must work conjointly with Ngati Ruanui. By contrast, he said, the paper remained relatively silent on the Tribunal’s remark that the two groups deserve separate consideration.²⁴ Dr Gilling also rhetorically asked whether Moriori and Ngati Mutunga on the Chathams were to be required to negotiate a settlement conjointly since they shared a territory. He argued that such an idea ‘seems prima facie to be an unsound and imposed straitjacket on the potential irregularities naturally present within Maori society’.²⁵

(7) Conclusion

Dr Gilling summed up the position thus:

Overall, one finds this process of Crown decision-making, at least as regards historical issues, to be something like a pyramid standing on its point. The Waitangi Tribunal’s report suggests the two groups being given separate consideration, but the official reading of the ‘unequal shares’ comment has been to consider that ‘unequal’ means no separate share at all, a clear misreading. Then the historical evidence available to the Crown has been weak at least, especially considering the potential gravity of this decision. The tribunal’s report is repeatedly characterised by its authors as preliminary. On the OTS side, the Crocker memorandum has been all that is available and the author of that made abundantly clear how initial and preliminary her work was. On the TPK side, no research seems to have been done and the Ministry has merely relied on some documents generated by the Working Party, the very body complained against by the claimants. It is apparent that in concluding that Tangahoe and Pakakohi have no traditional rights to separate negotiations, the Crown has made a historical decision based on little historical

24. Document A12, p 8

25. *Ibid*, p 31

evidence, and indeed largely on the historical record being silent or ambiguous. Historians have remained uncertain; the Crown has rushed in where professionals have feared to tread.²⁶

3.4 THE CASE FOR TANGAHOE INC

Mr Horner for Tangahoe Inc essentially made the following main points:

- ▶ the Tangahoe Inc deed of mandate had been submitted to OTS but had never been assessed;
- ▶ his clients were now willing to set aside their denial of Ngati Ruanui's existence and work cooperatively to reach an agreement; and
- ▶ a recommendation that more time be set aside before the deed of settlement was signed would allow for compromise to be reached.

3.4.1 The Tangahoe Inc mandate

Mr Horner stated that Tangahoe had submitted a mandate to OTS for assessment in April 1998 but had never received any consideration of it. He argued that steps towards signing a working party deed of settlement should now cease, and that the Tangahoe Inc deed of mandate should be assessed by the Crown. If approved, negotiations should be entered into with Tangahoe Inc. However, Mr Horner could not produce the mandate for our perusal and was unaware of its exact details. He had not prepared a case specifically on it, believing instead that our inquiry was focused solely on the working party's deed of mandate. He accepted the point, however, that a fundamental part of a challenge to the working party's mandate would be the credibility of Tangahoe Inc's own mandate.

We were assisted by Crown officials from OTS who were able to produce a copy of the Tangahoe mandate papers from their files. The papers included a list of some 800 names. Mr Horner believed that this register had been assembled for mandating purposes and currently contained some 1300 or 1500 names. However, he could not tell us when the list had been initiated. Amongst the papers, we noted in the May 1997 minutes of the Te Iwi o Tangahoe Inc annual general meeting a reference to another list of 91 supporters, which was not attached. In response to questions from the Tribunal as to how this list should be reconciled with the 805 names on the register, Mr Horner told us that he did not know. He also could not

26. Ibid, p9

explain to us whether any relationship existed between the register and a sample Tangahoe Inc mandate registration form, which also formed part of the Tangahoe Inc mandate documents.

Mr Horner acknowledged that the register of names might be a list solely of people who could affiliate with Tangahoe rather than of those who support the Tangahoe Inc mandate. He explained, however, that he and his clients had simply not had sufficient time to make an adequate case on the extent of support for Tangahoe. He returned to the point that the register had never been tested by the Crown and that, since his clients' application for mandate recognition had 'languished' in Wellington for some two years, Tangahoe had not had the opportunity that they should have had to develop their support.

Mr Horner argued that the working party's mandate was in no way solid. He made the point that none of the working party's mandating hui statements was supported by any minutes. He felt that the working party delegates were marae representatives, rather than those of hapu. He also pointed to some confusion attached to the document filed by counsel for the working party giving details of the hapu affiliations of the working party's members.²⁷ Counsel for the working party had stated that there were 18 working party members representing nine hapu and selected by 10 marae (excluding Manutahi). However, Mr Horner noted that there were 21 members on the list affiliating variously to 16 different hapu.

3.4.2 The denial of Ngati Ruanui's existence

In response to the Tribunal's observation that a strong theme running through the Tangahoe Inc papers was that Ngati Ruanui were a kind of bogus and legislated people, Mr Horner said that essentially that was still Tangahoe Inc's position. However, he added that his clients realised that it was no longer sustainable or practical to continue to deny Ngati Ruanui's existence, and that their preference was now to find a way to work together.

3.4.3 The requirement for more time

Mr Horner believed that a recommendation from the Tribunal for more time to be taken over the settlement would allow a compromise to be

27. See doc A26

reached, although he feared that the Crown's political imperative was to finalise a settlement before Christmas. He felt, in essence, that the Crown had simply got its settlement process wrong in south Taranaki. Tangahoe Inc had, he said, demonstrated a right to be dealt with separately. That said, he was prepared to find a way to come together at this late stage in the process. His compromise suggestion was either a pan-tribal south Taranaki runanga to administer settlement moneys or, at least, greater Tangahoe representation on the Ngati Ruanui settlement governance body.

3.4.4 Conclusion

In conclusion, Mr Horner noted that the Tangahoe Tribal Trust had been formed in 1959, that his clients had filed a claim with the Tribunal in 1990, and that they had attended or taken part in all the Taranaki Tribunal hearings. He stressed that a lack of research funding had meant that his clients had had to undertake the historical research into their claims themselves, despite being 'amateurs' with no expert historical training. He reiterated that in 1996 the Taranaki Tribunal had recognised Tangahoe as a functioning entity of distinct tradition, and he expressed his clients' dismay that they could be simply 'swept away'.

3.5 THE EVIDENCE FOR TANGAHOE INC

Briefs of evidence were filed on behalf of Tangahoe Inc by Rita Bublitz, Waveney Stephens, Aroha Houston, Martin Edwards, and Te Huirangi Waikerepuru. In addition, with the Tribunal's leave some papers were filed by counsel after the conclusion of the hearing, including a further affidavit of Mrs Bublitz's explaining the Tangahoe Inc register and mandate application.

3.5.1 Rita Bublitz

Mrs Bublitz outlined how Tangahoe Inc had never shared in the research funding that had been made available to the Taranaki claimant groups to present their claims to the Tribunal, in large part because of their

non-recognition by the Taranaki Maori Trust Board. However, Tangahoe Inc had carried on and researched and prepared its claim itself, and had attended all 12 Tribunal hearings. Mrs Bublitz emphasised the Taranaki Tribunal's impression that Tangahoe was a group deserving of separate consideration, and expressed a frustration that Tangahoe and Pakakohi had not had the proper opportunity to demonstrate to the Tribunal that they had indeed enjoyed a pre-eminence within their territory.

She then explained that relations between the south Taranaki tribes had become 'strained' since the release of the Taranaki Tribunal's report and the commencement of mandating procedures. Tangahoe Inc had presented its own mandate to OTS for consideration in April 1998, but it had never been acknowledged and the Crown had instead recognised the working party's mandate. She said that OTS had explained this in a letter of August 1999 as being, amongst other things, on account of the 'in-depth mandate assessments' carried out by OTS and TPK. She added that there currently existed an 'atmosphere of hostility' between Tangahoe Inc and the working party, 'which the process since May of this year had done nothing to ameliorate'.

With the Tribunal's leave, after the hearing's completion Mr Horner filed additional evidence from Mrs Bublitz on the Tangahoe Inc register and application for mandate recognition.²⁸ Mrs Bublitz explained that the register had been started in 1991 as a list of those who identified as Tangahoe, and that there were currently 1378 names on it. She attached the registration forms used in compiling the list, which, we noted, asked for personal details rather than expressions of support for separate negotiations for Tangahoe.²⁹ Mrs Bublitz confirmed that 'The register is not itself confirmation of a Treaty of Waitangi claim mandate for Tangahoe'.

However, Mrs Bublitz did include a registration form that she said was posted to 1000 members of Tangahoe seeking expressions of support for 'Te Iwi o Tangahoe' having the mandate 'in all future negotiations and development'.³⁰ Mrs Bublitz said that 91 people had filled in these forms, and this was the list of names referred to in the minutes of the May 1997 annual general meeting of Te Iwi o Tangahoe Inc (see s 3.4.1). She felt that this had been 'a good response'.

She also disputed the claim of counsel for the working party that the register contained the name of someone who had been dead for some time. She said that the person named by counsel was still alive.

28. Documents B3; A20, A20(a)

29. Document B3(a), (b)

30. Document B3(c)

3.5.2 Waveney Stephens

Waveney Stephens stated that, after she and others of Ngati Hawe and the Hamua hapu of Tangahoe had established a hapu 'mandate' at Ngatiki Marae in September 1995, members of the working party had begun actively trying to destabilise the process, holding their own meetings and selecting new 'mandate speakers' for Ngati Hawe.³¹

3.5.3 Aroha Houston

Aroha Houston stated that she and another had been elected as the 'mandated' Ngati Tanewai representatives at Wharepuni Marae in 1995, but that, through undemocratic means, they had been removed from these positions by marae trustees.³²

She also stated that whakapapa showed that the five Tangahoe hapu do not link to the ancestor Ruanui. She further asserted that Tangahoe representatives had been displaced by persons of Ngati Ruanui in local arrangements with the Ministry of Education and the South Taranaki District Council.

3.5.4 Martin Edwards

Martin Edwards explained that he was the mandated representative of the Hamua hapu on the Ngati Ruanui working party.³³ Despite this, he was writing his submission in support of Tangahoe Inc's request for 'a Waitangi Tribunal inquiry into the Ngati Ruanui Mandate'. He raised the concerns of his hapu about the validity of the working party's deed of mandate, stating that the working party's integrity had been 'destroyed'. This was because 'unjust' heads of agreement had been accepted and six members of the working party had been selected by meetings of marae trustees rather than having been mandated at full hapu hui. He also criticised the Crown for relying on the OTS and TRK risk analyses, which he felt were 'almost identical word for word', and in places presented 'a distorted picture'.

Mr Edwards appended (but did not comment on) a written answer provided in the House on 15 July 1998 by the then Minister in Charge of Treaty of Waitangi Negotiations, the Right Honourable Douglas Graham, in response to a question from Sandra Lee. Ms Lee had asked whether all

31. Document A6
32. Document A7
33. Document A17

internal issues of hapu representation would be resolved before the working party established a legal identity and received claimant funding. The Minister replied that Cabinet had approved the working party's mandate after a 'rigorous assessment process', which had involved 'substantial historical and contemporary research, and advice from Te Puni Kokiri'.

3.5.5 Te Huirangi Waikerepuru

Te Huirangi Waikerepuru (Mr Edwards's father) was the coordinator of the Ngati Ruanui working party from 1995 until November 1997, when, he said, he withdrew as one of the Hapotiki representatives because of what he saw as 'hidden agendas', 'irregularities', 'anomalies', and 'manipulations'. In short, Mr Waikerepuru seems to have felt that the Ngati Ruanui Tahua was imposing its will upon the working party and 'Taking over the mana of hapu representatives whose responsibility it is, to represent the interests of Hapu in matters relating to Muru/Raupatu Negotiations & Settlement with government'.³⁴

34. Document A8

4. THE CASE FOR THE CROWN AND THE WORKING PARTY

4.1 THE CROWN'S CASE

In sum, the Crown made the following main points:

- ▶ the Crown had kept an open mind on mandate issues, but the submissions process had revealed where the claimant community's support lay;
- ▶ the decision to recognise the working party's deed of mandate had been in conformity with the Crown's stated preference to negotiate with large natural groupings;
- ▶ the contentious arguments about Ngati Ruanui's origins had been prominent in Pakakohi Inc and Tangahoe Inc submissions until very recently;
- ▶ the Crown had lately made important concessions;
- ▶ no funding is made available to claimant groups until their mandate has been recognised; and
- ▶ Pakakohi claims not covered by this settlement would be included within the Nga Rauru settlement in due course.

Crown counsel Michael Doogan stated that the Crown still believed that the Pakakohi and Tangahoe claimants were 'dissenting groups within one claimant community'. He rejected the claimants' allegations that the Crown had not followed a fair and just process in recognising the working party's deed of mandate. He said that the Crown stood by its decision to recognise the mandate, and rejected in particular 'the allegations that it has relied upon inadequate or insufficient evidence and research material as the basis for recognition of the mandate'. He further maintained that the claimants' objections had been 'carefully considered' before the decision was taken.¹

Mr Doogan added that the Crown would continue to decline to consider deeds of mandate from the claimants. He noted the claimants' request in their 27 October 2000 précis of issues for the Tribunal to recommend that the Crown ensure that the status and position of the claimants be properly reflected in any settlement of their claims. His response was that this was precisely what the Crown had been endeavouring to do

1. Paper 2.40, pp 2-3

before the claimants withdrew from their dialogue with the Crown and the working party and reapplied for urgency.²

Mr Doogan confirmed that the Crown's policy is to settle with large natural groupings, such as iwi, although he explained it to be a preference rather than a rigid policy. He pointed to paragraph 24 of the 21 August 1997 OTS memorandum to its Minister as evidence of the Crown keeping an open mind on the status of Pakakohi and Tangahoe, for example. There, OTS officials had advised the Crown to await the outcome of the taking of public submissions on the working party's deed of mandate before deciding how to deal with Pakakohi Inc and Tangahoe Inc.

Mr Doogan also referred to the officials' suggestion at paragraph 16 of this memorandum, highlighted by Mr Upton, that one option could be to put the Pakakohi Inc and Tangahoe Inc deeds of mandate through the standard evaluation process to gauge their relative levels of support. The Tribunal queried him as to whether the Crown intended to disregard those mandates if they were heavily opposed by Ngati Ruanui submissions or whether it would assess the level of support for them from within Pakakohi and Tangahoe. Mr Doogan replied that the level of support should be gauged from within the 'claimant community', which he defined as the descendants of those who suffered the historical grievances. He agreed that this meant, essentially, that what Ngati Ruanui felt about a Pakakohi Inc mandate would certainly weigh heavily in the Crown's assessment.

Mr Doogan explained that the choice was made to gauge submissions on the working party's deed before deciding whether to seek views on other mandates. He reminded the Tribunal that the working party claimed in its deed of mandate to represent Pakakohi and Tangahoe in any event. He confirmed that the Crown ultimately viewed the submissions process as the best indicator of support. In those submissions, 'significant' levels of support for another group would have to be demonstrated for the Crown to contemplate extra negotiations. This, agreed Mr Doogan, tied in with the Crown's preference to negotiate with large groups save in exceptional circumstances. Whereas this standard might seem a rather high one for smaller groups, Mr Doogan stressed that the decisions were never arbitrary but always part of a complex political judgement process. The Crown knew that the decisions would never please everyone, but in this case it stood by the choices made.

2. Paper 2.40, p 6

In response to questions about the Pakakohi boundary split, Mr Doogan explained that the Ngati Ruanui settlement would encompass the claims of Pakakohi and Tangahoe except in the case of those who affiliate to Nga Rauru hapu and marae, whose claims would be settled in the Nga Rauru negotiations.

Mr Doogan took issue with the claimants' belated acknowledgement that their arguments about Ngati Ruanui's origins were really a 'distraction'. He felt that, for a long time, no progress had been possible between the working party and the Pakakohi and Tangahoe claimants because of this dogmatic stance. He said that the argument had been so prominent in the submissions of those groups that it had masked the quality of any other arguments and had led to the characterisation of the claimants as 'dissenters'. He said that the attitudes had still been prominent when urgency was reapplied for earlier this year.

He also emphasised that no claimant groups receive money during the period in which they attempt to gain their mandate from the claimant community. He stressed that the working party had received no money from the Crown until its mandate had been recognised, at which point its costs were reimbursed.

In conclusion, Mr Doogan drew attention to the efforts that the Crown had made in recent times to be inclusive and to effect compromise. He said, though, that he still did not know where the middle ground lay, as even Dr Gilling's point about the lack of credibility in the arguments about Ngati Ruanui's origins had not quite been accepted by Messrs Upton and Horner. In any event, he noted that if agreement between the parties could not be reached, then a political decision would have to be made.

4.1.1 Evidence of Andrew Hampton

Mr Doogan called OTS manager Andrew Hampton to give evidence in response to Dr Gilling.³ Mr Hampton criticised Dr Gilling for placing too much emphasis on the quality of historical research in the mandate-assessment process. He explained that it would require a 'clear majority of the marae, hapu and iwi members that today make up the claimant community' for the Crown to consider negotiating separately with Pakakohi Inc or Tangahoe Inc, and that this was a matter of careful judgement by

3. Document A23

officials and Ministers. As such, it was ‘essentially a policy and a political process, not one of legal or historical inquiry’.

Mr Hampton argued that the three groups shared the same land, history, and grievances, and were therefore defined as a ‘claimant community’. In response to questions from the Tribunal as to whether such an approach would work in the case of, say, Ngati Hine and Ngapuhi, Mr Hampton responded that it was totally dependent on the reaction of the particular claimant community. He thought that it was indeed possible for the claimant community to accept a smaller group settling with the consent of the larger aggregation, as with Ngati Turangitukua and Ngati Tuwharetoa, but that each circumstance would be different.

Mr Hampton listed the types of factors that went into the assessment of the working party’s deed of mandate:

- ▶ general historical evidence on who suffered the grievance;
- ▶ current marae and hapu affiliations;
- ▶ the extent to which the whakapapa and history of groups overlapped;
- ▶ how groups were perceived by their neighbours;
- ▶ the relative size of groups, in terms of population and rohe;
- ▶ relevant Waitangi Tribunal findings;
- ▶ the robustness of the process by which representatives were appointed;
- ▶ the governance policies of the body that is seeking the mandate;
- ▶ the level of support for the mandate as expressed through public submissions; and
- ▶ additional provisions for the representation of dissenting interests.

The Crown had been sufficiently satisfied that the working party fitted the necessary criteria to recognise its mandate, Mr Hampton said.

Mr Hampton thought that the 306 names on the Pakakohi Inc register were an indication of a high degree of support amongst those who identify exclusively as Pakakohi, but not necessarily a reflection of a large level of support amongst all those who affiliate with Pakakohi. The Tribunal observed that all hapu in the country have members who can whakapapa to other groups if they so choose. We pointed out our interest in identifying real communities, not virtual ones on the basis of whakapapa, and we observed that the question remains as to whether there is a current and viable Pakakohi community. Mr Hampton thought not, since Pakakohi overlapped too much with other groups. Nor did he think that the distinct

Pakakohi history – marked, for example, by the incarceration of almost 75 men – was in reality any different from the history of the wider Ngati Ruanui community.

The Tribunal queried whether the Crown’s classification, as evidenced by the TRK risk analysis, meant Pakakohi had to be defined as either an iwi or a group of dissenters, with no real middle ground. Mr Hampton disagreed and felt that there was a ‘third way’ of active Pakakohi participation in the working party’s process. He pointed out that opportunities for this had been afforded Pakakohi but had not been taken up. Nor did Mr Hampton agree that Pakakohi should have some form of separate status in the negotiations on the basis that their historical grievances (such as the incarceration of the Pakakohi men) seemed to give the Ngati Ruanui claim much of its moral underpinning. He felt that these experiences were no different from that of the wider Ngati Ruanui community. He thought that, in future, direct Pakakohi representation on the governance structure to receive the Ngati Ruanui settlement was a possibility, as long as such representation was properly accountable to the claimant community.

Mr Hampton also circulated a chronology that set out the major steps the Crown took in recognising the working party’s deed of mandate.⁴ In the chronology, Mr Hampton noted that the Cabinet Strategy Committee agreed to recognise the deed of mandate on 6 April 1998, and that ‘Ministers made [the] decision in [the] full awareness that Tangahoe and Pakakohi [were] likely to submit their own Deeds of Mandate’. Furthermore, the strategy committee inserted an ‘additional recommendation [to Cabinet] noting that they [did] not intend to negotiate separately with Tangahoe and Pakakohi’. When questioned by the Tribunal as to whether the Ministers had made a decision which went beyond the advice given to them by officials, Mr Hampton agreed that this was the case, although he added that the decision was still in line with OTS thinking. He added that Ministers felt that sufficient information had been gained from the submissions process to be sure of their decision.

Mr Hampton believed that it had been sufficient, when seeking responses from Maori, to rely upon the receipt of written submissions. He made the point that the submissions had followed a lengthy series of hui, albeit conducted by the working party. Mr Hampton also stressed that the Crown’s refusal to test the Pakakohi Inc and Tangahoe Inc mandates was not the closing of a door to those groups: from that point, the focus turned to how best to accommodate them within the working party’s process.

The Tribunal questioned him on whether representation by marae, rather than hapu, was appropriate in an area where the population had been so displaced and then mixed together after the raupatu. We observed that there remained some communities that did not neatly fit with marae communities. Others did fit, such as that at Manutahi Marae, but had not participated in the working party's process. Mr Hampton said that these were matters of concern but were not sufficiently problematic to warrant the mandate being revisited.

4.1.2 Evidence of Hauraki Greenland

Mr Doogan also called Hauraki Greenland, a Treaty settlements policy manager at TPK, to give further evidence in response to Dr Gilling.⁵ Mr Greenland disputed Dr Gilling's criticisms and made the point that TPK had not been attempting to undertake a historical analysis.

The Tribunal questioned Mr Greenland as to whether TPK had ever considered that there might be some distinction between Pakakohi and Tangahoe. The two were usually grouped together in the TPK risk analysis under such headings as 'Tangahoe and Pakakohi's argument' and 'Interpretation of Tangahoe and Pakakohi's position'. Mr Greenland recognised that they were distinct, but he did not suggest by his answer that consideration had been given to any features that might distinguish the two groups' challenges to the working party's mandate.

The Tribunal also questioned Mr Greenland about the wording on page 3 of the risk analysis, where TPK had considered that Pakakohi and Tangahoe should approach the Crown 'in conjunction with' Ngati Ruanui, rather than as 'part of' them. Mr Greenland agreed that this reference could indeed be regarded as an early recognition by TPK of a potential 'third way', with the parties working together in a distinct yet equal capacity. Mr Greenland could not recall why in the next paragraph Pakakohi and Tangahoe came to be described as 'dissenting interests', but he added that they were in fact both dissenting and conjoint interests.

4.2 THE WORKING PARTY'S CASE

Counsel for the working party, Chris Hall, made the following main points:

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- ▶ the Pakakohi and Tangahoe claimants had continued to make insulting allegations about Ngati Ruanui's origins, and the Crown's assessment of their submissions on the working party's mandate should be seen in those terms;
- ▶ Pakakohi and Tangahoe representation on the working party had always been provided for;
- ▶ the claimants did not represent Pakakohi and Tangahoe, but were dissident elements within those groups; and
- ▶ the mandate registers and documents prepared by the Pakakohi and Tangahoe claimants were unconvincing.

Mr Hall affirmed his clients' support of the Crown's decision to recognise the working party's deed of mandate as properly representing those who identify as Pakakohi and Tangahoe. He denied that the Tangahoe and Pakakohi claimants would suffer any prejudice as a result of the Crown and the working party signing a deed of settlement, and argued that:

Neither the relief claimed, nor any other relief should be granted to the claimants. Their claims are properly being dealt with as part of the Ngati Ruanui claimant community by the Working Party.⁶

Mr Hall made the point that, until very recently, a significant aspect of the Wai 758 and Wai 142 cases had been that Ngati Ruanui were a Pakeha construct. While the claimants now seemed to be resiling from this, significant offence had already been caused. Mr Hall ventured that it was impossible to ignore the fact that the Crown made its decisions in 1998 on the strength of the Pakakohi and Tangahoe claims as they were then framed, not as they were now being put forward.

Mr Hall also made the point that positions at the working party table had always been available for Pakakohi and Tangahoe. He justified this by saying that Wai 758 and Wai 142 were claims not of Pakakohi and Tangahoe but of some members of those groups. The majority of Pakakohi and Tangahoe, he said, supported the working party's mandate. To this end, he pointed to the working party representatives who could affiliate with the two groups.

Mr Hall went on to stress that Dr Gilling had all but overlooked the hui before the working party's mandate was submitted, as well as the submissions process which followed its receipt. He noted that the minutes of the Pakakohi meeting in the Patea Old Folks Hall recorded that Mrs Parker had encouraged those in attendance to make submissions to OTS but that

6. Document A14, p 4

only three were presented on behalf of Pakakohi. He also felt that the Pakakohi Inc and Tangahoe Inc lists were of no great moment. The Tangahoe Inc list – which he thought was simply a list of persons who could affiliate with Tangahoe – contained names of members of the working party and even, he said, one individual who had been dead for 40 years. As mentioned above, this claim was later disputed by Mrs Bublitz. Mr Hall calculated the Pakakohi list to have been compiled five years ago, judging by the ages recorded next to people's names. He observed that one person on that list was a member of the Nga Rauru working party, while another nine people were individuals who had 'registered' in support of the Ngati Ruanui settlement of Pakakohi and Tangahoe claims. In sum, he said, the lists were simply not what they had been claimed to be: namely, lists of people supporting separate negotiations for Pakakohi Inc and Tangahoe Inc.

Mr Hall did not feel it incumbent upon the Crown to coach claimant groups in the preparation of their mandates, and he thought that the Crown could be excused for not acting on the Tangahoe Inc list since it would not have known what to make of it. He argued that the Crown, in any event, had quite enough information upon which to make its decision. He felt that, at a certain point, the Crown was obliged to stop the mandate analysis process and make a firm decision, lest matters drag on indefinitely.

In response to questions from the Tribunal as to whether he saw the Pakakohi and Tangahoe claimants as dissidents within Ngati Ruanui or dissidents within Pakakohi and Tangahoe, Mr Hall thought they were the latter, describing them as a 'subset within a subset'. He said that the evidence for this conclusion was the nature of the submissions of both groups on the working party's deed of mandate. In response to concerns that the consultation hui before the submissions process had focused on selecting marae rather than hapu representatives – which in theory might disadvantage a group such as Pakakohi whose people were dispersed around the marae of other hapu – he said rather that the basis had in fact been hapu by hapu *at* marae. He then stated that Manutahi Marae had not in fact broken away but that its status simply remained unresolved.

Mr Hall explained that the statements by Martin Edwards and Te Huirangi Waikerepuru had been made by people who had once actively supported the working party but had fallen out politically with the rest of the membership. He felt that their support for the Tangahoe claim should

be seen strictly in those terms and that their erstwhile support for the working party was a reminder of the fact that the working party encompassed members of Pakakohi and Tangahoe. We sought confirmation from Mr Hall as to which hapu claimed by Pakakohi Inc and Tangahoe Inc were in fact represented on the working party. He produced in response a table showing the Pakakohi and Tangahoe connections of all the Ngati Ruanui hapu and marae, as well as a table showing the hapu and marae affiliations of all current members of the working party.⁷ These documents drew criticisms from counsel for Tangahoe Inc, which we have noted above.

Mr Hall summarised the situation in this way: counsel for the Tangahoe claimants had asked for recognition and involvement, and both of these had been provided. Pakakohi Inc had indeed been offered a seat at the table, but that offer had not been responded to for a whole year. Then Pakakohi Inc had come back with an unacceptable request for two seats, and so the offer had then been withdrawn. The essential thing, he said, was that Pakakohi and Tangahoe were represented on the working party and, more to the point, the working party had made a series of recent concessions to Pakakohi Inc. His clients were, he said, already occupying the middle ground.

Mr Hall accepted that Pakakohi had a distinct history and tradition from Ngati Ruanui, but denied that this tradition or history was a separate one. He concluded by stating that the only new pieces of evidence produced at the hearing to show that Pakakohi and Tangahoe did not support the working party were the two lists. These, he argued, established neither mandate nor support. He asserted that the working party still enjoyed the mandate and that it was time that this was recognised and that the settlement of the claim was allowed to proceed.

In response to questions from the Tribunal, David Tapsell, who also represented the working party, explained the relationship of the working party to the Ngati Ruanui Tahua in light of the allegations of Mr Kahukuranui that the two organisations were closely connected. He stated that the two bodies were quite separate entities and that the tahua had not interfered in the working party's selection process. However, he did concede that some financial and other assistance was made available by the tahua to the working party to assist it to obtain its tribal mandate.

7. Documents A25, A26

5. ANALYSIS AND RECOMMENDATIONS

5.1 THE NATURE OF THE TRIBUNAL'S ROLE

By the terms of section 6 of the Treaty of Waitangi Act 1975, any Maori can file a claim that he or she is likely to be prejudicially affected by any policy or practice adopted by or on behalf of the Crown which is inconsistent with the principles of the Treaty of Waitangi. In this case, the claimants reject any claim by the working party to have a mandate to represent members of the kin groups known as Tangahoe and Pakakohi in settling their historical claims. Accordingly, they claim that the Crown's policy that it will not settle separately the Tangahoe and Pakakohi claims prejudicially affects them and is in breach of the principles of the Treaty. The Treaty principles relied on by the claimants were not elaborated on in their arguments. The very nature of their complaints made plain to the Tribunal, however, that the relevant principles are those guaranteeing rangatira-tanga to Maori groups in the conduct of their own affairs, requiring the Crown and Maori to act reasonably and with absolute good faith towards one another, and enjoining the creation of fresh grievances from the treatment of historical claims.

Whether the claimants' allegations are able to be made out is a question which will be addressed shortly. First, however, we were surprised that no party sought to argue the more fundamental question of whether the Waitangi Tribunal could or should deal with these forms of dispute at all. Although the claims are technically aimed at the Crown, they mask what is essentially an internal dispute between closely related kin groups as to which organisation at which level speaks for them. The Tribunal was not established to deal with these categories of dispute. That role has to some extent been the traditional preserve of the Maori Land Court since 1865. It has been more expressly so since the enactment of section 30 of the Te Ture Whenua Maori Act 1993. By the terms of that section, it is left to a judge of the Maori Land Court and two assessors to identify representatives of kin groups in dispute for the purpose of any 'negotiations, consultations, allocation, or other matter'. By contrast, our jurisdiction requires us to focus on decisions of the Crown. In these claims, in order to meet that jurisdictional requirement it may be seen that the Crown is the primary 'respondent'. The working party is the true respondent, yet is

relegated to the status of an interested third party seeking leave to appear. There is, therefore, an air of artificiality about claims of this nature being advanced in this Tribunal.

In the result, although the matter was not argued before us, we find that we have jurisdiction to inquire into the claim. We consider however that the constraints on our jurisdiction, requiring us as it does to focus on Crown action, mean that we should tread very carefully.

It was partly for this reason that Chief Judge Williams referred the dispute to mediation under clause 9A of the second schedule to the Act (see s1.17). It was hoped by this means that Ngati Ruanui, Tangahoe, and Pakakohi would come together and collectively resolve who their spokespeople should be, for if the people themselves are unable to decide this most important of matters, there is little hope for any other body or person to be able to do it for them. In this dispute, Tribunal-facilitated mediation did not produce complete agreement despite genuine efforts on both sides. That is a matter for considerable regret. However, we should not overlook the fact that the mediation process was successful in bringing the parties together, in commencing productive dialogue and then ultimately narrowing the gap between their different perspectives. Had it not been for that mediation, we rather suspect that the hearing itself would have taken on a different, and less helpful character.

It follows from the foregoing that we are clear as to what the Tribunal's role is *not* in the context of claims of this nature. It is not the role of this Tribunal in investigating claims of this nature to substitute its own view of matters, for that arrived at by the Crown and the working party. There can be no room for second-guessing matters in decisions as delicate and fundamentally political as those relating to the recognition of mandate for the purpose of Treaty settlements. While the context of judicial review proceedings is significantly different to claims under section 6 of our Act, the principle of extreme caution which we instinctively adopt here, is echoed in High Court decisions. Thus, in *Kai Tohu Tohu o Puketapu Hapu Inc v Attorney-General*, Doogue J noted that 'The claims are claims entertained by the Crown as part of a political process and not part of a legal process'.¹ Similarly, Hammond J in *Greensill v Tainui Maori Trust Board* considered 'to intervene now would be an outright interference in what is nothing more or less than an ongoing political process as opposed to a distinct matter of law'.² A number of other cases have expressed the same sentiment.³ Accordingly, although the jurisdiction of the Tribunal is not

1. *Kai Tohu Tohu o Puketapu Hapu Inc v Attorney-General & Te Atiawa Iwi Authority* unreported, 5 February 1999, Doogue J, High Court Wellington, CP344/97, p 15

2. *Greensill & Ors v Tainui Maori Trust Board* unreported, 17 May 1995, Hammond J, High Court Hamilton, M117/95, pp 12–13

3. *Te Runanga o Wharekauri Rekohu Inc v Treaty of Waitangi Fisheries Commission* unreported, 11 September 1997, McGechan J, High Court Wellington, CP297/95; *Waitaha Taiwhenua o Waitaki Trust & Anor v Te Runanga o Ngai Tahu* unreported, 17 June 1998, Panckhurst J, High Court Christchurch, CP41/98

circumscribed within the relatively narrow discipline of judicial review, there are a number of important considerations which militate against the Tribunal interfering in mandate decisions except in clear cases of error in process, misapplication of tikanga Maori, or apparent irrationality. These considerations include the political nature of the decisionmaking under challenge, the artificiality of treating internal disputes as if they were disputes against the Crown, and the inherent difficulty of the subject matter.

5.2 THE TEST WE ADOPTED

With the foregoing in mind, we posed for ourselves a four-part test to determine whether the claims by Pakakohi or Tangahoe or both were well founded. The four-part test is as follows:

1. Does tikanga or early colonial history (or both) recognise Pakakohi or Tangahoe (or both) as a cultural and political entity distinct from Ngati Ruanui?
2. Do Pakakohi or Tangahoe (or both) have claims which are distinct from those of Ngati Ruanui? From this question, we sought to discern whether there was a prima facie argument in favour of Pakakohi and Tangahoe each being entitled to a separate settlement.

Questions 1 and 2 were posed as threshold tests – that is, as tests which allowed us to go on to consider the latter-day circumstances of either or both of the two kin groups in question. If the answers to 1 and 2 were yes in the case of either kin group, we had then to ask whether the evidence of the expressed will of the descendants of Pakakohi and Tangahoe today was such as to suggest that there may be significant support for separate or different treatment. Thus, the third question:

3. Is there sufficient evidence of support for a separate settlement in favour of Pakakohi Inc or Tangahoe Inc (or both) to warrant the Tribunal taking a hard look at the Crown's handling of the Ngati Ruanui working party mandating process?
4. If there is sufficient evidence to warrant a 'hard look' at the matter, were there flaws in the Crown's handling of that matter of sufficient severity to warrant the Tribunal considering that the Crown's acceptance of the working party's mandate to settle on behalf of Pakakohi or Tangahoe (or both) is unsafe?

In short, we needed to be satisfied that Pakakohi or Tangahoe (or both) had credibility in terms of tikanga, claims in their own right, and sufficient evidence of modern support to allow the Tribunal to question the conclusion that the claimants were a mere dissenting minority of those two kin groups. If those three tests were able to be satisfied, then the Tribunal would be in our view entitled to inquire into the integrity of the decision-making process undertaken on behalf of the Crown. Were relevant matters properly taken into account? Were irrelevant matters set to one side? Was the process fair given the nature of the decision and the circumstances of the parties?

5.3 QUESTION 1

Does tikanga or early colonial history (or both) recognise Pakakohi or Tangahoe (or both) as a cultural and political entity distinct from Ngati Ruanui?

This Tribunal did not undertake an extensive examination of this matter, and nor was it appropriate for us to do so. On the limited evidence available to us, we would come to the same conclusion reached in the Taranaki report, where the ‘distinctive tradition’ of Pakakohi and Tangahoe was recognised.⁴ They were certainly recognised as such by Pakeha observers of the time. In addition, both claimant groups presented evidence to the Tribunal on their traditional cultural identity (and indeed did so before the Taranaki Tribunal at a hearing in 1992).

For Pakakohi Inc this evidence included the emphatic position adopted by Mr Kahukuranui that Pakakohi whakapapa predated the arrival of the Aotea waka from whence came the primary descent line of Ngati Ruanui. Pakakohi was said to descend from Maruiwi and Paewhenua. He pointed to the differing names for landmarks within the rohe of Pakakohi including Taranaki maunga, the name for which, according to Mr Kahukuranui, in Pakakohi tradition is Pukehaupapa. Similarly, according to Pakakohi tradition, said Mr Kahukuranui, the Patea River was known as Tai Kehu. Pakakohi the ancestor was said to have come from the East Coast area and not from the Turi lines of Aotea Waka. There are of course many traditional examples of kin groups with no direct whakapapa connection to

4. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, p 316

larger neighbouring iwi, eventually coming to regard themselves as hapu of that iwi. But these considerations taken together establish a sound prima facie case for Pakakohi as a distinct cultural entity in pre-colonial and colonial times. That is sufficient for our purposes.

On the working party side, no challenge was offered to these arguments. Instead, the working party placed much greater emphasis on evidence which tended to suggest that Pakakohi was a hapu of Ngati Ruanui. The documentation referred to in the working party's response to the Pakakohi Inc and Tangahoe Inc submissions on its deed of mandate tended to emphasise this.⁵

For our part, we have found little help in analysing whether Pakakohi were a hapu of Ngati Ruanui or not. The picture seems rather more complicated than that. In traditional times, Pakakohi appear to have been an aggregation of hapu in their own right. The hapu generally accepted to be still within the Pakakohi karangatanga or calling are Ngati Ringi, Ngati Hine (including Nga Ariki and various other subordinate groups), Ngati Takou, and Ngati Tupito, although we note that such a list is a reflection of the major hapu identities today and not an exhaustive list of Pakakohi hapu over time.

We did not receive quite the same evidence from Tangahoe Inc on distinctive Tangahoe place names and descent lines, although some whakapapa were proffered in support of the proposition that Tangahoe were a distinct entity. We note in any event that Tangahoe were clearly recognised as a political entity by various Pakeha observers in the nineteenth century, and that Tangahoe, as well, were traditionally an aggregation of hapu in its own right. Again, from our contemporary knowledge, we understand these hapu today to be Hamua, Hapotiki, Ngati Tupaia, Ngati Tanewai, and Ngati Hawe.

It seems clear enough on the evidence that the relationship between Ngati Ruanui and Pakakohi and Tangahoe has for some considerable time now been ambiguous. It is sufficient for our purposes to conclude that both Pakakohi's and Tangahoe's cultural identity has been and remains distinctive but is today very closely related to that of Ngati Ruanui.

We would therefore answer the first question 'yes' for both Pakakohi and Tangahoe.

5. See doc A13, vol 1(19)

5.4 QUESTION 2

Do Pakakohi or Tangahoe (or both) have claims which are distinct from those of Ngati Ruanui?

For Pakakohi, Mr Kahukuranui deposed as follows:

On 14 June 1869, 233 men, women and children were incarcerated in a makeshift camp at Patea for 2 months, while Parliament debated what to do with them. After significant debate, 96 Pakakohi men were sent to Wellington and tried for treason. The women were left at Putiki Pa in Wanganui. Seventy four of the men were found guilty, including our tupuna and chief of our people Ngawakataurua. These men were sentenced to death. Indeed, I understand the initial sentence for them was that they were to be hung, drawn and quartered. The death sentence was later commuted to imprisonment. Two men died while awaiting sentence. A further eighteen died before they were released. The rest spent three years incarcerated in appalling conditions. On their release from Dunedin they were forced to spend another year in custody in Wellington and when they left Wellington they found their lands had been confiscated and they were prevented from returning to their homes. Grants of land were not made to Pakakohi until the 1880's and these were simply pathetic.⁶

The record makes it clear that the incarceration, trial, and confiscation suffered by these people was suffered as 'Pakakohi', even though all could whakapapa to Ngati Ruanui as well. We would observe that much of the moral force of the Ngati Ruanui claim is drawn from these events. Ngati Ruanui is clearly able in accordance with tikanga Maori to embrace the Pakakohi claim. Intimately linked whakapapa lines make that possible. On the other hand, we are mindful that if the question were asked, 'could the Pakakohi claim be considered to have its own factual matrix and raise its own distinctive issues?', the answer would plainly be yes. It follows that Pakakohi do have claims which are distinct from those of Ngati Ruanui even if it could not be said that they were separate. The point is rather that those claims have a clear historical credibility of their own and the tradition about those claims is carried by Pakakohi without being submerged in the larger Ngati Ruanui claim.

In respect of Pakakohi, therefore, we would answer the second question 'yes'.

6. Document A11, para 18

As to Tangahoe, our perspective is different. The original Tangahoe claim seems to have gained its impetus from the discredited notion that Ngati Ruanui do not exist. Until relatively recently, this remained the claimants' strongest case for a separate history. In the context of these hearings, that claim was softened considerably if not finally withdrawn. This left little else for the claimants to assert which marked their raupatu experience as distinct from that of the wider Ngati Ruanui tribal group. We note in the claimants' amended statement of claim of 17 November 1995 there is little assertion of a Tangahoe experience during the raupatu and its aftermath which is significantly distinct from that of neighbouring Ngati Ruanui groups.⁷

The only factor which may support Tangahoe Inc in this respect is that there has been little research specifically carried out on the possibility of distinctive claims of Tangahoe. The best we can say in favour of the claimants, therefore, is that we do not know categorically that their claim is a distinct one from that of Ngati Ruanui. It was open to the Tangahoe claimants to provide such evidence, even in summary or preliminary form, at the hearing. They did not. We conclude therefore that on the evidence before us and from our own knowledge of these matters, we find that proposition inherently unlikely.

At that point, the claim of Tangahoe Inc must fail, for if it cannot establish claims distinct from those of the wider Ngati Ruanui claim, there is no foundation upon which to build a separate settlement.

For the sake of completeness, however, we propose to comment generally on our impressions of the modern level of support for a separate Tangahoe settlement under question 3 below.

5.5 QUESTION 3

Is there sufficient evidence of support for a separate settlement in favour of Pakakohi Inc or Tangahoe Inc (or both) to warrant the Tribunal taking a hard look at the Crown's handling of the Ngati Ruanui working party mandating process?

It is convenient to deal with the question of Tangahoe Inc first. In short, we do not believe that the hapu belonging to Tangahoe have shown sufficient support for a separate Tangahoe settlement. The evidence suggests

7. Wai 142 RO1, claim 1.1(c), which most particularly sets out the claimants' historical grievances.

strongly that the Tangahoe claim has been driven by a small number of people who deny Ngati Ruanui's existence, and who more lately have gained support from those who have fallen out politically with the rest of the working party. Indeed, Mrs Bublitz seems to have had strong connections with the Ngati Ruanui leadership herself before falling out with the *tahua* and filing her Wai 142 claim in 1990. More lately, Te Huirangi Waikerepuru has expressed support for the Tangahoe claimants after being replaced as working party coordinator. Submissions from Tangahoe in respect of the working party's deed of mandate were essentially from the same small number of individuals. The recurring objection seems to have been that Ngati Ruanui were created by the Crown in the nineteenth century.

Nor was there strong evidence that Tangahoe Inc had undertaken proper mandate preparation. Claimant counsel at first suggested that the Tangahoe register of names had been compiled for these purposes but later stepped back from this. The register appeared to have been no more than a list of those who can affiliate with Tangahoe, and Mrs Bublitz confirmed as much in her second affidavit. Of more interest for our purposes was the apparent mail-out of 1000 forms some time prior to May 1997 asking Tangahoe affiliates whether they supported separate negotiations for Tangahoe Inc. We heard from Mrs Bublitz that 91 positive responses had been received. We consider that level of support to be insufficient to justify the 'hard look' called for in the third question unless there was other evidence to suggest that the 91 returns were indicative of a broader or more persistently expressed viewpoint. We may, for example, have felt differently if those returns were underpinned by a consistent refusal of Tangahoe *marae* and *hapu* to participate in the working party process. In fact, the five *hapu* which make up Tangahoe all elected *marae* delegates to represent the *hapu* on the working party at the consultation *hui* held at various Tangahoe *marae* in 1996 and 1997. We set out the details below:

- ▶ Wharepuni *Marae*, 15 December 1996: two Ngati Tanewai and two Ngati Tupaia delegates elected.
- ▶ Taiporohenui *Marae*, 25 May 1997: two Hapotiki and two Hamua delegates elected.
- ▶ Ngatiki *Marae* (and it appears that representation at that *marae* remains a matter of controversy), 22 June 1997: two Ngati Hawe delegates elected.

Waveney Stephens disputed the process by which the mandate had been achieved at Ngatiki *Marae*. But we do not consider the level of

support for a separate Tangahoe settlement at this marae to be sufficient to tip the balance.

We conclude, therefore, that, on the evidence, there was a sound basis for the Crown's conclusion that Tangahoe Inc was merely a dissenting minority of the wider Tangahoe people and that the Tangahoe majority opted to work within the working party. We hasten to add that we do not say that the Crown's conclusion is necessarily correct. We simply say that it was a reasonable conclusion to reach on the evidence. The result is we cannot point to any error in the process by which the Crown assessed Tangahoe support for the working party or any misapplication of tikanga Maori in that respect. Neither have the claimants established any apparent irrationality in the Crown's choice.

In respect of Pakakohi, the working party pointed first to the comprehensive consultation process that led to the selection of working party members. They argued that the working party's mandate was a 'bottom up' process involving marae and hapu at the flax roots of Ngati Ruanui, including Pakakohi. They argued that most working party members could affiliate to Pakakohi and effectively represent their interests. It followed, in the working party's view, that Pakakohi Inc represented only a dissenting minority of Pakakohi people.

Mr Upton for Pakakohi Inc argued that it had a list of 306 members who must have registered on the understanding that Pakakohi Inc would represent them in any settlement. Mr Johnston later conceded that the register was no claim to mandate but part of the general evidence that should have prompted the Crown to take the opportunity to assess the Pakakohi Inc mandate. In addition, we were advised that Pakakohi Inc held three mandating hui in order to garner support for a separate Pakakohi settlement. One hui was held in Levin in March 1997 and another in Gisborne in May 1997, both prior to the commencement of the working party's deed of mandate submissions process. A third hui was held in Patea in November 1997. We were supplied with minutes and attendance lists in respect of these hui. The minutes disclosed limited rather than substantial support for Pakakohi Inc's position. The attendance lists showed that 12 attended the Levin hui, 42 the Gisborne hui, and 34 the final Patea hui.

Throughout the hearing, Pakakohi Inc claimed that Manutahi Marae was the only truly Pakakohi marae that remained from the pre-raupatu complement. Manutahi has refused to take up either position on the working party.⁸ As a result, we were at first attracted by the proposition that

8. As can be seen from a perusal of chapter 2, there is some ambiguity in the Crown's accounts of how many places on the working party might be reserved for representatives of Manutahi Marae. The TRK risk analysis suggested the reservation of 'at least two places', while the OTS risk analysis referred to a single place. In the event, Cabinet referred to the reservation of places for 'Te Takere Marae representatives'.

Manutahi's stance was corroborative evidence of a desire of Pakakohi as a whole to stand apart from the working party's negotiations. On reflection, however, an analysis of the Ngati Ruanui marae and hapu has caused us to question the validity of that assessment. As presently situated Ngati Ruanui 'the iwi' has as many as 10 marae.⁹ This includes Whenuakura and Wai-o-Turi of the hapu Pamutanga and Rangitawhi, which have chosen to stand with Nga Rauru in their settlement negotiations. It also includes Ngarongo Marae and its hapu Araukuku, which has chosen to go with Nga Ruahine. There is also Whakaahurangi, which as we understand it is an 'urban marae' of more recent origin in Stratford. That leaves six.

It would be helpful if we set out our understanding of the hapu affiliation of the remaining six marae, and whether they have chosen to stand with the working party or not:

Marae	Hapu	Designation	Allegiance
Wharepuni	Ngati Tanewai Ngati Tupaia	Tangahoe	Working party
Taiporohenui	Hamua Hapotiki	Tangahoe	Working party
Ngatiki	Ngati Hawe	Tangahoe	Working party
Meremere	Ngati Hine Nga Ariki	Pakakohi	Working party
Pariroa	Ngati Tupito Ngati Hine Ngati Ringi	Pakakohi	Working party
Manutahi	Ngati Takou	Pakakohi	Pakakohi Inc

We should qualify the above by acknowledging that the decision of Ngati Hawe at Ngatiki to align with the working party has been the subject of controversy. This has caused the Crown to offer an additional place on the working party to a representative of that marae. Nevertheless, the table reveals that all hapu electing delegates to the working party are in fact hapu of either Pakakohi or Tangahoe. Setting aside Nga Ruahine and the hapu which have chosen to go with Nga Rauru, we were not made aware of any others. It appears, therefore, that one part of Ngati Ruanui springs from a Pakakohi tradition and the other part from a Tangahoe tradition. It is now very difficult to distinguish between Pakakohi, Tangahoe, and Ngati Ruanui. The experience of the working party's mandating process may well indicate that the once distinct strands have now merged.

9. We were also provided with the names of several traditional Ngati Ruanui marae which have not been functioning per se but which are apparently being rejuvenated in anticipation of the settlement. These appear to be mainly marae of Ngati Hine and its various sub-groupings, and include Otoia, Maraeroa, Haumatao, Ketemarae, Mokoia, and Ohangai: see doc A25.

We caution that we are not in a position to reach a concluded view on the matter. It was not our purpose to do so. What we can say is that the evidence challenging the foregoing analysis (namely, the Pakakohi Inc register and the three Pakakohi Inc mandating hui) was at best equivocal.

Pakakohi Inc argued that a marae-based mandating system was unfairly prejudicial to Pakakohi because so many of its marae had been laid waste during the wars of the 1860s. We can see the force in that argument. To substantiate it, however, it was incumbent upon Pakakohi Inc to adduce prima facie evidence of a ground swell of non-marae based support for its decision to stand apart. The evidence did not show this, even in a prima facie way. The Pakakohi register of 306 names was ultimately not contended to be a list of those supporting separate negotiations for Pakakohi Inc. A more relevant tally was the total of 88 people attending the three Pakakohi mandating hui in 1997, but an inspection of the attendance lists for those hui reveals that several persons attended more than one meeting and that the actual number attending overall was 78. Furthermore, the extent to which the register is not a mandate document is revealed by the fact that, by our estimation, fewer than 30 names out of the 306 appear amongst the lists of those attending the mandating hui.

That leaves Ngati Takou hapu and Manutahi Marae. The question, then, is whether the stance taken by them is enough for this Tribunal to conclude that there was sufficient evidence of support for a settlement with Pakakohi Inc to warrant us taking a hard look at the Crown's handling of the working party's mandating process. While considering this, we have borne in mind also the Crown's preference to settle with iwi or 'large natural groupings'. This is an approach with which we have considerable sympathy. There appear to us to be sound practical and policy reasons for settling at iwi or hapu aggregation level where that is at all possible. As the Whanganui River Tribunal put it, 'While Maori custom generally favours autonomy, it also recognises that, on occasion, the hapu must operate collectively'.¹⁰

We also commend the 'bottom up' process undertaken by the working party to hui with the marae and hapu within the Ngati Ruanui rohe and to generate flax roots support for its mandate. While there has been a deal of criticism about this approach, we consider as a general principle that a conjoint marae and hapu approach to mandating as adopted by the working party for its particular circumstances is fundamentally sound. The

¹⁰. Waitangi Tribunal, *The Whanganui River Report*, Wellington, GP Publications, 1999, p 13

decision of the Maori Land Court *In re Tararua District Council* is instructive on the point.¹¹ In that case, the court held that it ‘should look to local marae in matters of customary authority’, and that ‘Whilst there may [be] reasons as to why some claimants have been historically unable to maintain marae in our view customary authority finds its finest expression on marae’.¹²

When seen in this light, the position taken by Ngati Takou as one of several Pakakohi hapu and Manutahi Marae as one of three Pakakohi marae is simply not sufficient to prevent the Ngati Ruanui settlement.

In the result, we would answer question 3 for both sets of claimants in the negative. There is no need therefore to proceed to question 4.

Before concluding, we acknowledge that our position differs from the tentative conclusions reached by the Taranaki Tribunal about the claimant groups. That Tribunal hoped that it would not be necessary for it to rule definitively on the status of the hapu in order for the raupatu claims before it to be settled. Unfortunately, that was not to be, and this Tribunal has been required to consider the mandate issue squarely and on the basis of direct argument and evidence.

5.6 CONCLUSION

Although the evidence has not been sufficient to satisfy us that the mandate decisions regarding Pakakohi and Tangahoe were unsafe, we none the less believe that the Pakakohi and Tangahoe traditions must be factored into the settlement deed. Were they not, there would be a danger that the Pakakohi and Tangahoe identities would be written out of Taranaki history. That, were it to happen, would create a fresh grievance out of the settlement of an old one.

For this reason, we think it crucial that the discussions begun during the mediation should continue, although now in light of the conclusions we have reached. They should continue in order to ensure that the integrity of the Pakakohi and Tangahoe traditions is maintained in the settlement between the working party and the Crown. While the evidence has not shown that Pakakohi Inc and Tangahoe Inc have a mandate to represent Pakakohi and Tangahoe respectively, it is clear in our view that these two organisations have for many years been the standard bearers for those traditions. We are considerably heartened by the indication from ORS that

11. 138 Napier MB 85

12. *Ibid.*, fols 89, 92

a number of the proposals advanced by the claimants would be included in the deed of settlement. We think that more should be done. For example, we think that more work is needed on the phrases used in the deed of settlement that refer to the interrelationships between Ngati Ruanui and Pakakohi and Tangahoe. Similarly, there is room to better acknowledge in the recitals or other provisions of the deed the contribution of Pakakohi and Tangahoe tradition to the Ruanui identity. In addition, we consider that the issue of distinct representation for Pakakohi and Tangahoe on the post-deed governance structure is not necessarily closed. It may well be that there remains an argument in favour of including specifically designated representatives for them. That remains to be discussed between the various parties in the light of our conclusions, and we think it inappropriate to express any further view on the point.

In the end, for the reasons set out, we are not prepared to recommend a halt to the settlement. Nor are we prepared formally to recommend that the approach to settlement adopted by the Crown and the working party should be changed. We consider, however, that discussions along the lines mentioned above should continue, both before and after the deed of settlement is signed.

Heoi ano enei whakaaro o matou kei nga rangatira, kei nga hapu, kei nga iwi, kei nga kaimahi a te Karauna. He mea whakatakoto ki mua i a koutou i runga i te ngakau whakaiti, i runga ano hoki i te ngakau aroha.

E ki ana te korero a nga tauheke, 'He ranga maomao kei te moana e tere ana, he iwi kei uta. Ma wai e raranga e puta ai ratou ki te whai ao, ki te ao marama?' Kotahi tonu te whakautu e nga rangatira.

Ko koutou, ko koutou, ko koutou tonu.

Noreira e tangi tonu ana ki te hunga na ratou i tukutuku mai i nga taonga ataahua o te ao Maori, hei maramatanga mo tatou katoa. Ratou ki a ratou, tatou ki a tatou.

Tuturu o whiti whakamaua kia tina.

Hui e, taiki e!

Dated at Wellington this 14th day of November 2000



Chief Judge J V Williams, presiding officer



R Maaka, member



J R Morris, member



APPENDIX I. WAI 758 STATEMENT OF CLAIM

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Pakakohi Tribe

AND

IN THE MATTER OF a claim to the Waitangi Tribunal by Huia Rei Hayes, retired of Levin, a member of Te Pakakohi Iwi for and on behalf of herself and of the members of Te Runanganui o Te Pakakohi Trust Incorporated

STATEMENT OF CLAIM IN RESPECT OF TE PAKAKOHI TRIBE

TUESDAY THE 3RD DAY OF NOVEMBER 1998

THE CLAIMANT

1. This claim is lodged by Huia Rei Hayes ('the Claimant'), of Levin, retired for and on behalf of herself and Te Runanganui o Te Pakakohi Trust Incorporated ('Te Pakakohi Trust'):
2. Te Pakakohi Trust represents Te Pakakohi tribe and in particular the descendants of Hoka-o-te-rangi.
3. The Claimant represents Te Pakakohi tribe exercising manawhenua and manamoana over the area of South Taranaki from the Tangahoe River in the northwest to the Waitotara River in the southeast, up to the Matemateonga Ranges.

THE CLAIM

4. The Claimant notes that the Mana and Rangatiratanga of Te Pakakohi tribe stems from Tangahoe in the north to Waitotara in the south.

5. This claim particularly relates to a decision by the Crown through its representative the Office of Treaty Settlements on or about 20 April 1998 to:

- (a) Recognise the Deed of Mandate of Ngati Ruanui Muru Me Te Raupatu Working Party for the purpose of Treaty settlement; and
- (b) Not enter into separate treaty settlement negotiations with Te Pakakohi Trust or indeed any groups representing Te Pakakohi tribe.

6. The Claimant says that Te Pakakohi tribe and Te Pakakohi Trust are or are likely to be prejudicially affected by the acts, policies and practices adopted by or on behalf of the Crown and acts done or omitted by or on behalf of the Crown, the particulars of which are set out in further detail in this Statement of Claim.

7. The Claimant further claims that all of the acts, regulations, orders, policies, practices and actions taken omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

BACKGROUND

8. The Tribunal is aware of Te Pakakohi tribe from claims recently dealt with in an interim report of the Waitangi Tribunal in relation to the Taranaki region *The Taranaki Report – Kaupapa Tuatahi* (Wai 143). Te Pakakohi tribe has separate ancestry and a separate cultural identity from Ngati Ruanui. Indeed Te Pakakohi tribe has different and separate claims against the Crown from those of Ngati Ruanui.

9. In July 1997 the Ngati Ruanui Muru Me Te Raupatu Working Party submitted to the Crown a Deed of Mandate ('Deed of Mandate') which purported to recognise those who identify as Pakakohi in Treaty Settlement negotiations. Representatives of Te Pakakohi including Te Pakakohi Trust lodged submissions objecting to the Deed of Mandate.

10. On or about 20 April 1998 the Crown decided to recognise the Deed of Mandate.

11. In an undated letter, received by the Trust on or about May 1998, the Right Honourable Douglas Graham, Minister in Charge of Treaty Negotiations, advised the Trust that the Deed of Mandate had been accepted and

that the Crown was not prepared to enter into separate Treaty settlement negotiations with Te Pakakohi. A copy of that letter is attached to this Statement of Claim and marked with the letter 'A'.*

12. The Crown through the Minister in Charge of Treaty Negotiations also indicated that they would not accept a Deed of Mandate from Te Pakakohi Trust.

13. The Crown have since begun negotiations with the Ngati Ruanui Muru Me Te Raupatu Working Party to the exclusion of Te Pakakohi Trust.

CROWN TREATY BREACHES

14. The Crown has failed to ensure that the principles of the Treaty of Waitangi are adhered to and more particularly including the principle of recognition. This principle relates to Maori communities and Te Pakakohi tribe in particular being entitled to identify themselves and to manage their affairs in accordance with Maori custom and values.

15. The Crown act of recognising the mandate of Ngati Ruanui Muru Me Te Raupatu Working Party to the detriment of Te Pakakohi tribe and the Crown's omission to enter into separate negotiations with Te Pakakohi Trust was and is a continuing breach of the principles of the Treaty of Waitangi.

PREJUDICIAL EFFECTS

16. By virtue of the acts and omissions of the Crown in failing to recognise Pakakohi in its own right around the settlement table, Pakakohi have suffered and continue to suffer the following prejudicial effects:

- (a) The continued dispossession of their economic, spiritual and cultural base.
- (b) The continued loss of economic independence and prosperity.
- (c) The continued destruction of their culture and history.
- (d) The very real danger of losing their identity.
- (e) A continuation of the previous disenfranchisement suffered by Pakakohi during the Taranaki wars of the 1860's.

* This letter is not reproduced here.

- (f) A further destruction or erosion of any chance of restoring Pakakohi's economic base, social patterns and traditional leadership structures.
- (g) Continued poor health, welfare and education as a result or indirect result of the Crown's actions/omissions.
- (h) Loss of mana.

RELIEF SOUGHT

17. The Claimants seek the following recommendations:

- (a) A recommendation that any negotiations between Ngati Ruanui and the Crown that are currently underway which purport to apply to Pakakohi cease immediately
- (b) A recommendation that the Crown negotiate directly with Te Pakakohi Trust for and on behalf of Te Pakakohi tribe.
- (c) A recommendation that the Crown pay the full costs of the Claimants for the preparation and presentation of this claim.
- (d) Any other recommendation as the Tribunal thinks fit.

LEAVE TO AMEND

18. The Claimants seek leave to amend this Statement of Claim in light of research or other material which may become available during the presentation of this claim.

[Signed James Johnston]

[4/11/98]

Solicitor for the Claimant

Date

APPENDIX II. WAI 142 STATEMENT OF CLAIM

IN THE WAITANGI TRIBUNAL

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Iwi o Tangahoe, Wai 142

AND

IN THE MATTER OF a further claim by Rita Bublitz, Aroha
Houston, Waveney Stephens for and on
behalf of Te Iwi o Tangahoe

STATEMENT OF CLAIM IN RESPECT OF TE IWI O TANGAHOE THE 18TH DAY OF APRIL 2000

THE CLAIMANT

1.0 This further claim is lodged by Rita Bublitz, Aroha Houston, Waveney Stephens ('the Claimants'), of Hawera, for and on behalf of Te Iwi o Tangahoe ('Tangahoe').

1.1 The Claimants represent Tangahoe the indigenous people, 'Ko Tangahoe te Tuakana Ko Ruanui te Teina' exercising manawhenua and manamoana over the area of South Taranaki from the Tangahoe River in the south, to the Waingongoro River in the west and to Waipuku-Patea and the Maunga in the north.

THE CLAIM

2.0 This claim particularly relates to decisions by the Crown:

2.01 Failing to recognise the indigenous status of Tangahoe and their relationship to Moriori and recognising the mandate of Ngaati Ruanui Muru Me Te Raupatu Working Party (Ruanui) in April 1993 as including and representing Tangahoe and the claimants in Wai 142 and

2.02 To enter into a Heads of Agreement dated 7th September 1999 with Ruanui to settle the claim to this Tribunal by Tangahoe as Wai 142 and therefore agreeing to wipe out the indigenous status and iwi rights of Tangahoe and its hapu

3.0 The Claimants say that Tangahoe is or is likely to be prejudicially affected by the acts, policies and practices adopted by or on behalf of the Crown and acts done or omitted by or on behalf of the Crown, the particulars of which are set out in further detail in this Statement of Claim.

4.0 The Claimants further claim that all of the acts, policies, practices and actions taken omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

BACKGROUND

5.0 THE ORIGINS OF RUANUI

5.1 The Claimants remain adamant that historically there has never been a tangata whenua iwi in South Taranaki known as Ngati Ruanui. Tangahoe and Pakakohi are the tangata whenua iwi in the area claimed by Ruanui.

The Claimants believe that those persons styling themselves, Ngati Ruanui, have subsumed the mana and rangatiratanga of Tangahoe.

5.2 'Ruanui' is an Iwi from North Auckland. The name 'Ruanui' like the name 'Ngati Awa' was applied by very early colonists to areas of proposed settlement in Taranaki. The area in the north was referred to as Ngati Awa and in the south as Ruanui. Slaves/prisoners of war returned to (inter alia) southern Taranaki after 1840 under the auspices of the Church Wesleyan Society, became known as 'Ruanui'. Some of them were tangata whenua to Tangahoe; were generally converts to Christianity, and mission educated. They were aligned to the missionaries and to the Crown and most stood aside during the land wars.

The people of Tangahoe did not stand aside. They resisted the incursions of the Crown into their rohe and were thereafter cast as rebels. It is one of Tangahoe's tragedies that its people do not know or understand their history and that the Tribunal has to date not fully accepted it.

5.3 Ruanui did not have land in South Taranaki prior to the 1882 Dillon Bell Commission or since that date. Land returned [to] the aboriginal people in South Taranaki was returned [to] Tangahoe and their hapu, not Ruanui. Ruanui remains landless.

5.4 Such was the destruction of Tangahoe; their political and social structure, economy and culture between 1866 and 1869, that the people came to identify with Ruanui. Ruanui however, is a product of the Crown and the colonisation programme, not of the indigenous people.

5.5 Ruanui is not the tangata whenua iwi in the area it claims. Ruanui is claiming the rohe of the indigenous iwi Tangahoe and Pakakohi.

6.0 RUANUI'S CONFLICT OF INTEREST

6.1 Ruanui has an inherent conflict of interest in dealing with indigenous historical interests. Modern Ruanui (the Ngati Ruanui Tahua Iwi Authority 'the Tahua') is a service provider to Maori, funded by the Crown; a client of the Crown and dependant on the Crown.

6.2 While Ruanui might claim that it is actually separate from the Tahua, in practice this does not appear to be the case.

Ruanui is based at the Tahua premises in Hawera, shares facilities and personalities and the cultures of the two organisations are similar.

6.3 Ruanui is, through its origins and by virtue of its modern activities and statute, a Crown compliant iwi. It is not the appropriate organisation to negotiate a settlement for the indigenous Tangahoe people of South Taranaki.

7.0 FAILURE TO PROVIDE RESEARCH

The Crown has either:

7.01 Failed to fund the research and documentation required to enable the Claimants to properly present their case for pre-eminence within their rohe or;

7.02 Failed to ensure that the funding that was made available for South Taranaki Iwi claimants to this Tribunal was distributed fairly and accounted for.

7.1 The Claimants have not received any funding or research support outside of Tangahoe. They have researched and presented evidence at the Tribunal hearings of the Taranaki Claim since 1990 on their own.

The Claimants are mindful that legal counsel from Halliwells has since 1990 been provided at no cost.

7.2 The Claimants believe that substantial funding for Waitangi Tribunal Claims was made available to Taranaki Iwi Claimants through the Taranaki Maori Trust Board and directly to Ruanui. None of this funding has been available to the Claimants. Given the culture of the Taranaki Maori Trust Board and of Ruanui, and Ruanui's conflict of interest, this was expected. It is however a travesty of justice, and perpetuates the peoples' ignorance of their true history and the Crown's acceptance of that history.

8.0 FAILURE TO NEGOTIATE WITH TANGAHOE

8.1 Notwithstanding the recognition by this Tribunal of Tangahoe in *The Taranaki Report: Kaupapa Tuatahi* dated 30th April 1996 the Crown has never consulted with the Claimants regarding the Settlement of their claim or the unilateral decision of the Crown to mandate Ruanui to act on behalf of Tangahoe.

8.2 The decision to negotiate with Ruanui '... subject to conditions designed to protect ... Tangahoe' shows a lack of understanding of the dynamics of Maoridom in the Tangahoe rohe, or at worst is a perpetuation of the abuse of Tangahoe by the Crown.

8.3 Ruanui are not recognised by the Claimants. The Claimants do not recognise Ruanui's claim to negotiate with the Crown on behalf of the indigenous people of South Taranaki. Tangahoe can only negotiate with the Crown in its own right.

8.4 Ruanui have not consulted with the Claimants at any time before or after their executing the Heads of Agreement with the Crown, which agreement purports to bind the Claimants and extinguish the Claimants indigenous and customary rights forever.

9.0 INTO THE FUTURE

9.1 Neither the Crown mandating of Ruanui or the Heads of Agreement addresses either the basis of calculation of the so called settlement with Ruanui nor the means by which Ruanui will deliver the settlement to the indigenous people of South Taranaki.

9.2 As the Crown well knows, the losses sustained in South Taranaki by virtue of the acts and omissions of the Crown are huge. They amount in modern terms to a figure in excess of \$3 Billion. Ruanui state that they have achieved a settlement of some \$41 Million. They offer no explanation as to why they have accepted such a paltry sum. Tangahoe can only assume that it is because they have lost no land.

9.3 Tangahoe accept that Ruanui is entitled to accept an amount for themselves, but that settlement, can not and will not, include or bind Tangahoe.

9.4 Furthermore the history in Taranaki of delivery of their entitlement by Maori to Maori has over the years been very poor.

Tangahoe are determined to end the tradition of imprudent leadership cronyism, bullying and indifferent accountability which has plagued south Taranaki for so long.

9.5 The Claimants have no faith that Ruanui will deliver long term benefits in South Taranaki to indigenous, Tangahoe and Pakakohe people.

CROWN TREATY BREACHES

10.0 The Crown has failed to ensure that the principles of the Treaty of Waitangi are adhered to and more particularly including the principle of recognition. Tangahoe are entitled to identify themselves and to manage their affairs in accordance with Maori custom, values and proper business practice.

11.0 Both the method and act of the Crown recognising the mandate of Ruanui to the detriment of Tangahoe and the Crown's omission to enter into separate negotiations with Tangahoe is, a continuing breach of the principles of the Treaty of Waitangi. Tangahoe is being subject to Muru again.

PREJUDICIAL EFFECTS

12.0 By virtue of the acts and omissions of the Crown in failing to recognise Tangahoe in its own right around the settlement table, Tangahoe have suffered and continue to suffer the following prejudicial effects:

12.01 The continued dispossession of their economic, spiritual and cultural base.

12.02 The continued loss of economic independence and prosperity.

12.03 The continued destruction of their culture and history.

12.04 The very real danger of losing their identity forever.

12.05 A continuation of the previous disenfranchisement suffered by Tangahoe during the Taranaki wars of the 1860's.

12.06 A further destruction or erosion of any chance of restoring Tangahoe's economic base, social patterns and traditional leadership structures.

12.07 Continued poor health, welfare and education as a result or indirect result of the Crown's actions and omissions.

12.08 Loss of mana; loss of a future as fully participating New Zealanders.

RELIEF SOUGHT

13.0 The Claimants seek the following recommendations:

13.01 That the mandate of Ruanui to act for Tangahoe be revoked immediately.

13.02 That the implementation of the Heads of Agreement cease forthwith in so far as they purport to apply to Tangahoe and their hapu cease immediately.

13.03 The Crown are directed to assist the claimants in preparing further evidence to this Tribunal and fund such assistance.

13.04 That the Crown negotiate directly with Tangahoe for and on behalf of Tangahoe.

13.05 A recommendation that the Crown pay the full costs of the Claimants for the preparation and presentation of the Tangahoe claim.

13.06 Any other recommendation that the Tribunal thinks fit.

LEAVE TO AMEND

14.0 The Claimants seek leave to amend this Statement of Claim in light of research or other material which may become available during the presentation of this claim.

[Signed K A Horner]

[18.4.2000]

Solicitor for the Claimant

Date

APPENDIX III. RECORD OF INQUIRY

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear claims Wai 758 and Wai 142, concerning the Crown's settlement negotiations with the Ngati Ruanui Muru me te Raupatu Working Party, comprised Chief Judge Joseph Williams (presiding), Roger Maaka, and Joanne Morris.

COUNSEL

The Wai 758 claimants were represented by John Upton QC with James Johnston and Dorothy Benson; the Wai 142 claimants by Kenneth Horner; the Ngati Ruanui Muru me te Raupatu Working Party by Chris Hall with David Tapsell and Rachael Brown; and the Crown by Michael Doogan with Rachael Ennor. The hearing was also attended by Charl Hirschfeld for the Wai 419 claimants. He maintained a watching brief and did not seek to lead evidence, although he did express his clients' support for the Wai 758 claim.

THE HEARING

The claim was heard at the West Plaza Hotel in Wellington from 1 to 3 November 2000.

RECORD OF PROCEEDINGS

1. CLAIMS

1.1 Wai 758

A claim by Huia Rei Hayes on behalf of herself and Te Runanganui o te Pakakohi Trust Incorporated concerning the mandate of the Ngati

Ruanui Muru me te Raupatu Working Party and settlement negotiations between the working party and the Crown, 3 November 1998

2. PAPERS IN PROCEEDINGS

2.1 Direction of deputy chairperson registering claim 1.1 as Wai 758, 23 November 1998

2.2 List of parties sent notice of Wai 758, 8 December 1998
Declaration that notice of Wai 758 given, 8 December 1998

2.3 Submission of Wai 758 claimant counsel supporting application for urgency, 25 February 1999

2.4 Affidavit of Piki Parker supporting application for urgency, 23 February 1999

2.5 Submission of Crown counsel opposing application for urgency, 25 February 1999

2.6 Notice of adjournment of 25 February 1999 judicial conference to 8 March 1999, 3 March 1999

2.7 Facsimile from Wai 758 claimant counsel to registrar requesting adjournment of 8 March 1999 judicial conference, 4 March 1999

2.8 Direction of deputy chairperson adjourning 8 March 1999 judicial conference to 29 March 1999, 4 March 1999

(a) Facsimile from Wai 758 claimant counsel to registrar requesting adjournment of 29 March 1999 judicial conference, 26 March 1999

2.9 Direction of deputy chairperson adjourning 29 March 1999 judicial conference to 8 April 1999, 26 March 1999

2.10 Facsimile from Wai 758 claimant counsel to registrar requesting adjournment of 8 April 1999 judicial conference, 7 April 1999

- 2.11** Direction of deputy chairperson adjourning 8 April 1999 judicial conference to 21 April 1999, 8 April 1999
- 2.12** Submission of Wai 758 claimant counsel responding to paper 2.5, 21 April 1999
- 2.13** Affidavit of Piki Parker supporting application for urgency, 21 April 1999
- 2.14** Facsimile from Wai 142 claimant counsel to registrar supporting Wai 758 claimants, 21 April 1999
- 2.15** Direction of deputy chairperson following 21 April 1999 judicial conference declining application for urgency, 21 April 1999
- 2.16** Affidavit of Piki Parker supporting application for urgency, 26 October 1999
- 2.17** Memorandum from chairperson to Crown and claimant counsel seeking details of negotiations process between Crown and Wai 99 and Wai 758 claimants, 2 December 1999
- 2.18** Memorandum from Crown counsel to registrar seeking extension of time to respond to paper 2.17, 16 December 1999
- 2.19** Memorandum from Wai 758 claimant counsel to registrar objecting to Crown request for extension (paper 2.18), 16 December 1999
- 2.20** Direction of deputy chairperson granting Crown request for extension (paper 2.18), 6 January 2000
- 2.21** Memorandum from Crown counsel to registrar responding to paper 2.17, 11 January 2000
- 2.22** Memorandum from Wai 758 claimant counsel to Tribunal responding to paper 2.21, 11 January 2000

2.23 Direction of deputy chairperson arranging conference to consider application for urgency for Wai 758 and Wai 142, 4 May 2000

2.24 Submission of Wai 758 claimant counsel supporting application for urgency, 22 May 2000

2.25 Submission of Crown counsel concerning application for urgency for Wai 758 and Wai 142, 22 May 2000

2.26 Memorandum from Crown counsel to Tribunal agreeing to Tribunal-facilitated mediation, 23 May 2000

2.27 Direction of deputy chairperson appointing mediator for Wai 758 and Wai 142, 26 May 2000

2.28 Direction of deputy chairperson extending mediation period, 15 June 2000

2.29 Direction of deputy chairperson adjourning application for urgency, 26 July 2000

2.30 Memorandum from Crown counsel to Tribunal concerning Crown negotiations with Ngati Ruanui Muru me te Raupatu Working Party, 14 September 2000

2.31 Letter from registrar to Crown counsel seeking timeframe for execution of deed of settlement between Ngati Ruanui and Crown, 28 September 2000

2.32 Facsimile from Crown counsel to registrar responding to paper 2.31, 2 October 2000

2.33 Printout of e-mail from counsel for Ngati Ruanui Muru me te Raupatu Working Party to Tribunal seeking watching brief in respect of Wai 796 proceedings, 9 October 2000

(a) Direction of deputy chairperson and Joanne Morris granting counsel for Wai 99, Wai 201, and Wai 506 claimants and counsel for Ngati Ruanui

Muru me te Raupatu Working Party leave for watching brief in respect of Wai 796 proceedings, 13 October 2000

2.34 Memorandum from Wai 758, Wai 99, and Wai 142 claimant counsel to Tribunal applying for urgency, 16 October 2000

2.35 Memorandum from Crown counsel to Tribunal responding to paper 2.34, 20 October 2000

(a) Brief of evidence of Andrew Hampton, 24 October 2000

2.36 Memorandum from counsel for Ngati Ruanui Muru me te Raupatu Working Party to Tribunal responding to paper 2.34, 20 October 2000

2.37 Direction of deputy chairperson constituting Tribunal to hear Wai 758 and Wai 142 and scheduling hearing, 26 October 2000

2.38 Notice of hearing, 26 October 2000

2.39 Précis of issues for Wai 758 and Wai 142 claimants, 27 October 2000

2.40 Memorandum from Crown counsel to Tribunal responding to paper 2.39, 30 October 2000

2.41 Letter from Martin Edwards to Tribunal concerning mandate of Ngati Ruanui, 6 November 2000

2.42 Memorandum from counsel for Ngati Ruanui Muru me te Raupatu Working Party to Tribunal responding to material filed by Wai 142 claimants, 6 November 2000

2.43 Facsimile from Hori Manuirirangi to Tribunal concerning intended signing of deed of settlement between Ngati Ruanui and Crown, 5 November 2000

2.44 Memorandum from Wai 758 claimant counsel to Tribunal concerning special leave granted Wai 142 claimant counsel to file additional evidence, 6 November 2000

2.45 Memorandum from counsel for Ngati Ruanui Muru me te Raupatu Working Party to Tribunal concerning additional material on record of inquiry, 8 November 2000

RECORD OF DOCUMENTS

A DOCUMENTS RECEIVED TO END OF HEARING

A1 *Maori Law Review*, February 1999, pp 2–3

A2 ‘Heads of Agreement for a Proposed Settlement of the Ngaati Ruanui Historical Claims against the Crown’, unsigned copy, undated

A3 Taranaki Muru me te Raupatu Coordination Team, ‘Report on the Readiness of the Iwi of Taranaki to Negotiate a Settlement of the Taranaki Land Claim’, report commissioned by the Waitangi Tribunal, April 1996

A4 Waitangi Tribunal, *Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 315–316

A5 Affidavit of Rita Bublitz, 30 October 2000

(a) Supporting documents to document A5

A6 Affidavit of Waveney Stephens, 30 October 2000

(a) Supporting documents to document A6

A7 Affidavit of Betty Houston, 30 October 2000

(a) Supporting documents to document A7

A8 Affidavit of Te Huirangi Waikerepuru and supporting documents, 30 October 2000

A9 Submission of Wai 758 claimant counsel concerning mandate of Ngati Ruanui Muru me te Raupatu Working Party, 30 October 2000

A10 Affidavit of Piki Parker, 30 October 2000

- A11** Affidavit of Rongo Kahukuranui, 30 October 2000
- A12** Affidavit of Dr Bryan Gilling, 30 October 2000
- A13** Supporting documents for Pakakohi Inc, two volumes:
Volume 1: subdocuments (1)–(51)
Volume 2: subdocuments (51)–(91)
- A14** Document entitled ‘Synopsis of Submissions on Behalf of the Ngati Ruanui Muru me te Raupatu Working Party’, 30 October 2000
- A15** Document entitled ‘Response of Ngati Ruanui Muru me te Raupatu Working Party to Précis of Issues of Claimants – Wai 758 and Wai 142’, 30 October 2000
- A16** Document entitled ‘Crown Documents in Support of Urgent Hearing for Wai 758 and Wai 142 Mandate Issues’, 1 November 2000
- (a) Letter from director, Office of Treaty Settlements, to Minister in Charge of Treaty of Waitangi Negotiations concerning Ngati Ruanui, Tangahoe, and Pakakohi, 21 August 1997
- (b) Letter from Minister in Charge of Treaty of Waitangi Negotiations to Huirangi Waikerepuru concerning deed of mandate of Ngati Ruanui Muru me te Raupatu Working Party, 22 August 1997
- A17** Submission of Martin Edwards concerning mandate of Ngati Ruanui Muru me te Raupatu Working Party, 30 October 2000
- A18** Minutes of three Pakakohi mandate meetings, 23 March 1997, 17 May 1997, 1 November 1997
- A19** Assorted correspondence sent to Herewini Te Koha, Office of Treaty Settlements, concerning mandate of Ngati Ruanui Muru me te Raupatu Working Party, various dates in October and November 1997
- A20** Declaration of mandate for Te Iwi o Tangahoe Inc, 9 April 1998
- (a) Alphabetical list of names

A21 Document entitled 'Chronology of Crown Assessment of Working Party Mandate', undated

A22 Te Puni Kokiri, 'Risk Analysis: Ngati Ruanui Mandate to Negotiate Settlement of Treaty Claim', unpublished report, 22 December 1997
Covering letter from branch manager, Treaty Compliance, Te Puni Kokiri, to director, Office of Treaty Settlements, 22 December 1997
(a) Draft of document A22 with handwritten amendments showing later changes made, undated

A23 Document by Andrew Hampton, manager, Office of Treaty Settlements, entitled 'Office of Treaty Settlements Preliminary Response to Claimant Evidence', 31 October 2000

A24 Document by Hauraki Greenland, policy manager, Te Puni Kokiri, entitled 'Waitangi Tribunal Hearing: Tangahoe and Pakakohi: Te Puni Kokiri Preliminary Response to Claimant Evidence', undated

A25 Table entitled 'Nga Hapu o Ngatiruanui' undated

A26 List entitled 'Current Working Party Members', undated

A27 List entitled 'List of Attendance 1st November 1997 Te Pakakohi Hui', 1 November 1997

A28 Untitled list of names and personal details, undated

B DOCUMENTS RECEIVED AFTER HEARING

B1 Submission of Aroha Houston concerning motions passed at Wharepuni Marae annual general meeting, 6 November 2000

(a) Copies of three public notices of Wharepuni Marae Trustees annual general meeting (28 September 2000, 28 September 2000, 12 October 2000) and one notice of nomination and declaration of result of election of Wharepuni Marae trustee (2 November 2000)

B2 Submission of Aroha Houston concerning Ngati Ruanui Muru me te Raupatu Working Party submissions, undated

(a) Supporting documents to document B2

B3 Submission of Rita Bublitz concerning register of people identifying with Tangahoe, 6 November 2000

(a) Supporting documents to document B3

B4 Submission of Hori Manuirirangi concerning Crown and Ngati Ruanui Muru me te Raupatu Working Party settlement negotiations, 5 November 2000

B5 Five 'person profiles' and covering letter from Andrea Ward-Williams to Chief Judge Williams, Maori Land Court, 6 November 2000

ACKNOWLEDGEMENTS

The Tribunal would like to acknowledge the exceptional contributions of the staff who assisted in getting this matter to hearing at very short notice and in producing this report with the urgency which the issues at stake required. In particular, we acknowledge Moana Murray and Midge Te Kani for claims administrative duties; Marie Parker for secretarial and word processing tasks; Carwyn Jones for legal research; Dominic Hurley and Lauren Zamalis for production work; and especially Paul Hamer for assisting in the hearing of this claim and the preparation of this report.