IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI

IN THE MATTER of the Treaty of Waitangi Act 1975

A N D

IN THE MATTER of an application by Charlie Tawhiao on behalf of the Ngai Te Rangi Settlement Trust for an urgent inquiry into the Crown's settlement negotiations policy and practice concerning Hauraki redress

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STATEMENT OF CLAIM

Dated this 14th day of March 2017

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MAY IT PLEASE THE TRIBUNAL:

The claim

1. This claim is made by Charlie Tawhiao (Chairman), on behalf of the Ngai Te Rangi Settlement Trust ("Ngai Te Rangi").

2. Ngai Te Rangi claim that on 22 December 2016, the Crown initialled a Deed of Settlement with the Hauraki Iwi Collective (see **Appendix C**) that incorrectly and inappropriately provides the Hauraki Iwi Collective ("Hauraki") redress that extends into the heartlands of Ngai Te Rangi, thereby undermining the mana, rangatiratanga and tikanga of Ngai Te Rangi. As a result, Ngai Te Rangi say that the Crown has breached the principles of Te Tiriti o Waitangi.

3. The following settlement redress that is provided to Hauraki and falls within the rohe of Ngai Te Rangi is in issue (see **Appendix D**):

    (a) Tauranga Moana affirmations to preserve a fifth seat in the Tauranga Moana Framework and right to participate in alternative redress if the Framework is abandoned by TMIC;

    (b) Department of Conservation ("DOC") rights to engage in planning, customary take of flora and fauna and dead marine mammals, establish wahi tapu reserves and other decision making rights;

    (c) Ministry of Primary Industries ("MPI") Advisory Committee rights to advise the Minister on the utilisation of fisheries resources;

    (d) MPI Quota Rights of First Refusal ("RFR") to purchase certain quota;

    (e) Pare Hauraki Worldview statement of "Mai Matakana ki Matakana"; and

(f) Pare Hauraki Redress Area claims area up to Oturu stream (Te Puna).[1]

4. Given the extent of the redress now contained in the Hauraki Deed, Ngai Te Rangi also take issue with the specific redress items that were allocated to Hauraki as a result of previously negotiated outcomes including:

(a) Athenree Forest;

(b) RFR properties in Tauranga Moana;

(c) Commercial properties in Tauranga Moana; and

(d) Kaimai Statutory Acknowledgement.

5. Ngai Te Rangi negotiated outcomes for the redress due to the pressures to achieve a timely Treaty settlement, and on the basis that it was intended at the time that those agreements would be the full redress sought by the Hauraki Collective in Tauranga Moana. The agreements are not a reflection or acknowledgement of Hauraki rights in these areas.

6. Ngai Te Rangi's position is that all redress now contained in the Hauraki Deed that falls within Tauranga Moana, should be removed until there has been a proper process for determining the interests claimed.

7. Ngai Te Rangi entered into its own Deed of Settlement with the Crown on 14 December 2013 (**Appendix L**); the settlement Bill is at the second reading stage. Ngai Te Rangi have reached a position where they feel it necessary to put their own settlement on hold given the developments with the Hauraki settlement.

8. Ngai Te Rangi's claim calls into question failures of Crown policy and practice. It raises serious concerns regarding transparency, fairness and the durability of both the Ngai Te Rangi and Hauraki settlements.

[1] ROI TBC, *Brief of Evidence of Huhana Rolleston* [14 March 2017], at paras 8-26.

9. Ngai Te Rangi claim that the significant and irreversible prejudice that is being, and will be suffered by their iwi includes:

   (a) The undermining of Ngai Te Rangi mana whenua/mana moana, rangatiratanga, and tikanga;

   (b) The Crown and Hauraki, by including preservation clauses in the Hauraki Deed, have determined the parameters of future negotiations on the Tauranga Moana Framework;

   (c) Given the preservation clauses in the Hauraki Deed, Ngai Te Rangi may have to let go of the Framework, or negotiate lesser redress, thereby compromising a "critical" part of the settlement of their historical grievances;

   (d) Inter/intra-tribal division and damage to relationships;

   (e) Damage to the Crown and Ngai Te Rangi's Tiriti partnership; and

   (f) Loss of resources.

10. The prejudice is to such an extent that the Hauraki Deed has created fresh grievances for Ngai Te Rangi.

11. In fact, the Hauraki Deed has created a situation where neither the Hauraki settlement nor the Ngai Te Rangi settlement can be fair or durable.

12. The prejudice will be permanently entrenched by the passing of settlement legislation. The Crown has not indicated when this will occur.

The claimants

13. Ngai Te Rangi are an iwi of Tauranga Moana.

14. The Ngai Te Rangi Settlement Trust is the post-settlement governance entity for Ngai Te Rangi.

15. Ngai Te Rangi, Ngati Ranginui and Ngati Pukenga are connected with Tauranga Moana to such an extent that the iwi are known and referred to as the Tauranga Moana Iwi. The three iwi have collectivised for the purposes of settling their historical Tiriti claims as the Tauranga Moana Iwi Collective ("TMIC").

16. Tauranga Moana Iwi are the iwi who have held mana whenua/mana moana and exercise rangatiratanga over the lands and waters within Tauranga Moana, which extends from Nga Kuri a Wharei in the north, inland to the Kaimai Ranges, south to the pae maunga of Puwhenua, Otanewainuku to Wairakei in the south. That mana and rangatiratanga has been held uninterrupted by the three iwi since prior to 1840, through to today.[2]

17. On 1 March 2017, the Ngai Te Rangi Settlement Trust Board passed the following resolutions:

    (a) To continue to engage with the Crown to seek a final position on the withdrawal of Hauraki redress in issue by 2 March 2017;

    (b) To file an urgent application to the Waitangi Tribunal as soon as it is ready and no later than 8 March 2017;

    (c) That if no agreement is reached with the Crown on the redress sought by the Hauraki Collective in the rohe of Tauranga Moana then:

        (i) All previous agreements reached with the Hauraki Collective are withdrawn on the basis that it was intended at the time that those agreements would be the full redress sought by the Hauraki Collective in Tauranga Moana, including:

            (A) 60% of Athenree Forest;

            (B) Fifteen RFRs in Te Puna/Katikati areas;

[2] Save for Crown colonisation.

(C) Four properties in Te Puna/Katikati/Otawhiwhi areas;

(D) Kaimai Statutory Acknowledgement; and

(E) Kauri Point Reserve.

(d) That Ngai Te Rangi not proceed with the completion of the Ngai Te Rangi Settlement Bill until a satisfactory agreement is reached on the Hauraki Collective and individual Hauraki iwi redress within Tauranga Moana, including a satisfactory agreement on the removal of the fifth seat in the Tauranga Moana Framework.

Cause of action: The Crown has breached Te Tiriti and undermined Ngai Te Rangi mana whenua/mana moana, rangatiratanga and tikanga by granting Hauraki redress in the rohe of Ngai Te Rangi

18. Ngai Te Rangi claim that the Crown has breached Te Tiriti and undermined their mana whenua/mana moana, rangatiratanga and tikanga in the following ways:

(a) In the face of consistent and clear opposition, the Crown has granted Hauraki redress that extends into the heartlands of Ngai Te Rangi, thereby entrenching a long-standing dispute;

(b) The Crown only notified Ngai Te Rangi of the nature and extent of the redress contained in the Hauraki Deed three days prior to the initialling of the Deed;

(c) The Crown has failed to carry out overlapping claims processes for redress contained in the Hauraki Deed;

(d) The Crown has failed to carry out a fair and transparent assessment into whether the limited nature of the historical interest claimed by Hauraki in Tauranga Moana justifies the now extensive redress and interests that Hauraki will receive as part of its settlement package;

(e) The Crown has incorrectly and inappropriately applied the undertaking to Hauraki in 2012 that it would provide Hauraki with no less favourable co-governance arrangements in their area of customary interest, and cultural redress within the Te Puna and Katikati Blocks, as agreed with the Crown. That area has now extended far beyond Te Puna and Katikati, into the heartlands of Ngai Te Rangi;

(f) The Crown has failed to properly consider and balance the prejudice that will be suffered by Ngai Te Rangi against the Crown and Hauraki's intention to finalise a Hauraki settlement which includes redress in the rohe of Ngai Te Rangi;

(g) The Crown, by including general preservation clauses regarding the Tauranga Moana Framework or any future resource management redress in the Hauraki Deed, has set the parameters of future negotiations on the Framework in a manner that is prejudicial to Ngai Te Rangi;

(h) The Crown has failed to act in a manner that is fair and transparent;

(i) The dispute between Ngai Te Rangi and Hauraki remains unresolved. The Crown has failed to act rigorously, to exhaust all avenues, and to discharge its duties honourably;

(j) The Crown has failed to act in partnership with Ngai Te Rangi and require a resolution of the issues prior to initialling the Hauraki Deed; and

(k) In settling one grievance, the Crown has created another.

Te Tiriti o Waitangi and the Crown's Treaty settlement policy

19. The Tribunal's role is to determine whether Crown policy and practice is consistent with the principles of Te Tiriti o Waitangi.

20. Existing Tribunal reporting and the Crown's own settlement policy assists with the consideration of the claims made by Ngai Te Rangi, and is set out below as follows:

    (a) Relevant Te Tiriti principles (see **Appendix E**);

    (b) The right of Tauranga Moana Iwi to exercise rangatiratanga (see **Appendices J and K**);

    (c) The Crown's policy for Treaty settlements (see **Appendix F**);

    (d) Overlapping claims policy; and

    (e) Other important Tribunal statements regarding the standard that applies to the Crown's conduct where issues arise during settlement negotiations.

Relevant Te Tiriti principles

21. The following Te Tiriti principles apply to Treaty settlement negotiations:[3]

    (a) **The principle of reciprocity:** The Crown must provide for hapu and iwi to exercise their tino rangatiratanga in the settlement of their claims. It follows that the Crown must also consider its Treaty obligation to particular groups, if their circumstances warrant an alternative approach to the Crown's negotiation policies, processes and targets for the settlement of claims. To attain true reciprocity, there must be consultation and negotiation in practice as well as in name, and flexibility in the application of policies where shown to be strictly necessary;

[3] Waitangi Tribunal, *The Te Arawa Settlement Process Reports* [Wai 1353, June 2007], at 199 – 201.

(b) **The principle of partnership:** The principle of partnership carries with it an obligation for each Treaty partner to act towards each other with the utmost good faith. Where the particular circumstances of a group or groups warrant a more flexible approach, the Crown must be prepared to apply its policies in a flexible, practical and natural manner;

(c) **The principle of active protection:** The Crown's obligation is to actively protect the just rights and tino rangatiratanga of Maori in the use of their lands and waters to the fullest extent practicable; and

(d) **The principles of equity and equal treatment:** The Crown is to act fairly and impartially towards Maori. This extends to not allowing one iwi an unfair advantage over another. This does not mean treating all groups exactly the same, where they have different populations, interests, leadership structures and preferences. Rather, it means that the Crown must do everything in its power not to create or exacerbate division and damage relationships.

The right of Tauranga Moana Iwi to exercise rangatiratanga

22. The claims of the Tauranga Moana Iwi were reported on by the Waitangi Tribunal[4] in 2004 and 2010 respectively (see **Appendices J and K**), in:

(a) *Te Raupatu o Tauranga Moana*;[5] and

(b) *Tauranga Moana 1886-2006*.[6]

[4] We note that for the purposes of this Statement of Claim and accompanying evidence/submissions, the Wai 215 Tribunal is referred to as "the Tauranga Moana Tribunal". The reports will be distinguished either in text or in the corresponding footnote.
[5] Waitangi Tribunal, *Te Raupatu o Tauranga Moana* [Wai 215, August 2004] ("*Te Raupatu o Tauranga Moana*").
[6] Waitangi Tribunal, *Tauranga Moana 1886-2006* [Wai 215, August 2010] ("*Tauranga Moana*").

23. In those reports, the Tauranga Moana Tribunal made a number of significant statements that are relevant to this urgent application. In particular, the Tribunal stated that:

(a) Where their (Tauranga Moana Iwi) environment and cultural heritage are concerned, Tauranga Maori have had to fight hard to maintain even a faint shadow of the tino rangatiratanga and kaitiakitanga they exercised at the time of the signing of the Treaty;[7]

(b) The Crown has a duty to respect te tino rangatiratanga of Tauranga Maori and to foster their empowerment and autonomy;[8]

(c) Maori autonomy is "the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those objectives";[9]

(d) It agreed with Tribunal's views in the *Ngawha Geothermal Report* (1993) in terms of the implications for the Crown of its duty of active protection of Maori resource-use, where several important elements of the duty were identified, including:[10]

(i) That Maori are not unnecessarily inhibited by legislative or administrative constraint from using their resources according to their cultural preferences;

(ii) That Maori are protected from the actions of others which impinge upon their rangatiratanga by adversely affecting the continued use or enjoyment of their resources whether in spiritual or physical terms; and

(iii) The exercise of tino rangatiratanga over taonga within modern New Zealand's legal framework now requires

[7] At xxiv (Letter of Transmittal).
[8] At 18.
[9] At 23.
[10] At 22.

either ownership or, where this is not possible, significant management rights recognised and provided for in statute. Such management rights provide another means by which to recognise tino rangatiratanga, and allow the expression of kaitiakitanga;

(e) Where Tauranga Maori have lost ownership over their property and taonga against their will, and in breach of the principles of the Treaty, they may retain Treaty rights to exercise rangatiratanga and kaitiakitanga over those resources;[11]

(f) In consistently refusing to acknowledge Maori rangatiratanga over Tauranga Harbour, we find that the Crown has therefore acted contrary to both the plain meaning of article 2, and the principles of partnership and the duty of active protection;[12] and

(g) Tauranga Maori ought to have had the **full protection** of their Treaty rights to rangatiratanga and kaitiakitanga over Tauranga Harbour recognised at all times, unless alienated by freely negotiated agreement, or when strictly necessary in the national interest.[13]

24. Significantly, the Tauranga Moana Tribunal found that only once Maori have the capacity to assume the responsibility of acting as kaitiaki over their taonga will the Crown have provided a system of resource management that allows Maori to exercise their rangatiratanga. Only then will the Crown discharge its duties, and avoid further breaches of the principles of the Treaty.[14]

Crown policy for Treaty settlements

25. The Crown's guidelines for the resolution of historical claims are set out in the *Red Book* and include that (see **Appendix F**):[15]

[11] At 854.
[12] At 608.
[13] At 608 (Emphasis added).
[14] At 625.
[15] Office of Treaty Settlements, *Ka tika ā muri, ka tika ā mua: Healing the past, building a future – A Guide to Treaty of Waitangi Claims and Negotiations with the Crown* [March

(a) Treaty settlements should not create further injustices;

(i) In providing settlement redress to one claimant group the Crown should not harm the interests of other claimant groups;

(b) As settlements are to be durable, they must be fair, achievable and remove the sense of grievance;

(i) Settlements will not last if they are seen to be unfair and do not remove the sense of grievance;

(ii) The process of negotiation is intended to ensure that the Crown and a claimant group sign a Deed of Settlement only when both parties are satisfied that it is fair, and the claimant groups agree that their grievances are finally settled;

(c) The Crown must deal equitably and fairly with all claimant groups;

(i) This means that the Crown must have consistent policies and processes and that the redress for each group should be fair in relation to the redress received by other groups;

(ii) However, the Crown also acknowledges that each claimant group has different interests and particular claims against the Crown.

Overlapping claims policy

26. The *Red Book* provides that an overlapping claim exists where two or more claimant groups make claims over the same area of land that is the subject of historical Treaty claims (see **Appendix F**).[16]

2015], at 24 ("*Red Book*").
[16] Such situations are also known as 'cross claims'.

27. The Crown's policy states that the Crown can only provide redress "if it is satisfied that any overlapping claims have been addressed: [17]

> The Crown's policy provides that overlapping claims or interests of other claimant groups **must be addressed to the satisfaction of the Crown before the Crown will conclude a settlement** involving any of the sites or assets concerned.

28. The policy also provides:[18]

(a) In areas where there are overlapping claims, the Crown encourages claimant groups to discuss their interests with neighbouring groups at an early stage in the negotiation process and establish a process by which they can reach agreement on how such interests can be managed;

(b) Addressing overlapping claims at an early stage will avoid delays – and the possibility of a challenge to the settlement package – at a later stage in the settlement process. The Crown will assist this process by providing information on proposed redress items to all groups with a shared interest in a site or property;

(c) Disagreements relating to overlapping claims may arise from the Crown proposing a particular form of redress, such as the transfer of a site or property to one claimant group to the exclusion of another. Where there are overlapping claims, such exclusive redress may not always be appropriate. Often both groups have an interest, such as historical or cultural associations, in a site or property and these interests can be accommodated by a form of redress which is non-exclusive. This allows the interests of different groups to be recognised and accommodated;

(d) The Crown would prefer that disagreements over redress were settled by mutual agreement between claimant groups. However, in the absence of agreement amongst them, the

[17] *Red Book,* above n 15, at 27 (Emphasis added).
[18] At 54.

Crown may have to make a decision. In reaching any such decision on overlapping claims, the Crown will be guided by two general principles:

(i) The Crown's wish to reach a fair and appropriate settlement with the claimant group in negotiations; and

(ii) The Crown's wish to maintain, as far as possible, its capability to provide appropriate redress to other claimant groups and achieve a fair settlement of their historical claims

Other important Tribunal statements regarding the standard that applies to the Crown's conduct where issues arise during settlement negotiations

29. The Tribunal has previously made findings on cross-claim settlement disputes, including:

(a) *The Tamaki Makaurau Settlement Process Report*; [19]

(b) *The Te Arawa Settlement Process Reports*;[20] and

(c) *The Ngāti Awa Settlement Cross-claims Report*.[21]

30. In discussing the Crown's approach to overlapping claims, the Te Arawa Tribunal said:[22]

(a) The Minister and OTS should at all times be mindful that because of these multiple roles, **OTS holds a powerful position in the negotiation process**: it becomes the negotiator, the dispenser of justice, and the policy adviser to the Minister who has the final power. This makes **it critical that OTS is rigorous in its endeavours to uphold the honour of the Crown**, and to discharge the Crown's Treaty duties. In the context of overlapping claims, it must do so in a

[19] Waitangi Tribunal, *The Tamaki Makaurau Settlement Process Report* [Wai 1362, June 2007] ("*Tamaki Makaurau Report*").
[20] *Te Arawa Reports*, above n 3.
[21] Waitangi Tribunal, *The Ngāti Awa Settlement Cross-claims Report* [Wai 958, July 2002] ("*Ngāti Awa Report*").
[22] *Te Arawa Reports,* above n 3, at 64 (Emphasis added).

manner that is fair and impartial. It must be an **honest broker**, and it must remain independent; and

(b) OTS staff must have the requisite skills to move in and out of the Maori realm if they are to truly understand the tikanga underpinning Maori cultural preferences. These understandings must then be reflected in the development of policies and processes that respect those preferences, without relying solely on the advice of those standing to benefit the most from the settlement process.

31. In addition, the Ngati Awa Tribunal found that:[23]

(a) The Crown should not be satisfied that cross-claims have been addressed until really **no stone has been left unturned**. Even if a consensual approach can be achieved only in relation to *one* item of contested redress, that can ameliorate the wider relationships in issue. The Crown has a duty in this regard, flowing from the principles of partnership and good faith under the Treaty of Waitangi; and

(b) "The simple point is that where the process of working towards settlement causes fall-out in the form of deteriorating relationships either within or between tribes, the Crown cannot be passive". It must exercise an 'honest broker' role as best it can to effect reconciliation, and to build bridges wherever and whenever the opportunity arises. Officials must be constantly vigilant to ensure that the cost of settlement in the form of damage to tribal relations is kept to the absolute minimum.

32. The Tamaki Makaurau Tribunal was critical of the Crown's overlapping claims policy and said:[24]

(a) The explanation of the process for dealing with 'overlapping' claimants in the Office of Treaty Settlement's policy manual *Ka Tika ā Muri, Ka Tika ā Ma* (the *Red Book*) is summary and

[23] *Ngāti Awa Report,* above n 21, at 88 (Emphasis added).
[24] *Tamaki Makaurau Report,* above n 19, at 86-87.

unhelpful. It deals only in broad principles, and gives no clear idea as to how they will be applied or achieved; and

(b) The *Red Book*'s treatment of how cultural redress will be handled in situations where there is competition over sites and recognition provides no insight into how problems will be identified and addressed.

Particulars

33. A chronology has been prepared for this application (**Appendix G**),[25] which covers the 10-year period between 2007-2017; the period of time that Ngai Te Rangi has been engaged in the Crown's settlement process.

34. A document bank has also been prepared (**Appendix H**).

35. To assist the Tribunal's consideration of this application, the key time periods and particulars that highlight essential context to Ngai Te Rangi's claim are summarised below.

36. At 1840:

(a) Tauranga Moana Iwi held and exercised mana whenua/mana moana/rangatiratanga in and over Tauranga Moana; and

(b) Hauraki did not exercise mana whenua/mana moana/rangatiratanga in Tauranga Moana.

37. Between 1840-2017:

(a) Tauranga Moana Iwi held and exercised mana whenua/mana moana/rangatiratanga in Tauranga Moana; and

(b) Hauraki did not exercise mana whenua/mana moana/rangatiratanga interest in Tauranga Moana.

38. In 2004, the Tauranga Moana Raupatu Tribunal identified that some payments were made to Hauraki tupuna for Crown purchase of the Te

[25] See: ROI TBC, *Brief of Evidence of Huhana Rolleston* [14 March 2017].

Puna-Katikati block at the northern end of Tauranga Moana.[26] It is this Tribunal finding that the Crown and Hauraki largely rely on to justify the allocation of redress to Hauraki.

39. In 2008, the Crown engaged in settlement negotiations with the TMIC.

40. In 2009, the Crown engaged in settlement negotiations with Hauraki.

41. In September 2012, Hauraki applied to the Waitangi Tribunal for an urgent inquiry into the TMIC Deed. Hauraki claimed prejudice arising from unfair process, and that the TMIC Deed could irreversibly prejudice their customary interests.

42. On 24 October 2012, the urgent application was then adjourned on the basis that the Crown made an undertaking to Hauraki that the:[27]

> Tauranga Moana Framework will not prevent Hauraki iwi and the Crown negotiating no less favourable co-governance arrangements with local government in their areas of customary interests than provided to TMIC.
>
> …
>
> Cultural redress will be provided to iwi of Hauraki within the Te Puna and Katikati Blocks, as agreed with the Crown.

43. From this point on, the Crown and Hauraki have continued negotiations on the basis of the Crown's undertaking, and the past Tribunal report which recognised Hauraki's interests in the Te Puna and Katikati blocks.

44. In December 2012, the Crown and TMIC initialled a Deed of Settlement.

45. Between October 2013 – 2015:

    (a) In October 2013, the Crown notified Ngai Te Rangi that Ngai Te Rangi would likely have interests in areas where redress

[26] *Te Raupatu o Tauranga Moana,* above n 5, at 189-190.
[27] Wai 215, #2.695, *Joint Memorandum of Counsel for the Hauraki Collective and the Crown* [24 October 2012], at para 3.

was proposed for Hauraki and commenced the overlapping claims process;

(b) On 14 December 2013, Ngai Te Rangi signed a Deed of Settlement with the Crown (see **Appendix L**)

(c) Both the preliminary and final decision of the Minister from the overlapping claims process, confirmed that the Minister's position was that the creation of a fifth seat for other iwi on the Tauranga Moana Framework would be appropriate recognition for the interests of Hauraki in Tauranga Moana;

(d) The Minister stipulated that the TMIC Deed could not proceed without providing an additional seat for other iwi, and that if TMIC agreed to the additional seat that the seat would be created through negotiation with the other iwi and TMIC would be engaged in a further overlapping claims process;

(e) Through extensive engagement with the Crown, TMIC reluctantly accepted the fifth seat with a number of conditions, which preserved the mana whenua, mana moana and rangatiratanga of TMIC and ensured Hauraki was able to participate when TMIC determined Hauraki interests may be affected;

(f) In August 2014, the Crown and TMIC engaged to redraft the TMF to include the additional seat, on terms that were acceptable to TMIC. TMIC has since maintained that those terms must apply;

(g) The terms of the revised draft of the TMF to include the and fifth seat were not acceptable to Hauraki, and a number of attempts were made between the Crown, TMIC and Hauraki to reach an agreement on the fifth seat in order for the TMF to be finalised in the TMIC Deed. Attempts to reach agreement on the terms of the fifth seat were unsuccessful on all fronts;

(h) On 21 January 2015, the Crown and TMIC signed the Deed of Settlement, which included the Framework, with the fifth seat for other iwi, with conditions, for the co-management of Tauranga Moana (see **Appendix M**). Hauraki maintained its challenge that it should have a seat on the Framework without the conditions required by TMIC;

(i) In May 2015, the Crown, having determined that the parties were unlikely to reach an agreement, sought that the Tribunal determine whether the application for an urgent hearing by Hauraki be granted;

(j) On 6 August 2015, the Tribunal granted the application for urgency. The urgent hearings did not take place as parties again attempted to reach a resolution on the Framework;

(k) Between August 2015 and October 2015, agreements on the fifth seat of the Framework could still not be reached and the conversation between the Crown and TMIC shifted to whether or not TMIC would agree to remove the Framework from the TMIC Deed. The basis for this was to enable the remainder of the TMIC Deed to be finalised. The Minister confirmed that given the significance of the Framework to settling TMIC historic claims, that a separate Bill could be passed for the Framework in the future, once issues were resolved;

(l) TMIC agreed to remove the Framework from the TMIC Deed subject to conditions that the claimants say have not been completed;

(m) On 30 October 2015, the Crown notified TMIC of the process to resolve specific matters with the TMF.[28] The Crown advised that the right to participate in the fifth seat will be subject to the resolution of overlapping claims (including those of Tauranga Moana Iwi) to the satisfaction of the Crown and will:

[28] The process the Crown relied on is set out at clause 2.15 of the Tauranga Moana Iwi Collective Deed.

(i) Be commensurate with matters such as: The relative strength and nature of the association of the claimant group to the Tauranga Moana catchment, taken as a whole; and the nature of the claimant group's grievances in relation to the Tauranga Moana catchment;

(ii) Not undermine the fundamental elements of the Tauranga Moana arrangements set out in the TMIC Deed;

(iii) Not derogate from the Crown's recognition of the relationship between Tauranga Moana iwi and hapu and Tauranga Moana referred to in clauses 2.12 and 2.13 of the TMIC Deed; and

(iv) Be designed to preserve and enhance relationships between Tauranga Moana Iwi and other iwi.

(n) On 31 August 2015, because agreement could not be reached on the fifth seat, the Crown and TMIC agreed to have the Framework removed from the TMIC Bill, in order for the issues concerning the fifth seat to be resolved at a later date, through a separate process on the conditions noted above.

46. In 2016:

(a) In May 2016, the TMIC Settlement Bill was introduced to the House and proceeded through the Maori Affairs Select Committee process;

(b) On 22 August 2016, the Maori Affairs Select Committee hearings for the TMIC Redress and Bill were held in Tauranga. Hauraki did not participate in these hearings. Tauranga Moana Iwi relayed the prejudice arising from Hauraki claims to Tauranga Moana;

(c) The Crown, TMIC, and Hauraki attempted to engage regarding the TMF. Once again, no agreements were reached;

(d) On 21 October 2016, the Crown provided TMIC with information from Hauraki, which the Crown agreed was the basis that Hauraki had sufficient interests to take the fifth seat on the TMF, and have interests in Tauranga Moana provided for in settlement. Again, this largely included the earlier Tribunal reporting regarding Hauraki interests in the Te Puna and Katikati blocks, and the Crown undertaking from 2012;

(e) On 19 December 2016, three days prior to the Hauraki Deed initialling, the Crown provided TMIC with a table of proposed redress for Hauraki and overlapping claims consultation with Ngai Te Rangi;

(f) On 20 December 2016, the Crown was notified of Ngai Te Rangi's opposition to the redress, namely that Ngai Te Rangi opposed the Hauraki Deed that included redress in the rohe of Ngai Te Rangi. Ngai Te Rangi requested that the Crown do not initial the Deed with Hauraki until the issues could be resolved;

(g) On 22 December 2016, the Crown and Hauraki initialled the Hauraki Deed;

(h) Under the Hauraki Deed, the Crown granted Hauraki broad redress in Tauranga Moana.

47. From January 2017 to present:

(a) On 27, 28, 29 December 2016 and 13, 18 January 2017, news articles were published which note Ngai Te Rangi's opposition to the Crown and Hauraki approach to overlapping claims (see **Appendix I**). The articles demonstrate tribal division;

(b) On 11 January 2017, Ngai Te Rangi, Ngati Whatua ki Orakei and Waikato Tainui met to address mutual concerns with the Crown's overlapping claims policy in the context of the Hauraki Deed, and agree to collectively oppose the Crown's approach;

(c) On 3 February 2017, the Crown commenced overlapping claims processes for new redress contained in the Hauraki Deed;

(d) On 22 February 2017, Ngai Te Rangi wrote to the Minister and requested a process for addressing Ngai Te Rangi's issues with the Hauraki Deed;

(e) On 28 February 2017, the Crown declined to engage on the terms upon which Ngai Te Rangi sought to resolve the issues. OTS advised:

(i) The Minister will not consider the part of the letter which states that the TMF be preserved, except for the fifth seat;

(ii) The Minister made it clear that if the TMF remains, he cannot and will not exclude the fifth seat as the redress is already envisaged for Hauraki and he would in effect be removing this undertaking by agreeing to this text;

(iii) That what the Minister agreed to do is work with Hauraki to agree text that allows for discussion with Tauranga Moana over the next 2-4 years which might result in the redress being agreed which is different to or changes the TMF;

(iv) During this period of time, the TMF will be parked, with neither the Tauranga nor Hauraki claims in respect of the moana being settled;

(v) But if those discussions fail and parties revert to the TMF at the conclusion of the discussions, then it will be in its current form, unedited; and

(vi) This position was confirmed in writing by Ngai Te Rangi on 9 March 2017.

(f) On 7 March 2017, OTS wrote to Ngai Te Rangi and confirmed that the Crown considered that the redress for Hauraki, save a few outstanding matters, was finalised and that the redress in issue would not be removed;

(g) On 9 March 2017, Ngai Te Rangi responded to the Minister's letter and advised that:

(i) Ngai Te Rangi has resolved not to progress with their own settlement until satisfactory agreement with the Crown is reached concerning Hauraki cross claims;

(ii) That the Hauraki Deed is facilitating significant prejudice on Ngai Te Rangi mana and rangatiratanga;

(iii) Ngai Te Rangi have no alternative but to apply to the Waitangi Tribunal for an urgent hearing; and

(iv) That the Ngai Te Rangi and Nga Potiki Claims Settlement Bill second reading should not take place on 15 March 2017.

Prejudice

48. As a result of Crown action, omission, policy and practice in the settlements of Ngai Te Rangi, TMIC and Hauraki, the claimants are suffering the following forms of prejudice:

(a) The Crown's allocation of redress to Hauraki that incorrectly and inappropriately extends into the heartlands of Ngai Te Rangi;

(b) The redress allocated to Hauraki in the rohe of Ngai Te Rangi undermines the mana whenua/mana moana, rangatiratanga and tikanga of Ngai Te Rangi;

(c) The redress allocated to Hauraki extends far beyond the nature of the limited historical interest claimed by Hauraki;

(d) The failure of the Crown's overlapping claims policy to resolve the issues;

(e) The lack of transparency and fairness in the Crown's approach to the issues;

(f) The preservation of the ability of Hauraki in their Deed to gain redress in Tauranga Moana, which unfairly and prejudicially sets the parameters of what Ngai Te Rangi and TMIC are able to negotiate for their own claims;

(g) The Crown's provision of extensive new redress to Hauraki in Tauranga Moana, which was not dealt with in overlapping claims processes;

(h) The Tiriti partnership between the Crown and Ngai Te Rangi is suffering due to Ngai Te Rangi having to commence litigation to resolve the issues; and

(i) There is division and damaged relationships caused between the whanau and hapu of Ngai Te Rangi and Hauraki.

49. When the Hauraki Deed is settled, these issues become irreversibly entrenched in law.

Relief

50. Ngai Te Rangi seek the following relief from the Tribunal:

(a) That the Tribunal find that:

(i) Ngai Te Rangi's claims are well founded;

(ii) The Crown's overlapping claims policy and practice is inconsistent with Te Tiriti o Waitangi;

(iii) The Crown has undermined the mana, rangatiratanga and tikanga of Ngai Te Rangi;

(iv) The Crown has incorrectly and inappropriately applied the 2012 undertaking and past Tribunal reporting to

Hauraki by providing Hauraki cultural redress that extends beyond the Te Puna and Katikati Blocks, where the Tribunal accepted Hauraki had an interest in or around the 1860s;

(b) That the Tribunal recommend that the Crown undertake to stop settlement negotiations with Hauraki and:

(i) **Remove the redress:** remove all redress in the rohe of Ngai Te Rangi/Tauranga Moana from the Hauraki Deed; then

(ii) **Independent facilitation:** enter into an independent facilitated process with TMIC and Hauraki, with agreed terms of reference, including terms for commissioning research on the issues, with the view to resolving all overlapping claims redress issues arising in the Hauraki Deed;

(iii) **Commission research:** following agreement on the Terms of Reference, and prior to entering into facilitation, commission independent research/reports on the respective interests of TMIC and Hauraki in Tauranga Moana;

(iv) **Review of overlapping claims policy:** engage widely with Maori to develop a new overlapping claims policy to guide the resolution of the current issues, and future historic and contemporary settlement negotiations;

(v) **Finalisation of TMF:** finalise the TMF for TMIC;

(vi) **Compensation:** Compensate parties for the delay to the finalisation of their settlements;

(c) That, if necessary, parties be able to return to the Tribunal for further assistance; and

(d) Any other such other finding and relief that the Tribunal sees fit.

Amendment

51. Ngai Te Rangi reserve the right to amend this statement of claim.

DATED at Pakaraka this 14th day of March 2017

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Season-Mary Downs/Heather Jamieson
Counsel for the Ngai Te Rangi Settlement Trust

This statement of claim is filed by Season-Mary Downs, Chelsea Terei and Heather Jamieson of Tukau Law, the solicitors for the Applicants. Accordingly, the address for service for all documents for this claim is:

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