

THE  
TE AROHA MAUNGA  
SETTLEMENT PROCESS REPORT



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Waitangi Tribunal

Te Rōpū Whakamana i te Tiriti o Waitangi

Kia puta ki te whai ao, ki te mārāma

The Honourable Dr Pita Sharples

Minister of Māori Affairs

and

The Honourable Christopher Finlayson

Minister for Treaty of Waitangi Negotiations

Parliament Buildings

WELLINGTON

13 June 2014

E ngā Minita, tēnā kōrua

Enclosed is the *Te Aroha Maunga Settlement Process Report*, the outcome of an urgent hearing in Wellington on 7 and 8 May 2014.

The focus of the inquiry was on whether or not the Crown had dealt fairly with a conflict between Ngāti Rāhiri Tumutumu and the Hauraki Collective over the return of land on Te Aroha maunga. Te Aroha and Moehau maunga are iconic to all Hauraki iwi. The Crown has offered to the Hauraki Collective the fee simple return of 1,000 hectares on both maunga. Te Aroha Maunga is central to the Ngāti Rāhiri Tumutumu claims. While they will share in the Collective vesting they also wanted land on Te Aroha vested in themselves, including all or part of the land on offer to the Collective.

We do not find that the process by which the offer was made to the Collective was unfair to Ngāti Rāhiri Tumutumu. In coming to that view, a significant factor was Ngāti Rāhiri Tumutumu support for the process that led to the offer. It was also a process which generated significant early momentum in the Hauraki negotiations from which Ngāti Rāhiri Tumutumu and the other iwi of the Collective benefited.

Factors leading to this inquiry stem partly from what appear to be irreconcilable differences between the redress offered to the Collective redress and the aspirations for

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



redress of Ngāti Rāhiri Tumutumu. However, it also seems to us that this difference emerged and crystallised in the way it did due to a lack of clarity about how the interests of each iwi would be negotiated and recognised within the context of collective redress. The respective roles and responsibilities of the Crown and the Collective in this regard were not clear.

We understand that the Hauraki settlement is imminent. While we do not find a Treaty breach, and consequently make no recommendations, we are left with considerable unease about the situation Ngāti Rāhiri Tumutumu now find themselves in. Collective redress over Te Aroha is now being finalised in circumstances where it remains unclear how and when Ngāti Rāhiri Tumutumu redress will be negotiated over this, their core claim.

We therefore make some suggestions about what might now be done in the hope they may assist all parties.

Nāku noa



Nā Judge Michael Doogan  
Presiding Officer



PREFACE

This is a pre-publication version of the *Te Aroha Maunga Settlement Process Report*. As such, parties should expect that in the published version headings and formatting may be adjusted, typographical errors rectified, footnotes checked (and corrected where necessary), and maps modified, added, or replaced.

## ABBREVIATIONS

AIP	agreement in principle
AIPE	agreement in principle equivalent
app	appendix
CA	Court of Appeal
CCN	chief Crown negotiator
DOC	Department of Conservation
ELRNZ	<i>Environmental Law Reports of New Zealand</i>
CFRT	Crown Forestry Rental Trust
ch	chapter
comp	compiler
doc	document
ed	edition, editor
fn	footnote
fol	folio
HC	Hauraki Collective
HCFWA	Hauraki Collective Framework Agreement
ltd	limited
no	number
NRT, NRTT	Ngāti Rāhiri Tumutumu
NZLR	<i>New Zealand Law Reports</i>
OTS	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
PGSE	post-settlement governance entity
pt	part
ROI	record of inquiry
RTT	Ngāti Rāhiri Tumutumu
s, ss	section, sections (of an Act of Parliament)
SC	Supreme Court
sec	section (of this report, a book, etc)
SOE	State-owned enterprise
SOI	statement of issues
vol	volume

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers.

Unless otherwise stated, footnote references to claims, documents, memoranda, and papers are to the Wai 663 record of inquiry, a select copy of which is reproduced in appendix I. A full copy is available on request from the Waitangi Tribunal.

## CHAPTER 1

### THE HAURAKI SETTLEMENT NEGOTIATIONS AND THIS INQUIRY

*[S]ome connections can never be broken. They exist not because of deeds or pieces of paper, but they are written in the rocks and in the waters, and they can be heard echoing down from the peaks.*

—Tane Mokena talking about the significance of Te Aroha springs and maunga during the Hauraki district inquiry<sup>1</sup>

#### 1.1 INTRODUCTION

This report is the result of an urgent inquiry into an aspect of the Treaty settlement process in the Hauraki district. In 2006, the Waitangi Tribunal determined that groups in the Hauraki district have well-founded claims concerning past Crown actions, which had breached the principles of the Treaty of Waitangi, and caused them harm, or prejudice. The 12 iwi in the Hauraki district have formed the Hauraki Collective (the Collective), to negotiate settlement of their claims with the Crown. However, one of those iwi, Ngāti Rāhiri Tumutumu, has raised serious concerns about Crown actions in the settlement negotiations.

Ngāti Rāhiri Tumutumu's chief concern relates to the Crown's 2011 offer to the Collective of fee simple title to 1,000 hectares of Crown land on Te Aroha maunga. It is the highest peak of the Kaimai Ranges, which run north from Rotorua toward the Coromandel Peninsula. As the Tribunal's *Hauraki Report* notes,

In traditional Maori imagery, the Coromandel is the jagged barb of the great fish of Maui, Te Tara o te Ika, also called Te Paeroa o Toi. The peninsula is also seen by Tainui people as the ama (outrigger) of their waka, with the 900-metre high peaks of Te Aroha and Mount Moehau marking the prow and stern respectively.<sup>2</sup>

Te Aroha maunga is currently Crown land, being part of Kaimai Mamaku Forest Park.<sup>3</sup>

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1. Wai 686 ROI, doc G22, p 15

2. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 1, p 33

3. Document E2, p 48

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The Crown made its offer of 1,000 hectares of Te Aroha maunga to the Collective knowing that it conflicted with the aspirations of Ngāti Rāhiri Tumutumu, who hoped that their own specific redress would include sole title to the Crown's lands on Te Aroha maunga. The nub of the question before us is, therefore, has the Crown acted fairly in dealing with the difference that has emerged between Ngāti Rāhiri Tumutumu and the other iwi of the Hauraki Collective over the proposed return of land at Te Aroha maunga?<sup>4</sup>

It is important to emphasise, at the outset, that the Crown's offer of fee simple land at Te Aroha maunga to the Hauraki Collective is not itself the issue for this inquiry. In this inquiry, as we explain further below, the issue at stake is entirely the process by which the offer to the Collective was negotiated, made, and maintained, and whether that process was fair and complied with Treaty principles.

On this point, Ngāti Rāhiri Tumutumu say that the Crown's offer of 1,000 hectares to the Collective was made before the Crown had undertaken iwi-specific negotiations with them, and this has meant that the Crown has failed to properly manage the tension between Ngāti Rāhiri Tumutumu aspirations for redress on Te Aroha and the offer it made to the Collective. Ngāti Rāhiri Tumutumu argue that the Crown should not have made such an offer before undertaking a careful assessment as to how to provide for all interests on the maunga – those interests particular to each of the various iwi, as well as those that might fairly be shared among them.<sup>5</sup> They argue that the Crown thereby breached the principles of the Treaty, and in particular failed in its duty of active protection. They describe the negotiation process that has resulted in the offer to the Collective as unclear, informal, and prejudicial to their interests, to tikanga, and to their relationships with other iwi in the Collective.

The Crown, for its part, says it recognised both Moehau and Te Aroha maunga as of significance to all iwi of Hauraki, and considered that a transfer of land on the maunga to the Collective was appropriate, both because it responded to the express wishes of the Collective, and because such an approach was consistent with the findings of the Tribunal in its 2007 *Tāmaki Makaurau Settlement Process Report*. The Crown emphasised that its offer to the Collective does not preclude further iwi specific redress, both within and outside of the area that it is proposed will be vested in the Collective. The Crown's position in these respects is supported by a number of other iwi in the Collective, some of whom appeared as interested parties to our inquiry.<sup>6</sup>

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4. Paper 2.87 p13

5. Paper 2.135, paras 1.3–1.5, 1.7

6. Ibid, pp 5, 7, 39, 17–18

## 1.2 THE STRUCTURE OF THIS REPORT

This inquiry is a narrow one, but the parties involved, and the issues at stake between them, cannot properly be understood without some explanation of the broader context, especially the earlier Waitangi Tribunal report on Hauraki, and, subsequently, how Hauraki iwi have gone about negotiating settlement of their claims with the Crown. In the remainder of this chapter, therefore, we provide this important background. We first introduce the parties to the inquiry more fully. We then describe the original Tribunal inquiry into the Treaty claims of Hauraki groups which commenced in 1998, and the findings of that Tribunal relating to Te Aroha lands. We then outline the negotiations of Ngāti Rāhiri Tumutumu and other Hauraki groups with the Crown for the settlement of their claims, before explaining the process for granting the urgency application, and hearing the claim. We conclude this chapter by setting out the issues that the presiding officer determined were at stake in this inquiry.

Chapter 2 sets out the submissions of each of the parties. We summarise their cases with respect to the issues identified for this inquiry.

Chapter 3 contains the Tribunal's analysis and findings with respect to the issues. We conclude the chapter, and our report, with some observations that we hope may assist the parties in their efforts to reach a fair settlement of the claims of all Hauraki iwi.

## 1.3 THE PARTIES TO THIS INQUIRY

### 1.3.1 The claimants

The claimants in this inquiry are the Ngāti Rāhiri Tumutumu mandated negotiators, Jill Taylor and Nicola Jane Scott, on behalf of Ngāti Rāhiri Tumutumu. They were represented by counsel Tom Bennion and Lisa Black.

### 1.3.2 Other parties

The Crown is the other main party in this inquiry. Crown counsel were Jason Gough and Mia Gaudin of the Crown Law Office.

A number of Hauraki groups are interested parties in this inquiry, as the outcome may affect their settlement negotiations. They are:

- ▶ The Whānau Mangakahia (Wai 475), represented by Charl Hirschfeld.
- ▶ Ngāti Porou ki Hauraki (Wai 866), represented by John Kahukiwa / Dayle Takitimu.
- ▶ Ngāti Hako, represented by Charl Hirschfeld.
- ▶ Ngāti Pu (Wai 355), represented by Charl Hirschfeld.
- ▶ Ngāti Maru, represented by Paul Majurey.

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- ▶ Ngāti Tamaterā, represented by John McEnteer.
- ▶ Ngāti Tara Tokanui, represented by Amelia Williams.

**1.3.3 People who presented evidence to this inquiry**

The following people presented evidence to this inquiry:

- ▶ Jill Taylor: Ngāti Rāhiri Tumutumu mandated negotiator. Jill Taylor was one of the two interim negotiators who signed the Framework Agreement in October 2010.
- ▶ Nicola Scott (née Green): Ngāti Rāhiri Tumutumu mandated negotiator and negotiations committee secretary. She signed the agreement in principle equivalent (AIPE) in July 2011 shortly after her appointment.
- ▶ Mapuna Turner: former (interim) negotiator for Ngāti Rāhiri Tumutumu, who (along with Jill Taylor) signed the Framework Agreement in October 2010. She was replaced as a negotiator by Nicola Scott in 2011.
- ▶ Michael Dreaver: chief Crown negotiator for Hauraki (and Tāmaki) settlements.
- ▶ Glenn Webber: deputy director of the Office of Treaty Settlements since April 2013.
- ▶ Clare Piper: former OTS Hauraki Team analyst from June 2011 to February 2013. Ms Piper was summonsed as a witness at the request of the claimants.
- ▶ Paul Majurey: chair of the Hauraki Collective, mandated negotiator for Ngāti Maru, and counsel for Ngāti Maru in this inquiry.
- ▶ Liane Ngamane: mandated negotiator for Ngāti Tamaterā.
- ▶ Amelia Williams: mandated negotiator for Ngāti Tara Tokanui.

**1.4 INQUIRY BACKGROUND AND NEGOTIATION PROCESS**

**1.4.1 The Waitangi Tribunal inquiry into Hauraki claims**

Ngāti Rāhiri Tumutumu first submitted their claim (Wai 663) to the Waitangi Tribunal in 1997.<sup>7</sup> As subsequently amended the Wai 663 claim related particularly to the Crown's purchase of Te Aroha block in 1878, the proclamation of the Te Aroha goldfield in 1880, and the acquisition of land in and around Te Aroha township, including public works takings, Te Aroha mountain and the hot springs that lie at the base of the mountain.<sup>8</sup>

The Tribunal's Hauraki district inquiry (Wai 686) was constituted in January 1998 and hearings were held between September 1998 and November 2002. The majority of the claims in the district were advanced by the Hauraki Māori Trust Board, which includes

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7. Wai 686 ROI, claim 1.1 In late 1996, the State-owned enterprise Television New Zealand applied to remove memorials on land titles in Te Aroha. Tanengapuia Te Rangiawhina Mokena of Ngāti Tumutumu responded in part to this application but also made claims regarding gifted lands and other properties in the Te Aroha region on behalf of the Mokena whanau.

8. Waitangi Tribunal, *Hauraki Report*, vol 1, p 17

Ngāti Rāhiri Tumutumu. Ngāti Rāhiri Tumutumu gave a mandate to the Board to prosecute the wider Hauraki claims on its behalf.<sup>9</sup> The Board's claim addressed land confiscations, acquisition of Te Aroha lands for mining purposes, Te Aroha reserves and hot springs, and the operation of the Native Land Court and native land legislation in and around Te Aroha.<sup>10</sup> Ngāti Rāhiri Tumutumu also continued to advance separately its Wai 663 claim specifically regarding Te Aroha lands.<sup>11</sup>

The Waitangi Tribunal issued the *Hauraki Report* on 6 June 2006. In that report, the Tribunal described Te Aroha mountain as 'a maunga tapu, a sacred mountain', for Ngāti Rāhiri Tumutumu and for Hauraki people generally.<sup>12</sup> The report describes the connection of Ngāti Rāhiri Tumutumu, Marutūāhu, and Hauraki peoples generally to the mountain which, according to Hauraki Māori Trust Board witness Taimoana Turoa, 'embodies the prow of a canoe with its stern at Moehau, at the northern end of Coromandel Peninsula' (according to others, Te Aroha is the stern). The connections of Hauraki peoples to the maunga are conveyed in its various names. Taimona Turoa referred, for example, to an 'older name for Te Aroha mountain . . . "Puke-kakariki-kaitahi", which he suggested is "probably of early Ngati Hako origin".<sup>13</sup> Another of its names is 'Te Tatau ki Hauraki whanui' or the 'portal or doorway to Hauraki widespread'. The name Te Aroha itself, meaning love, yearning, or compassion, is a shortened version of a name which appears in Tainui, Te Arawa, and Mataatua traditions as "Te Aroha-ki-tai, Te Aroha-a-uta", a phrase uttered by the ancestor Rāhiri when returning from dwelling in the far north. Traversing the places of his youth, Rāhiri named key sites, 'yearning for his coastal homeland (tai) and its inland territories (uta).'<sup>14</sup> We note that in our inquiry, Ngāti Tara Tokanui also linked the naming of the maunga with their ancestor Tiki Te Aroha.<sup>15</sup>

The Hauraki Tribunal quotes Mapuna Turner: 'Ngati Rahiri Tumutumu and the rest of Hauraki consider Mount Te Aroha to be wahi tapu'.<sup>16</sup> Tane Mokena (a descendant of Ngāti Rāhiri Tumutumu rangatira Te Mokena Hou) told the Hauraki tribunal:

The hot springs lie at the base of Te Aroha Mountain, right beneath Whakapipi or Bald Spur. The springs flow out of the heart of the mountain, so I cannot talk about the significance of the springs without first talking about Te Aroha Mountain.

Te Aroha mountain and the Kaimai Ranges are closely associated with our ancestors. Te Aroha mountain itself is traditionally associated with the ancestor Te Ruinga. On one side, Te Ruinga descended from Raukawa, on another side he came from this area. Twin peaks

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9. Wai 686 ROI, doc A51, pp 5–6

10. Wai 686 ROI, claim 1.3(a), pp 28, 32, 47

11. Waitangi Tribunal, *Hauraki Report*, vol 3, p 1244

12. Ibid, p 928

13. Ibid, pp 901–902

14. Ibid, p 901

15. Document D2, p 4

16. Waitangi Tribunal, *Hauraki Report*, vol 3, p 902

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stand atop Te Aroha mountain. The higher one bears the name Te Aroha-a-uta, and the lower one Te Aroha-a-tai.

Associated, as they were, with the ancestors and the tapu state of death, mountains were perceived as eerie, tapu places – spiritual halfway stations between this world and the next. Mountains were places where earth – the realm of mortals – met the sky – the realm of the supernatural. Te Aroha mountain was such a tapu mountain. In a number of traditional stories Patupaiarehe inhabit its misty peaks. Patupaiarehe seemed to slide in and out of this world and the next. They both embodied, and intensified, the tapu nature of the mountain.

Our ancestor Te Ruinga came from the mountain; he descended from the spirits who inhabit its misty peaks. The Hot Springs at Te Aroha, because they flow out of the heart of the mountain, are also part of the mountain, and also partake of the tapu associations of the mountain. The Hot Springs symbolise the giving, caring nature of the mountain and the ancestors.

The hot springs which lie at the foot of Mount Te Aroha were a very special place to our ancestors. They rise out of the base of the tapu mountain, and right underneath Te Ruinga's pa site at Whakapipi, were considered to be very tapu, and had to be approached with respect and caution.<sup>17</sup>

The Hauraki Tribunal also summarised the three Native Land Court decisions that affected the Te Aroha land block (some 62,000 acres on either side of the Waihou River).<sup>18</sup> In 1869, Mr Mokena's tupuna Te Mokena Hou told the court that over 20 hapū held interests in the block.<sup>19</sup> Such layers of occupation led the Tribunal to observe that rights in Hauraki were probably 'more than usually dispersed and intermingled'. For that reason, the Tribunal observed:

the concept of a continuous circumference neatly bounding all the land rights of a group and separating them from those of adjacent (and related) groups was virtually unknown before contact. . . . Rather, we consider that the creation of such boundaries was driven by the process of post-1840 land transactions or the determination of ownership of distinct 'blocks' by the Native Land Court.<sup>20</sup>

In 1869, the first Native Land Court decision regarding title to the maunga and environs awarded title to the Te Aroha block to Ngāti Haua, although 'it was acknowledged by all parties that, until [the battle of] Taumatawiwi, the block was within the rohe of Marutuahu tribes.'<sup>21</sup> On appeal by Ngāti Rāhiri, the land was awarded to "the Marutuahu tribes" (not

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17. Waitangi Tribunal, *Hauraki Report*, vol 3, p 903

18. *Ibid*, vol 1, p 63

19. *Ibid*, vol 3, p 904

20. *Ibid*, vol 1, p 62

21. *Ibid*, vol 3, p 905. The historical documents refer to Ngāti Rāhiri and sometimes to Ngāti Tumutumu.



Ngāti Rahiri alone) in 1871.<sup>22</sup> Ngāti Rāhiri Tumutumu petitioned this decision. In response, the Native Affairs Committee noted that ‘the subject “involves questions of Native title to land of a character much more intricate than appears on the surface”, and referred the matter back to the [Native Land] Court.’<sup>23</sup> In 1878, the court again returned most of the block’s lands to Marutūāhu; however, it also awarded Ngāti Rāhiri 7,500 acres of the block, at Omaha. The Tribunal noted that ‘by this time, of course, the arrangements reflected not only the court’s interpretation of complex customary rights but transactions which had been in progress for some years.’<sup>24</sup> The Hauraki tribunal noted the Native Land Court heard evidence of both Ngāti Tumutumu and Ngāti Maru eel weirs at the base of the mountain.<sup>25</sup>

The Hauraki Tribunal stressed that it was ‘hardly feasible’ to revisit the decisions of the Native Land Court. Clearly, these decisions are not at issue here either. However, they do illustrate the historical complexity of interests in and around Te Aroha.<sup>26</sup>

The Hauraki Tribunal emphasised that, notwithstanding that Ngāti Rāhiri Tumutumu do not have legal title to Te Aroha hot springs and township lands, ‘all Ngāti Rahiri Tumutumu witnesses were adamant that they had not relinquished their kaitiaki role over the mountain and the hot springs at its base.’<sup>27</sup> The Tribunal said ‘it is not in dispute that Ngāti Rahiri Tumutumu have occupied the Te Aroha district for many generations.’<sup>28</sup> The Tribunal found that the Crown had failed to protect the traditional values and kaitiakitanga of Ngāti Rāhiri Tumutumu in Te Aroha mountain and hot springs, and had failed to ensure their participation in the management of these places. It concluded: ‘In general terms, we consider the Wai 663 claim to be well founded, and recommend that this claim be included in a comprehensive settlement for the Hauraki inquiry district.’<sup>29</sup>

#### 1.4.2 The Hauraki Collective

The 12 iwi represented on the Hauraki Trust Board came together gradually between December 2009 and May 2010 to form the ‘Hauraki Collective’ as a forum for progressing their interests in settlement negotiations with the Crown. Those 12 iwi are Ngāti Hako, Ngāti Hei, Ngāti Maru, Ngāti Pāoa, Ngāti Porou ki Hauraki, Ngāti Pūkenga, Ngāi Tai ki Tāmaki, Ngāti Tamaterā, Ngāti Tara Tokanui, Ngāti Whanaunga, Te Patukirikiri, and Ngāti Rāhiri Tumutumu.<sup>30</sup>

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22. Ibid, vol 1, p 63; doc E2, p 1246

23. Waitangi Tribunal, *Hauraki Report*, vol 1, p 63

24. Ibid

25. Ibid, vol 3, p 904

26. Ibid, vol 1, p 67; doc E10, para 43(f); doc E10(a), p 40; doc E12, p 2; transcript 4.1, pp 218–219

27. Waitangi Tribunal, *Hauraki Report*, vol 3, p 905

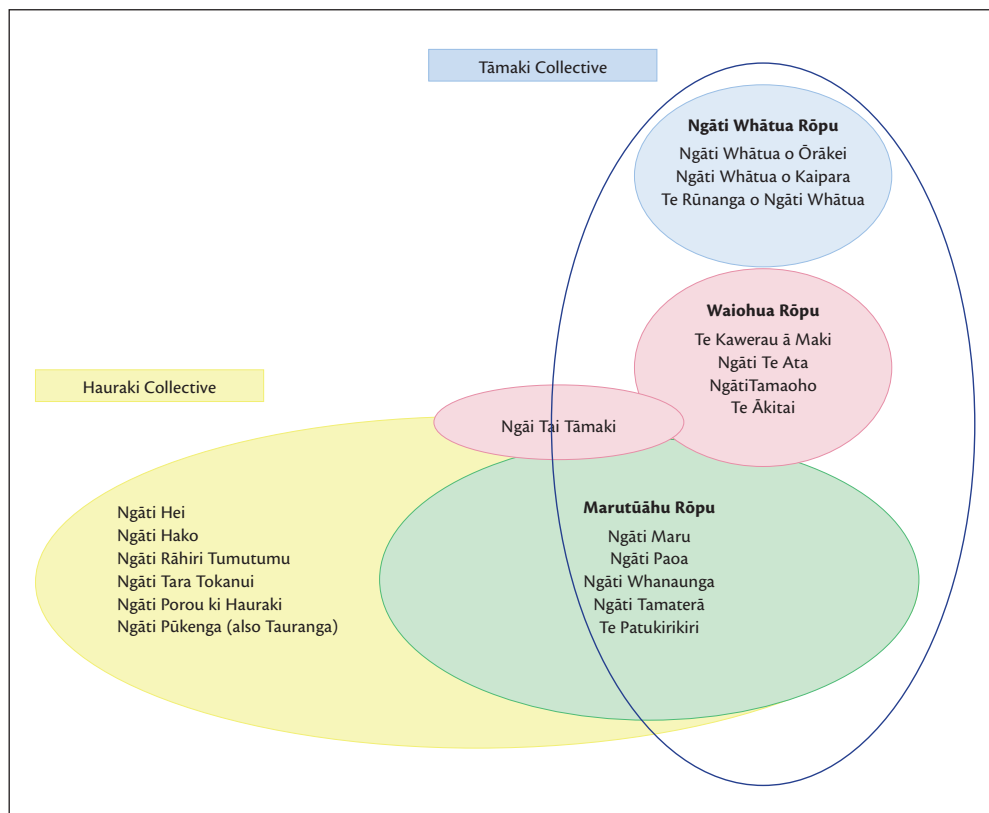
28. Ibid, p 903

29. Ibid, p 1244

30. In the 2006 New Zealand census, 195 people identified as Ngāti Rāhiri Tumutumu: doc E2, p 1835.

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Hauraki Collective iwi membership as depicted by the Office of Treaty Settlements for a ministerial briefing paper  
Redrawn from document E2, p1830

The Minister and officials from the Office of Treaty Settlements encouraged the Collective’s formation. The Crown had originally sought one mandated body to negotiate all Hauraki claims, but attempts to resolve mandate held up negotiations for several years. To resolve this ‘mandate impasse’, the Minister for Treaty Negotiations agreed to a ‘new approach’ to Hauraki negotiations.<sup>31</sup> In 2009 a remedies hearing was sought before the Waitangi Tribunal over mandate issues. In its May 2009 decision the Tribunal did not accede to the remedies application; rather it adjourned it and supported the Crown’s proposal to appoint a facilitator to resolve the mandating ‘stalemate.’ It recommended that parties abide by that facilitator’s decision as to mandating.<sup>32</sup>

The Crown commissioned the former Minister of Treaty of Waitangi Negotiations, Sir Douglas Graham, to ‘initiate or revive’ regional Treaty negotiations and settlements in the Hauraki, Tāmaki and Kaipara regions ‘by responding to the issues raised by the Waitangi

31. Document E2, p 2

32. Wai 686 ROI, paper 2.682, p 24

Tribunal' in its *Tāmaki Makaurau Settlement Process Report 2007*.<sup>33</sup> In his 2009 report, Sir Douglas cited the Tāmaki tribunal's description of that region:

Thus it [Tāmaki Makaurau] was, and remains, an intensively occupied part of the country, where constant habitation by changing populations of Māori as a result of invasion, conquests, and intermarriage has created dense layers of interests.<sup>34</sup>

In addition to broad outlines for settlement redress and quantum, Sir Douglas suggested the formation of a collective body (provisionally called 'Te Māori o Hauraki') to negotiate and administer redress for the region. It would be composed of 'interim negotiators'.<sup>35</sup>

Forming the new collective involved inviting each of the 12 iwi of Hauraki to elect interim negotiators and to decide whether they wished to enter negotiations with the Crown.<sup>36</sup> Broad agreement to work collectively on collective matters was reached at a hui attended by at least some Hauraki iwi on 23 December 2009 (attendees not recorded).<sup>37</sup> And most of the Hauraki iwi then set about getting interim mandates.

Two iwi with interests in other inquiries, Ngāi Tai ki Tāmaki and Ngāti Pukenga, completed standard, full mandate processes. Of the remaining 10 iwi, seven elected interim negotiators at hui attended by official observers from Te Puni Kōkiri. Ngāti Rāhiri Tumutumu were part of this group, and Jill Taylor and Mapuna Turner were elected as interim negotiators at a hui that the Office of Treaty Settlements (OTS) recorded was attended by 18 people.<sup>38</sup> The Minister for Treaty of Waitangi Negotiations acknowledged these 'interim negotiators' in February 2010.<sup>39</sup>

Just prior to the Minister acknowledging the interim negotiators' mandates, OTS set out the risks and justifications for doing so in a paper to the Minister of Treaty of Waitangi Negotiations. The paper states 'Importantly these are only interim negotiators, and a formal mandating process will precede any agreements in principle being reached with the Crown.' It notes that at a recent Waitangi Tribunal judicial conference about a mandate dispute for Ngāti Te Ata, the presiding officer 'expressed concern about the possibility of the Crown entering into agreements in principle with claimant groups that only have interim negotiators.' Noting that the process had been adopted only after 'numerous attempts over many years' to resolve the mandating impasse, the paper recorded that:

Recognition of the interim negotiators signals that the Crown wants to progress negotiations and settle Treaty claims in the Hauraki region . . .

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33. Document D3, p 2

34. Document E6(c), p 3; Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2006), p 13

35. Document E6(c), pp 14, 22

36. Document E2, pp 4-5

37. Document E8(a), p 1; doc E2, p 15

38. Document E2, pp 4-5

39. *Ibid*, pp 1-6

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. . . The holding of interim hui was a preliminary phase for the Crown to assess the views of iwi/hapū . . . It also served as a mechanism for identifying representatives who could work with the Crown to progress a formal deed of mandate . . .<sup>40</sup>

Following the Minister's recognition of the interim mandates, the Hauraki Collective was, according to OTS records, officially established in April 2010. Three iwi, Ngāti Tara Tokanui, Ngāti Hako, and Ngāti Tamaterā subsequently elected interim negotiators in April and May 2010 and took up earlier invitations to join the Collective.<sup>41</sup>

Possibly because parties saw it as falling outside the formal ambit of Crown and Collective negotiations and the issues facing us, we received little evidence about how the Collective operates and how individual iwi interests are represented and provided for in that forum, and on how decisions are made.<sup>42</sup> From March 2010, members of the Collective appear to have held meetings every fortnight, with Mr Dreaver usually attending in the morning. Decisions made by those present at hui were recorded as a high-level summary that was then distributed around the members of the Collective.<sup>43</sup>

**1.4.3 Settlement negotiations**

**(1) The 2010 Framework Agreement**

The first milestone in settlement negotiations between the Hauraki Collective and the Crown was the signing of the Hauraki Collective's Framework Agreement of October 2010. OTS advised the Minister for Treaty of Waitangi Negotiations that the Framework Agreement was designed to provide parameters for the Crown's discussions with iwi and to 'present iwi with a sense of certainty as to what a possible redress package could entail.'<sup>44</sup>

In the months leading up to the signing of the Framework Agreement, members of the Collective and the Crown discussed draft versions of it. We do not know the exact process by which the first draft was prepared or finalised, nor which members of the Hauraki Collective were involved, but it appears to have come as a proposal from the Collective (though, as we noted above, Ngāti Tara Tokanui, Ngāti Hako, and Ngāti Tamaterā joined the Collective only in late April or early May). Collective members appear to have discussed the draft framework on 13, 16 and 30 April 2011.<sup>45</sup> Ngāti Rāhiri Tumutumu said they became involved at some point in April.<sup>46</sup> Mr Dreaver was presented with a proposed draft 'Collective Framework Agreement' on 30 April.

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40. Document E2, pp 5–6

41. Ibid, p 15

42. Document D1(c), pp 18–87; doc E2 pp 880–881, 1637

43. Document E8, p 3

44. Document E2, p 59

45. Document E8(a), pp 4–6

46. Ngāti Rāhiri Tumutumu submitted that the draft was first 'introduced' to a meeting of the Collective in April: paper 2.135, para 22.

The Hauraki Collective's draft proposed Framework Agreement records:

In recognition of their shared whakapapa and whanaungatanga, the Iwi of the Hauraki Collective wish to work together via their negotiators to secure the best possible Treaty of Waitangi settlement redress measures in respect of which there are significant shared interests (or take) among the mana whenua hapū/iwi of Hauraki . . .<sup>47</sup>

The proposed Framework Agreement noted the special status of Moehau and Te Aroha maunga, and included the following provisions:

12. The Crown agrees to vest in fee simple in the Hauraki Collective the Crown-owned parts of Te Aroha and Moehau (Maunga).
13. The Maunga will be vested in fee simple in the ownership of the Hauraki Collective, as reflected in the associated computer freehold register (title). Each register will have a notation that will name each of those Iwi who wish their customary interests with the Maunga to be so recognised.
14. The Crown's transfer of title will be subject to the following conditions:
  - (a) The Maunga will be held in trust and managed for the common benefit of the mana whenua hapū/iwi of Hauraki and the people of the relevant agencies.
  - (b) Title of the Maunga cannot be alienated or mortgaged.
  - (c) The land will attract no rating or any other liabilities.
  - (d) Any reserve status will be retained in a way which enables such reserve to be ultimately managed by the mana whenua hapū/iwi of Hauraki.
  - (e) Public access is to be agreed.
  - (f) Any existing third party rights and obligations will be maintained.
15. The Maunga will be co-governed/co-managed as between a statutory board comprising the Hauraki Collective, and the relevant agency.
16. Discussion will take place following the signing of the Framework Agreement regarding the following matters:
  - (a) Membership numbers on the statutory board.
  - (b) Decision-making between the statutory board and the relevant agency, and any casting vote.
  - (c) Revenue and expenditure for the Maunga and an annual appropriation for the Hauraki Collective's participation in the governance and management of the Maunga.

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47. Document E2, pp 22-23

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17. It is acknowledged that the Iwi will also be seeking the return of crown owned maunga as Iwi-specific redress, the discussions on which can include discussions within the Hauraki Collective.<sup>48</sup>

Mr Dreaver, and the Minister for Treaty of Waitangi Negotiations both indicated in response to the draft Framework Agreement, that some of its aspirations were possible, some would require further negotiation, while others were not possible.<sup>49</sup> The Crown and the Hauraki Collective continued negotiations over the draft Framework, and in October 2010, the final Collective Framework Agreement was signed.

The final Framework Agreement set out offers to the Collective, details of particular financial and commercial redress, and the process by which the Crown and the Collective would negotiate further redress. It was described as being non-binding and without prejudice. ('Without prejudice' is a legal phrase used in negotiations. Amongst other things it helps preserve confidentiality in negotiations; without prejudice documents generally cannot be produced in court as evidence unless all parties agree.)

The Framework Agreement also recorded that the Crown was 'undertaking parallel negotiations with the iwi of the Hauraki Collective' and intended to 'offer iwi specific redress to address their particular claims and interests'.<sup>50</sup> The Framework Agreement recorded that after signing, each iwi of the Hauraki Collective would 'mandate their iwi representatives to negotiate iwi-specific redress . . . and mandate the Hauraki Collective to negotiate Hauraki Collective redress'.<sup>51</sup> Importantly, the desire for the maunga to be transferred to the Collective is recorded, and so too is a commitment to 'explore' for inclusion in any agreement in principle the most appropriate way to recognise the interests of the Hauraki Collective in the maunga.<sup>52</sup>

The final Framework Agreement dropped the proposed transfer of all Crown lands on the maunga to the Collective and also has fewer details on maunga governance mechanisms than the Collective's original proposal. It recorded the following:

**CULTURAL REDRESS**

**Recognition of sites of significance**

*Maunga*

- 23 The Waitangi Tribunal noted in its *Hauraki Report* that the iwi of the Hauraki Collective see the Coromandel as the jagged barb of the great fish of Maui, te Tara o te Ika, also called te Paeroa o Toi. The peninsula is also considered by the iwi as the ama (outrigger) of the waka, with the peaks of Te Aroha and Moehau marking the prow and the stern respectively.

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48. Document E2, p 25

49. Ibid, pp 7, 33

50. Document D3(a), p 2

51. Ibid, p 12

52. Ibid, p 6

- 24 The Crown and the Hauraki Collective acknowledge:
- a the iwi of the Collective believe Te Aroha and Moehau maunga are fundamental to their identity on account of their high ancestral, spiritual and cultural significance and desire for the maunga to be transferred to the Hauraki Collective; and
  - b the Crown considers the maunga to have significant public importance and high conservation value.
- 25 Following the signing of this Framework Agreement, the Crown and the Hauraki Collective will explore, for inclusion in any Agreement in Principle or similar documents, Deed of Settlement and the Settlement Legislation, the most appropriate way in which to recognise the interests of the Hauraki Collective in these maunga as well as any other Crown-owned maunga of high ancestral, spiritual and cultural significance within the Hauraki region.<sup>53</sup>

While Mr Dreaver had attended earlier meetings of the Collective, the official ‘first phase’ of negotiations with the Crown began after the signing of the Framework Agreement, with fortnightly meetings between the Crown and members of the Collective.<sup>54</sup>

**(2) Post Framework Agreement: Te Aroha negotiations and formal mandates**

In keeping with the Framework Agreement, the Department of Conservation, the Office of Treaty Settlements, and the Hauraki Collective explored the possibility of redress over Crown conservation land on Te Aroha and Moehau maunga between March and June 2011. Members of the Hauraki Collective had originally, in their draft Framework Agreement of April 2010, sought a vesting in fee simple of all 7,910 hectares of Crown land on Te Aroha maunga. The Crown had made a counter proposal, offering to provide a statutory acknowledgement over the 7,910 hectares only (with no fee simple vesting). Iwi rejected this offer. Negotiations continued, and in March 2011, the Department of Conservation offered to vest 250 hectares of fee simple land at Te Aroha in the Hauraki Collective and appeared to have provided an indicative map.<sup>55</sup> The Collective made a counter-proposal of 7,910 hectares on 1 April, identifying a proposed area that encompassed a large portion of the Kaimai Mamaku Forest Park, including Te Aroha maunga.<sup>56</sup>

Over the course of negotiations over the size of the vesting, officials in OTS and the Department of Conservation communicated internally about options for the extent and possible location of a Crown offer, and drafted various maps of a smaller area that fell within the 7,910-hectare area proposed by the Collective, excluding the contaminated site of the Tui mine.<sup>57</sup> We do not know whether those early maps were tabled with the Collective

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53. Ibid

54. Document E5, p 9

55. Document E2, pp 162, 242

56. Ibid, pp 571, 801, 805

57. Ibid, pp 166–171, 469–472, 496–500, 768–769; doc E5, pp 12–14



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but there were some updates on the work being done with the Department of Conservation, and some general discussions about areas of conservation land that could be suitable for a transfer, at Hauraki Collective meetings.<sup>58</sup>

On 29 June 2011, officials from OTS and the Department of Conservation put a joint paper to the Ministers of Treaty of Waitangi Negotiations and Conservation proposing the transfer of 1,000 hectares of land at Te Aroha and Moehau to the Collective.<sup>59</sup> The paper included a very high-level map showing the broad areas of public conservation land in the Hauraki district but not any proposed areas for vesting.<sup>60</sup> Ministers approved this proposal on 6 July 2011.<sup>61</sup>

After each Hauraki iwi separately undertook a formal mandating process, the Crown recognised the mandate of their respective iwi negotiators between May and July 2011.<sup>62</sup> Ngāti Rāhiri Tumutumu held mandate hui in Auckland and in Te Aroha in March 2011, attended by a total of 87 people.<sup>63</sup> Of those who voted, 58 voted in support, and 22 against mandating the Ngāti Tumutumu Ngāti Rāhiri Settlement Committee to represent Ngāti Rāhiri Tumutumu 'in comprehensive negotiations to settle Ngāti Rāhiri Tumutumu historical Treaty of Waitangi claims.'<sup>64</sup> On 29 June 2011, the Minister for Treaty of Waitangi Negotiations and the Minister of Māori Affairs recognised the 'Ngāti Tumutumu Ngāti Rāhiri Settlements Committee' as 'the appropriate representatives of Ngāti Rāhiri Tumutumu to negotiate a comprehensive settlement of Ngāti Rāhiri Tumutumu's historical Treaty settlement claims with the Crown'. Ministers were aware of claimant definition issues within Ngāti Rāhiri Tumutumu and offered assistance from Te Puni Kōkiri for 'any outstanding relationship issues.'<sup>65</sup> The Crown's recognition of mandate did not refer to the Hauraki Collective, either as a forum for negotiations or as a recipient of redress.

### (3) *The 2011 AIPES*

Another milestone in negotiations came when each of the iwi of the Hauraki Collective entered into AIPES with the Crown on 22 July 2011. The AIPES contained both collective and iwi-specific chapters.

In the period leading up to the Ngāti Rāhiri Tumutumu AIPES being signed, negotiator Jill Taylor raised concerns about the collective vesting and its relationship to the iwi-specific redress Ngāti Rāhiri Tumutumu sought. On 31 March 2011, she emailed members of the Hauraki Collective seeking assurance that their iwi-specific sites of significance at Te Aroha,

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58. Document E2, pp 150–151, 158, 165, 170, 174; transcript 4.1, pp 345–346

59. Document D2, pp 567–578

60. Document E2, p 578

61. Ibid, pp 567, 570, 601; doc E5, pp 12–14

62. Document E5, p 8

63. This figure includes the observer from Te Puni Kōkiri who attended both hui.

64. Document E2, pp 201–209

65. Ibid, p 580



including the summit, would be protected as iwi-specific cultural redress: 'I know the detail needs to be worked out, but we need to flag up that we need some comfort around the protection and return of our wahi tapu sites as iwi specific cultural redress with regards to Mt Te Aroha.' She sought clarification on whether cultural sites would be returned to individual iwi before the detail of the area of the maunga to be returned to the Collective was set. She expressed particular concern about the possibility of the Crown returning Te Aroha to the Collective without either the Crown or Collective discussing and resolving with Ngāti Rāhiri Tumutumu how redress would provide for Ngāti Rāhiri Tumutumu iwi-specific sites of significance.<sup>66</sup> The documents we received did not include a response from the Collective to Ms Taylor's email. Ms Taylor later emailed Mr Dreaver, on 4 July, raising strong concerns about the draft AIPE recording Te Aroha maunga as redress for the collective and seeking 'some clarity/commitment' from the Crown on Ngāti Rāhiri Tumutumu's position that the return of the maunga to the Collective did 'not rule out the return to a single iwi'.<sup>67</sup> Mr Dreaver's response on 5 July was:

Te Aroha maunga – noted as Rahiri Tumutumu specific. I need to insert a clause noting also offered to Collective so that the tension is clear and we know we have to address that.<sup>68</sup>

Ms Taylor emailed Mr Dreaver again on 7 July to say that she had been instructed by the Settlement Committee to 'formally advise' that Ngāti Rāhiri Tumutumu 'does not support the return of Te Aroha maunga to the Hauraki Collective'. When Mr Dreaver said that he could not recall this being mentioned at any Collective hui he had attended and queried whether the Hauraki Collective was aware of that, Ms Taylor responded:

Mike,

At the Hui you attended in April, I made it clear to you that the iwi did not support the return of the Maunga to the HC [Hauraki Collective]. We lost it once because the crown returned it to Marutuahu iwi, who then onsold it, we will not be doing this again.

The HC has been informed, which is why I stated a few emails back

*[Note our position on the HC AIP [agreement in principle] with regards to Mt Te Aroha is that the reference to the return of the maunga to the HC does not rule out the return to a single iwi within the HC. Some clarity/commitment to our position would be helpful. [Emphasis in original.]*<sup>69</sup>

The final AIPE included two statements relating to redress at Te Aroha maunga. The Collective chapter of the AIPE stated:

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66. Document D1(c), p 1

67. Ibid, p 7

68. Document D1, p 7

69. Ibid, p 8. Counsel for Ngāti Rāhiri Tumutumu said the reference to a meeting was to Mr Dreaver's visit to Tui Pā Marae in April 2011.

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**Land transfers**

16. The Hauraki Collective seeks:
  - a. the fee simple vesting of Crown owned parts of Moehau and Te Aroha Maunga;
  - b. the fee simple vesting of other Crown lands of ancestral, spiritual and cultural significance to the Hauraki Collective, including Crown land administered by the Department of Conservation/Whenua Kura (conservation land), maunga and motu;
  - c. other cultural lands to be returned to the Hauraki Collective for cultural purposes;
  - d. the best endeavours of the Crown to facilitate requests by the Iwi of Hauraki to local authorities for the transfer of ancestral lands.<sup>70</sup>

The iwi-specific chapter of the AIPE, meanwhile, recorded:

**Land transfers**

5. Ngāti Rāhiri Tumutumu seeks:
  - a. The fee simple vesting of Crown owned parts of Te Aroha Maunga;
6. Ngāti Rāhiri Tumutumu also seeks:
  - a. return of and access to taonga; and
  - b. specific recognition of Ngāti Rahiri Tumutumu within relevant co-governance arrangements that may be negotiated.<sup>71</sup>

Despite the chief negotiator's earlier email on 4 July, neither clause referred to the other.

**(4) The Crown's offer of 1,000 hectares to the Collective**

On 22 July, the day of the AIPE signing, Mr Dreaver verbally advised the Hauraki iwi of the offer of 1,000 hectares to the Collective on Te Aroha maunga (and 500 hectares on Moehau maunga). In the ensuing discussion, Mr Dreaver said that the Crown had 'moved significantly' from its initial offer of land on Te Aroha and Moehau maunga and 'won't be easily persuaded that very large areas should be transferred to individual iwi'.<sup>72</sup>

On 4 August 2011, the Crown confirmed the offers of land on Te Aroha and Moehau maunga in writing to the Collective and provided an 'indicative map' (see the area in map 1). The offer was made 'subject to agreement by Cabinet and the resolution of overlapping claims'.<sup>73</sup> Earlier that day, Mr Dreaver had emailed an official at OTS about Te Aroha maunga, noting that at the meeting with the Collective on 22 July, the Crown had promised to provide an indicative map 'in due course' and he was wanting the map to send along with the written offer.<sup>74</sup> Liane Ngamane of Ngāti Tamaterā and Mr Dreaver suggested the

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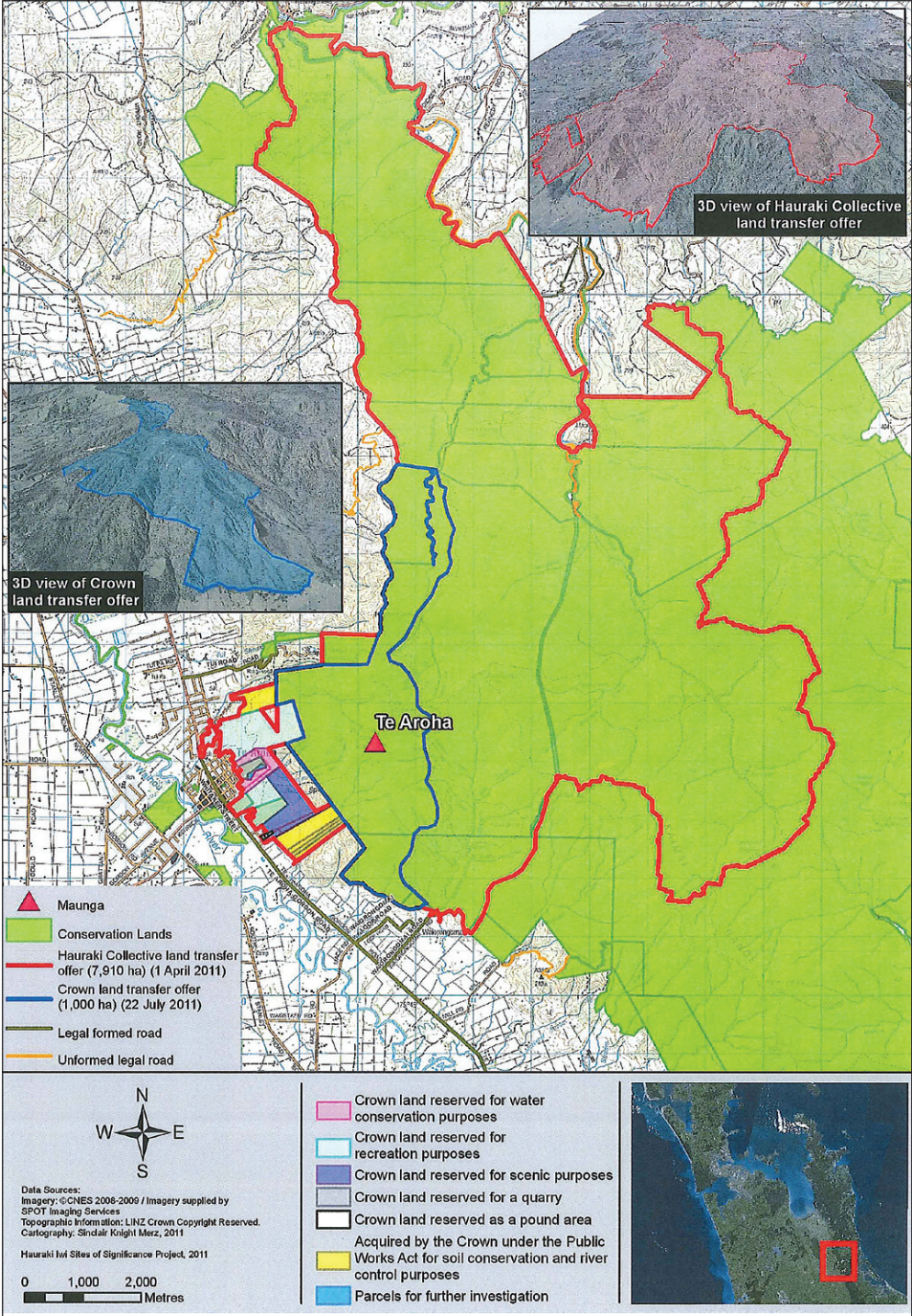
70. Document D3(b), ch 1, pt 2, cl 16

71. Document D3(b), ch 2, pt 3, cls 5-6

72. Document E2, p 764

73. Ibid, pp 795-797

74. Ibid, p 775



Map 1: Area proposed for transfer by the Hauraki Collective in April 2011 and area offered by the Crown in July and August 2011  
Source: document E2, p 805.



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### 1.4.3(4)

Collective were involved in identifying the boundaries of the area before and after the offer.<sup>75</sup> The Crown says the boundaries ‘remain a proposal, without prejudice and have not been formally established.’<sup>76</sup>

The Ngāti Rāhiri Tumutumu negotiators advised the Collective by emails of 4 and 23 August 2011 that they opposed acceptance of the offer until the detail of iwi-specific redress claims had been worked through.<sup>77</sup> In the latter email, they put forward a range of specific requests regarding the distribution amongst iwi of any redress on Te Aroha that they argued would need to be discussed and agreed to in advance of accepting the Crown’s offer to provide redress to the Collective:

1. Recognition of manawhenua and kaitiaki of those iwi who have always maintained those roles;
2. Recognition and transfer of iwi specific sites of significance held within the area offered;
3. Co-governance specifics need to be worked out – manawhenua role.

We see this as needing much more time to work through the detail before we should be agreeing to anything the Crown offers. We are therefore opposed to accepting the Crown’s offer even on a conditional basis at this point.<sup>78</sup>

The chair of the Hauraki Collective responded to Ngāti Rāhiri Tumutumu on 23 August 2011 (copying in the Hauraki Collective members), saying that all 12 iwi had agreed to a collective position in regards to Te Aroha and Moehau in both the Framework Agreement and the AIPPE documents. The chair expressed regret that the Ngāti Rāhiri Tumutumu negotiators wished to renege on the previous collective agreements and took issue with arguments that the Framework Agreement and the AIPPE were not binding. The chair emphasised that the Collective had succeeded in shifting the Crown from a position where it was originally unwilling to offer title to any land on Te Aroha and to an offer of title to 1,000 hectares, as well as receipt of income generated by the lease (to Kordia) of land on Te Aroha summit for a telecommunications transmitter, and ‘a willingness to explore the transfer’ of Crown-owned land administered as reserves by the Matamata–Piako District Council. According to the chair, ‘That has all been achieved through the power of collective negotiations’. He accused Ngāti Rāhiri Tumutumu of attempting to use a ‘negative veto’ over Collective negotiations.<sup>79</sup>

In September 2011, Ngāti Rāhiri Tumutumu mentioned their concerns about the offer of Te Aroha lands to a senior historian at OTS, who had been invited by Mr Dreaver to

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75. Document E12, p 4; transcript 4.1, pp152, 204–205, 225–227, 345–346

76. Paper 2.130, p 6

77. Document D1(c), pp13, 16–17

78. Ibid pp16–17

79. Ibid, pp18–21

facilitate the hui with the Collective. In an internal email to colleagues and to Mr Dreaver, that staff member acknowledged the complexity of the situation:

This is a tricky one. Kaitiaki responsibilities and interests tend to be specific and highly localised. Balancing this is the irrefutable fact that Mt Te Aroha in particular is of importance to all Hauraki iwi as a maunga tupuna. It would seem that we need to think about how these different levels of interest can be balanced in a redress package. I wonder sometimes whether it would be possible to develop a 'kaitiaki' acknowledgement type of redress within a transfer of title to a wider grouping. This would require new thinking and new policy, but it may be an important component for other areas of redress in Hauraki where we need to do all we can to maintain a 'federal' structure while allowing individual groups their own space and recognition. The concerns expressed by Rahiri Tumutumu are likely to be shared by other groups in other areas.<sup>80</sup>

A type of 'kaitiaki acknowledgment' within the collective title was later proposed by the Crown as one option to recognise Ngāti Rāhiri Tumutumu's status as kaitiaki.

On 21 November 2011, the Ngāti Rāhiri Tumutumu negotiators wrote to Mr Dreaver seeking parallel negotiations specifically in regard to the maunga. They said:

On the point that we signed the HCFWA and in doing so agreed that the maunga will be collective cultural redress, we did so under the premise that the maunga will not be dealt with in an either or approach, and that individual iwi interest was paramount to negotiations and settlement, we have a legitimate iwi specific claim to maunga te aroha, therefore believe parallel negotiations is paramount in protecting our interests and whenua, and seeking a sound settlement of our historic treaty claims.

The Ngāti Rāhiri Tumutumu negotiators then reiterated what is the crux of their case in this inquiry, asserting: 'The current process around maunga Te Aroha as we see it is that the [Hauraki Collective] redress is surpassing our individual iwi specific right.' They went on to seek the removal of the Crown offer to the Collective of the Crown-owned reserve lands administered by the council.<sup>81</sup> We note that this request was successful: the reserves were subsequently withdrawn from the Crown's offer to the Collective, and were instead offered as iwi-specific redress to Ngāti Rāhiri Tumutumu.<sup>82</sup>

### **(5) Shift to negotiating Ngāti Rāhiri Tumutumu specific claims**

The Crown and the Hauraki Collective seem to have intended that parallel negotiations would take place with the Hauraki Collective and with specific iwi, as recorded in the Framework Agreement. In May 2012, OTS noted in a report to Minister Finlayson that

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80. Document E2, 846–847

81. Document D1(c), p 2

82. Paper 2.130, p 30; doc E2, p 1387; doc E3, p 38; doc E6, p 13

## THE TE AROHA MAUNGA SETTLEMENT PROCESS REPORT

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‘Collective negotiations are further advanced than the individual iwi negotiations’ for Hauraki. The Minister was also advised that several iwi were concerned that sites of specific cultural significance to them had been offered to the Hauraki Collective. The Minister was advised that, in an upcoming meeting with him, Ngāti Rāhiri Tumutumu were likely to raise issues surrounding the Hauraki Collective redress offer over Te Aroha and redress over the Crown-owned reserve lands in Te Aroha (administered by the Matamata–Piako District Council). He was advised to emphasise that the Crown wished to keep all iwi negotiations progressing at ‘the same pace’ to address ‘interest overlaps’.<sup>83</sup>

In July 2012, an OTS official confirmed that the Minister was aware that Ngāti Rāhiri Tumutumu did not support the collective redress around Te Aroha maunga.<sup>84</sup> OTS officials attended a site visit at Te Aroha in September 2012.<sup>85</sup>

In February 2013, after an OTS official acknowledged ‘intolerable’ delays, Ngāti Rāhiri Tumutumu had its first formal iwi-specific negotiations with the Crown.<sup>86</sup> The Crown confirmed to Ngāti Rāhiri Tumutumu that it did not intend to change its offer of vesting Te Aroha maunga in the Hauraki Collective.<sup>87</sup>

On 11 February 2013, the Ngāti Rāhiri Tumutumu negotiators set out their opposition to the Crown’s intention to deal with the maunga as cultural redress for the Collective. The letter (addressed to Mr Dreaver) included the following statements:

- ▶ Ngati Rahiri Tumutumu is claiming the Maunga Te Aroha fee simple as cultural redress . . .
- ▶ Ngati Rahiri Tumutumu is the only iwi with a wai claim with a specific grievance on Maunga Te Aroha.
- ▶ Ngati Rahiri Tumutumu is the only manawhenua iwi in Te Aroha.
- ▶ Ngati Rahiri Tumutumu is the only iwi recognised as kaitiaki of Maunga Te Aroha by the Waitangi Tribunal.
- ▶ Maunga Te Aroha sits in the heart of Ngati Rahiri Tumutumu’s rohe.
- ▶ Ngati Rahiri Tumutumu is currently consulted exclusively by DOC [the Department of Conservation] on all issues concerning the Maunga.
- ▶ Our view that Maunga Te Aroha only sits as cultural redress at the Hauraki Collective table by virtue of Ngati Rahiri Tumutumu sitting at that table.
- ▶ Our view that Maunga Te Aroha being returned to a Collective will undermine the manawhenua of Ngati Rahiri Tumutumu.
- ▶ Our view that Maunga Te Aroha being returned to a Collective will create a new grievance by the Crown on our people.

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83. Document E2, pp 913–927

84. Ibid, pp 1001–1002

85. Ibid, pp 1066–1071

86. Document E2, p 1225; doc E5, p 8

87. Document E2, p 1227

- Our view that Maunga Te Aroha being returned to a Collective will make our iwi worse off than before it commenced these Treaty negotiations . . .

Their letter went on to say that, 'had we known that we would not even get the opportunity to negotiate the return of Maunga Te Aroha, Ngāti Rāhiri Tumutumu would have withdrawn from these negotiations two years ago.'<sup>88</sup>

The extent of the divide that by now separated the Crown and Ngāti Rāhiri Tumutumu was made clear in an internal email sent by Mr Dreaver on 11 February 2013, which commented on the Ngāti Rāhiri Tumutumu negotiators' letter. Mr Dreaver suggested that, having received an exclusive offer regarding the Crown-owned council administered reserves, the Ngāti Rāhiri Tumutumu negotiators now sought the entire maunga. He advised officials at OTS that:

It's very important that the Crown does not fall in with the latest Ngāti Rāhiri Tumutumu view that they have "never accepted the Crown approach to" Te Aroha maunga. If that were indeed the case there would be real grounds for Ngāti Rāhiri Tumutumu to suggest the Crown is negotiating in bad faith. But on the contrary, until after the signing of the Hauraki Framework Agreement, Ngāti Rāhiri Tumutumu never advanced sole ownership, not to me anyway. The Framework Agreement is crystal clear about what is proposed with Te Aroha (and Moehau) and Rāhiri Tumutumu signed that Agreement. If the other Hauraki iwi had thought that after including Te Aroha as part of that Collective agreement the Crown might suddenly withdraw it to offer it exclusively to one iwi, then they would not have made the other trade-offs associated with the Collective deal . . .<sup>89</sup>

Mr Dreaver went on to suggest that, while Ngāti Rāhiri Tumutumu have a strong association and kaitiaki relationship with Te Aroha, their interests are by no means exclusive. On that basis, he concluded, an exclusive offer of Te Aroha to Ngāti Rāhiri Tumutumu would simply invite challenge from most of the other Hauraki iwi.

Between February and September 2013, the Crown and Ngāti Rāhiri Tumutumu discussed a vesting of 'up to 250 hectares of DOC administered land on Te Aroha' (separate from the 1,000-hectare vesting in the Collective). The Crown confirmed that offer in February 2014.<sup>90</sup>

A meeting with the Minister of Treaty of Waitangi Negotiations on 31 May 2013 saw him recognise Ngāti Rāhiri Tumutumu's concerns about the Collective redress as an important issue and propose 'creative thought on all sides'. For example, the idea of some iwi with stronger interests having varied shares in the collective vesting within the 1,000 hectares was discussed.<sup>91</sup> In July 2013, the Crown had raised with the Collective the need to resolve

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88. Document D1(c), pp 72–73

89. Document E2, p 1217

90. Ibid, p 1761

91. Ibid, pp 1495–1497

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the tension between the cultural redress offered to the Collective on Te Aroha maunga and what was sought by Ngāti Rāhiri Tumutumu and recorded in their AIPÉ. The Crown said it was committed to maintaining the integrity of its offer to the Collective and also noted that the map could be ‘adjusted to maintain 1,000 hectares to provide specific vesting redress to Ngāti Rāhiri Tumutumu within the offer area.’ Ngāti Rāhiri Tumutumu indicated that they did not necessarily oppose a 1,000-hectare Collective vesting on the maunga, but they sought an iwi-specific vesting on the western face, including part of the summit.<sup>92</sup>

We have not seen many details of ensuing discussions. There were some further attempts to find a compromise, including the Crown offer to Ngāti Rāhiri Tumutumu of up to 250 hectares of land in the Kaimai Mamaku Forest Park exclusively to them, including land on the western face that extended into the boundaries of the area to the Collective. At this point, the offer to Ngāti Rāhiri Tumutumu included vestings of up to 250 hectares of Department of Conservation land on Te Aroha, co-governance over some 250 hectares of council reserves at its foot, and a share in the collective vesting of 1,000 hectares. Ultimately, however, agreement between the various parties on how to balance the Collective’s and Ngāti Rāhiri Tumutumu’s redress aspirations, and particularly their seeking land on the summit of the maunga, was not reached.<sup>93</sup> At this point, negotiations broke down, eventually leading to this urgent inquiry.

**1.4.4 Ngāti Rāhiri Tumutumu’s application for urgency**

On 14 October 2013, Ngāti Rāhiri Tumutumu filed an application for an ‘urgent remedies’ inquiry before the Tribunal. The chairperson of the Waitangi Tribunal sought responses to the application, and delegated Judge Michael J Doogan to determine the application.<sup>94</sup>

At this point it is necessary to distinguish between two kinds of application that seek urgent Tribunal consideration. The first is an application for an urgent inquiry into a claim; this simply asks the Tribunal to prioritise an existing or new claim. The second is an application for an urgent remedies hearing. This arises when the Tribunal has determined that a claim is well-founded but has deferred decisions on recommendations for relief, or remedy. Claimants can subsequently apply to the Tribunal panel to determine what remedies should

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92. Document E4, pp 76–82

93. Document E2, pp 1603–1604, 1726, 1763–1764, 1746; doc E5, pp 77–78

94. Papers 2.39, 2.40. In response to his appointment, Judge Doogan noted his previous role as a negotiator appointed by and for the Crown in foreshore and seabed negotiations with Ngāti Porou ki Hauraki (who are members of the Hauraki Collective). Judge Doogan sought submissions on whether he should recuse himself from determining the application (paper 2.41). Counsel for Ngāti Porou ki Hauraki suggested Judge Doogan should recuse himself (paper 2.43). All the other parties that made submissions, including the Crown, raised no objection or took the position that there was no justification for recusal. Judge Doogan put the matter to the chief judge of the Māori Land Court, who did not require Judge Doogan’s recusal; Judge Doogan could see no logical connection between the current application for urgency and the request he recuse himself (paper 2.56).



be recommended to remove the prejudice flowing from the breaches of the Treaty.<sup>95</sup> In both cases, urgency can be granted if claimants demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice, and that there is no reasonable alternative remedy.<sup>96</sup> The claimants also need to show they are ready to be heard.<sup>97</sup>

Ngāti Rāhiri Tumutumu's application for an urgent inquiry involved aspects of both types of urgent inquiry. It primarily asked the Tribunal to grant an urgent hearing to determine what remedy should be recommended as needed to remove the prejudice caused to them. Secondly, it also asked the Tribunal to conduct an urgent inquiry into the Crown's process of negotiating the settlement of their claims.

### **(1) Responses to the application for an urgent inquiry**

The Crown opposed Ngāti Rāhiri Tumutumu's application for an urgent inquiry, arguing that Ngāti Rāhiri Tumutumu had not demonstrated that there would either be significant and irreversible prejudice as a result of a current or pending Crown action or policy, or in the event the remedies hearing was not granted.<sup>98</sup>

Several representatives of members of the Hauraki Collective iwi also filed responses to Ngāti Rāhiri Tumutumu's application for urgency, as follows:

- ▶ Whānau Mangakahia, Ngāti Hako, and Ngāti Pu did not oppose the application.<sup>99</sup>
- ▶ Ngāti Porou ki Hauraki supported the application, noting their concerns with Crown negotiation processes.<sup>100</sup>
- ▶ Ngāti Maru opposed the application saying that the Tribunal's *Hauraki Report* recorded the multiple customary interests in Te Aroha, rather than the exclusive interests of the applicants; that Ngāti Rāhiri Tumutumu had been able to attend the 107 Hauraki Collective hui, with the same level of resources as other iwi; and they had signed the Framework Agreement and AIPE that specified the collective vesting of maunga, and further negotiations as to iwi-specific management.<sup>101</sup>
- ▶ Ngāti Tamaterā opposed the application (adopting the submissions of Ngāti Maru).<sup>102</sup>
- ▶ Ngāti Tara Tokanui opposed the application, citing its long-standing association with Maunga Te Aroha.<sup>103</sup>

Counsel for Ngāti Rāhiri Tumutumu replied, noting that:

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95. Waitangi Tribunal, *Guide to the Practice and Procedure of the Waitangi Tribunal* (Wellington: Waitangi Tribunal, 2012), p 5

96. Ibid

97. Ibid, p 5; paper 2.87, p 7

98. Paper 2.54

99. Papers 2.42, 2.46, 2.47

100. Paper 2.43

101. Paper 2.52

102. Paper 2.53

103. Paper 2.51

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### 1.4.4(2)

The complaint in this application is that the Crown has breached the Treaty in terms of process, by making the offer of the fee simple of the maunga to the Hauraki Collective before engaging with the Collective and Ngāti Rahiri Tumutumu over Ngāti Rahiri Tumutumu's clearly stated request for the fee simple.<sup>104</sup>

#### **(2) Judicial conferences and mediated discussions**

A judicial conference was held on 4 December 2013 to hear argument on the application for urgency. Judge Doogan then proposed facilitated discussion to see whether the Crown and Ngāti Rāhiri Tumutumu could reach agreement around possible ways in which the Ngāti Rāhiri Tumutumu relationship with Te Aroha maunga could be recognised and provided for.<sup>105</sup> 'Constructive' discussions, facilitated by Judge Doogan, were held between 17 December and 11 February. These discussions were initially attended by the Crown and current and former Ngāti Rāhiri Tumutumu negotiators. Later sessions did not include the Crown and were attended by the Ngāti Rāhiri Tumutumu negotiators and five other iwi in the Hauraki Collective that opposed the application for urgency: Ngai Tai ki Tāmaki, Ngāti Tamatera, Ngāti Tara Tokanui, Ngāti Hako, and Ngāti Maru.<sup>106</sup> The parties did not reach agreement through these discussions, and on 17 February 2014 the Ngāti Rāhiri Tumutumu claimants sought a decision from the Tribunal on their request for an urgent remedies hearing.<sup>107</sup>

#### **(3) Remedies inquiry declined but urgent inquiry granted**

On 28 February 2014, Judge Doogan declined the application for urgent remedies on the grounds that he did not consider the Ngāti Rāhiri Tumutumu claimants had demonstrated that they were likely to 'suffer significant and irreversible prejudice' from the Crown's offer of Te Aroha land to a Collective of which they are a member.<sup>108</sup>

In his decision on the application, Judge Doogan noted that the Tribunal's findings and recommendations in the *Hauraki Report* in respect of Ngāti Rāhiri Tumutumu claims (appropriately) 'do not require or imply that a fee simple vesting of Te Aroha Maunga is necessary in order to remove the prejudice arising from their well-founded claims.'<sup>109</sup> The findings speak more to the Crown's past failure to recognise and provide for Ngāti Rāhiri Tumutumu's traditional values and association with the maunga and hot springs, and their exclusion from management over these places. Bearing this in mind, and taking into account relevant findings of the Tribunal in the *Tāmaki Makaurau Settlement Process Report*, Judge Doogan found Ngāti Rāhiri Tumutumu (RTT) had not established that they

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104. Paper 2.59, p 2

105. Paper 2.66. Referral to mediation or facilitation by another Tribunal member was also offered.

106. Papers 2.71, 2.74, 2.75

107. Paper 2.78

108. Paper 2.85

109. Paper 2.87, p 9

are likely to suffer significant and irreversible prejudice because the Crown proposes to offer the 1,000 hectares to the Collective, rather than vest it in them alone.<sup>110</sup> In his full decision issued on 7 March 2014, the judge stated that:

Within the collective vesting there remain options for recognition of particular iwi associations. Moreover, I am not satisfied that RTT have in fact exhausted all the remedies available through the negotiation process itself. This includes potential recognition on the title and iwi governance arrangements which remain to be negotiated (primarily within the iwi Collective itself). Once again, it is not a situation where it can be said that remedies such as these are not reasonably available to RTT in and through the current negotiation. Regrettably there has been a breakdown in the negotiations which has meant that substantive discussions between RTT and the Crown and between RTT and their fellow iwi in the Collective over ways to recognise their particular relationship with Te Aroha have stalled.

For completeness I would also observe that the import of the Hauraki Tribunal's findings on the RTT claims and the Crown's offer to vest 1000 hectares of Te Aroha Maunga in the Collective of which RTT are a part, is not so inconsistent with or contrary to those findings as to warrant intervention by way of an urgent remedies hearing. It is common ground that Te Aroha Maunga is of immense significance to all iwi of the Hauraki Collective. A fee simple vesting of the Maunga in one iwi of the Collective, especially if it included the peak, would inevitably be contentious unless all of the iwi of the Collective were in agreement. While it is clear that many iwi of the Collective acknowledge RTT's close association with Te Aroha township and the Maunga, there is no consensus that the Maunga should be vested in fee simple solely in RTT. In fact there is significant opposition to this proposition from a number of the iwi.<sup>111</sup>

Judge Doogan considered that the application was a hybrid between an application for an urgent remedies hearing and one for an urgent inquiry; it was therefore assessed against the criteria for an urgent inquiry as well.<sup>112</sup> As we set out above, the two sets of criteria are similar.

The Ngāti Rāhiri Tumutumu complaint was that they have been denied the proper opportunity to negotiate with the Crown over their aspirations for redress on Te Aroha maunga because the area for the collective vesting was determined in a way that has forestalled any prospect of meaningful negotiations in respect of the iwi-specific redress. On this matter Judge Doogan observed:

I acknowledge that balancing a large collective negotiation with iwi-specific negotiations is a complex and difficult task. I also acknowledge that it is very unlikely that any single iwi

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110. Papers 2.85, 2.87

111. Paper 2.87, p 10

112. Ibid, p 7

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of the Collective would have been able to negotiate the return of 1000 hectares of Moehau and Te Aroha Maunga. Redress of this magnitude tends to be one of the benefits of a collective approach.

However in a situation such as this where there is a clear overlap and potential conflict between collective and iwi-specific redress it is all the more important that the negotiation process is transparent and fair.

The Tribunal in its Tāmaki report came to the conclusion that in the circumstances of that case the Crown's policy and practice had been unfair both as to process and outcome. In this case whilst I am not convinced that RTT have established grounds for an urgent remedies hearing, I am satisfied that there are grounds for an urgent inquiry in order to establish whether or not the Crown's response to this conflict between the Collective and RTT redress has been fair. For reasons already stated I am not convinced that the decision of the Crown to offer 1000 hectares of Te Aroha Maunga to a collective of which RTT are a part is wrong in principle or of itself sufficiently prejudicial to warrant an urgent remedies inquiry.

However, if it is established that the process by which the offer to the Collective was made was in fact unfair to RTT in that it thereby foreclosed any prospect of good faith negotiations over RTT's stated redress aspirations that happened to fall within the 1000-hectare area, then it may be open to the Tribunal to find that prejudice has been caused to RTT by reason of that unfair process. These are necessarily matters for inquiry as is the question of what (if any) recommendations may be warranted to mitigate any such prejudice.

I also have in mind that whilst the Crown has indicated that RTT may still be able to benefit from collective redress in the event that they are not able to conclude their own settlement in conjunction with the other Hauraki iwi, this scenario is far from satisfactory and one which should if at all possible be avoided. The Crown have indicated that iwi-specific negotiations with RTT would be unlikely to resume for a year or more if they miss the window of opportunity currently available to settle with the other iwi of Hauraki.

Whilst theoretically RTT remain at the table for the purposes of collective negotiations, it seems clear that their relationship with both the Crown and some members of the Collective is strained. The major cause is the ongoing tension over RTT aspirations for redress on Te Aroha Maunga. Whilst this situation continues there is a very real risk that RTT will remain further isolated from active or constructive engagement with the Collective over issues such as the governance of the collective area. These are matters of critical importance for RTT and indeed for all the iwi of the Hauraki Collective. All iwi of the Hauraki Collective including RTT have achieved a great deal in their negotiations. It would be most unfortunate if by reason of this application they are not able to reach the finish line together.<sup>113</sup>

The judge therefore granted urgency on the basis of concern about one aspect of the negotiation process: whether the Crown's offer to the Collective of 1,000 hectares of land on

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113. Paper 2.87, pp 12–13

Te Aroha maunga had ‘foreclosed any prospect of good faith negotiations’ over Ngāti Rāhiri Tumutumu’s aspirations for redress within that same area.

In response to parties’ submissions, Judge Doogan subsequently confirmed that the urgency decision left open the possibility of recommendations relating to the location of the 1,000 hectares on offer to the Collective.

On 5 March 2014, the Tribunal chairperson appointed Judge Doogan presiding officer; Professor Sir Hirini Moko Mead and Associate Professor Rawinia Higgins were appointed panel members on 27 March.<sup>114</sup> Two days of hearings were held on 7 and 8 May 2014 at the Waitangi Tribunal in Wellington.

### 1.5 ISSUES BEFORE THIS INQUIRY

In granting Ngāti Rāhiri Tumutumu’s application for urgency, the presiding officer emphasised the need for a focused inquiry into the Crown’s process in making the offer of 1,000 hectares of land on Te Aroha maunga to the Collective. Inquiry was limited to the following issues:

- ▶ The process by which the Crown identified the 1,000-hectare area of conservation land to be offered to the Collective and the steps taken (if any) to consult with the Collective or specific iwi (or both) over the location of the boundaries of that 1,000-hectare area prior to confirmation of the offer.
- ▶ Prior to and following execution of the Ngāti Rāhiri Tumutumu AIPÉ in July 2011, what steps did the Crown take to address the apparent conflict between the aspirations of the Collective for redress over Te Aroha Maunga and Ngāti Rāhiri Tumutumu’s iwi-specific aspirations for redress over Te Aroha Maunga?
- ▶ Did the Crown commit to an offer of 1,000 hectares to the Collective (including the western slopes) without due regard for or consultation with Ngāti Rāhiri Tumutumu over their interests in respect of the Maunga?
- ▶ If the evidence establishes that the process by which the Crown offered 1,000 hectares of Te Aroha Maunga to the Collective was inconsistent with conduct required by the principles of the Treaty of Waitangi, what (if any) prejudice has been or could be caused to Ngāti Rāhiri Tumutumu?
- ▶ If prejudice has been or could be caused to Ngāti Rāhiri Tumutumu, what recommendations (if any) should be made?<sup>115</sup>

The parties’ submissions in this inquiry spoke to these five issues, as we set out in the following chapter.

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114. Papers 2.86, 2.96

115. Paper 2.87, p 13



## CHAPTER 2

### THE PARTIES' POSITIONS

#### 2.1 INTRODUCTION

This chapter summarises the arguments of the three parties to this inquiry: the claimants, the Crown, and the interested parties. Each party's position is presented with reference to the issues that the Tribunal determined were at stake in this inquiry.

#### 2.2 THE CLAIMANTS' CASE

Ngāti Rāhiri Tumutumu claimants submitted that the Crown's offer to the Hauraki Collective of title to lands on Te Aroha maunga breached the Treaty, and in particular its duty of active protection. This, they submitted, was because the Crown's offer was made and boundaries determined prior to engaging with Ngāti Rāhiri Tumutumu and the Collective over Ngāti Rāhiri Tumutumu's consistent request that the Crown make an exclusive vesting of land on Te Aroha maunga to them.<sup>1</sup>

Ngāti Rāhiri Tumutumu cited the Waitangi Tribunal's statement in *The Tāmaki Makaurau Report* that, when allocating sites as cultural redress:

the Crown will only be in a position to decide whether any group should receive non-exclusive redress in these places after it has determined that no group should receive exclusive redress. Such a determination can only be made safely and fairly once there has been a correspondingly intensive investigation of the interests of the other groups in these places, and engagement in settlement negotiation to ascertain where the groups' respective settlement priorities lie.<sup>2</sup>

In Ngāti Rāhiri Tumutumu's submission, the Crown attempted no such 'intensive investigation' of their interests before offering 1,000 hectares on Te Aroha maunga to the Hauraki Collective in July 2011.<sup>3</sup>

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1. Paper 2.59, p 2; doc D1, p 4

2. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p106

3. Paper 2.120, paras 35.1, 38.1; paper 2.135, paras 1.4–1.5, 36

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Ngāti Rāhiri Tumutumu were strongly critical of the Crown's new approach to settlement negotiations, which counsel described as 'sped-up', 'informal', 'poorly defined', 'high risk' and, in the final analysis, not compliant with the Treaty.<sup>4</sup> The negotiating process used with Hauraki iwi, counsel said, was a marked departure from the Office of Treaty Settlements published negotiations guidelines *Ka Tika ā Muri, Ka Tika ā Mua: Healing the Past, Building a Future* (called the *Red Book*), and was neither properly defined nor explained. In particular, they said, the differences between the iwi-specific and collective negotiating forums and redress, and how the Crown would approach them, were left ambiguous, as was the nature of the mandate that negotiators sought from their iwi to negotiate a settlement of their claims.<sup>5</sup> They also expressed concern both about there being lack of formal records of some stages of the negotiations and about the level of the Crown's disclosure of records in this inquiry.<sup>6</sup>

The claimants emphasised the importance of Te Aroha lands and maunga to Ngāti Rāhiri Tumutumu. They say that Ngāti Rāhiri Tumutumu have continuously occupied Te Aroha and are the only iwi with a marae in Te Aroha; that Ngāti Rāhiri Tumutumu have no other lands than those at Te Aroha; and that they are the only group with claims relating to Te Aroha and Te Aroha maunga, claims which the Waitangi Tribunal has determined to be well founded.<sup>7</sup> They say they have been traditionally regarded as 'the practical kaitiaki' of the maunga because they lived there.<sup>8</sup>

Ngāti Rāhiri Tumutumu acknowledged the difficulties of reconciling property law and tikanga, and the difficulties of apportioning rights in an iconic maunga where there are overlapping interests, but said that in making a blanket, collective vesting of Te Aroha maunga without giving due consideration to Ngāti Rāhiri Tumutumu's relationship to the maunga, the Crown took an overly simplistic and insensitive approach to tikanga and misinterpreted the Waitangi Tribunal's findings in the *Tāmaki Makaurau Report*.<sup>9</sup>

The Crown's 'new' approach in Hauraki, the claimants submitted, raises important questions both about how settlement negotiations cater for mana whenua and kaitiaki interests, and how they address collective and iwi-specific interests. If collective redress is negotiated in advance of iwi-specific discussion, they asked, then 'how might that affect/distort the discussions of the iwi specific redress? Who would be responsible for settling such issues, the Crown or collective?'<sup>10</sup>

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4. Paper 2.120, paras 12–14, 35; paper 2.135, para 5

5. Paper 2.135, paras 15–18; paper 2.120, para 12

6. Paper 2.120, paras 16–19; transcript, pp 263–265; paper 2.135, paras 19–20. Mr Dreaver noted during hearings that he had deleted some email records held on his personal computer.

7. Document D1, pp 3–4

8. Paper 2.135, para 14

9. Ibid, paras 7–12; paper 2.120 paras 7–10; transcript, pp 7–8

10. Paper 2.135, para 12



We summarise below the response of Ngāti Rāhiri Tumutumu to each of the issue questions for this inquiry.<sup>11</sup>

**2.2.1 How did the Crown identify the 1,000-hectare area offered to the Collective?**

Ngāti Rāhiri Tumutumu criticised the process leading up to the signing of the Agreement. They described the granting of interim mandates and work drafting the Framework Agreement as an informal, risky, and poorly documented process in which their involvement was late and limited, and noted that those who signed that Framework Agreement had only 'interim' mandates and no funding for legal advice, and were dealing with a single private consultant for a Crown representative who was spread thin across numerous negotiations.<sup>12</sup> Jill Taylor gave evidence about her experience as a mandated interim negotiator in the period the Hauraki Collective was formed and the Framework Agreement signed:

There were no sessions with the Crown or anyone else about what our role would be, how the process would proceed, what key moments in the process would be, when we might need external advice, what separate external advice might be possible or provided to us in what timeframes . . .<sup>13</sup>

The Crown was wrong, claimant counsel submitted, to 'have encouraged and promoted such a detailed proposal from such an informal process'.<sup>14</sup>

In addition to concerns about the process by which it was prepared, Ngāti Rāhiri Tumutumu said that the Crown's reliance on the substance of the Framework Agreement as justification for its offer to the Collective was misplaced.<sup>15</sup> Ms Taylor said that negotiators had seen the Framework Agreement as 'the first step' of progressing their iwi negotiations and they had signed it in 'good faith' on the understanding their iwi-specific negotiations would run in parallel with Collective negotiations.<sup>16</sup> The Collective Framework Agreement, claimants said, had not precluded an iwi-specific vesting, while in the final Framework Agreement, the members of the Hauraki Collective and the Crown had agreed to explore 'the most appropriate way' in which 'to recognise the interests of the Haruaki Collective' in Te Aroha and Moehau maunga.<sup>17</sup> Jill Taylor noted that her understanding when signing the Framework Agreement was that iwi-specific redress was 'paramount' and any redress

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11. Some of the answers to the first issue question seem to sit better under subsequent issue questions, or certainly are relevant to them. Our summary of the response to each issue question reflects how they were set out in the claimants' closing submission (paper 2.135).

12. Paper 2.120, paras 19, 34, 37; paper 2.135, para 19; doc D1, pp 5, 6

13. Document E8, pp 2-3

14. Paper 2.120, para 35.2; paper 2.120, para 38

15. Document D1, p 7

16. Document E8, pp 3- 4

17. Paper 2.135, paras 1.3, 23.3

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2.2.1

negotiated by the Collective would be subject to it.<sup>18</sup> Ngāti Rāhiri Tumutumu had not considered, counsel submitted, that entry into the Framework would later be interpreted by the Crown to mean that their iwi-specific redress on the maunga could be subject to the approval of the Collective.<sup>19</sup>

Any ambiguity around the Framework Agreement, they said, should have been made clear by the AIPE of July 2011 which explicitly acknowledged Ngāti Rāhiri Tumutumu's aspiration for a vesting of Crown-owned parts of Te Aroha maunga.<sup>20</sup> In the months leading up to the signing of the AIPE, Ngāti Rāhiri Tumutumu negotiators raised concerns with the Collective and the chief Crown negotiator, Michael Dreaver, about the conflict between their aspiration and that of the Collective. Mr Dreaver acknowledged that tension and the need to address it in his email in early July, while the AIPE of July 2011 maintained, they submitted, a tension between what was offered as Collective and iwi-specific redress at Te Aroha maunga.<sup>21</sup> As the negotiators of the AIPE, Ms Taylor and Ms Scott said that on the basis of the wording in the AIPE and Ms Taylor's preceding discussions with Crown officials, they expected that the negotiations of Ngāti Rāhiri Tumutumu and the Collective over Te Aroha would be conducted in 'parallel'.<sup>22</sup> In light of the tension between collective and iwi-specific redress on Te Aroha that was known of prior to, and recorded in, the AIPE, counsel for Ngāti Rāhiri Tumutumu questioned why Mr Dreaver proceeded to formalise the offer without having investigated their interests: 'What was his understanding of the obvious contradiction? Why did he feel he could disregard it?'<sup>23</sup> The offer was made, counsel said, 'with full knowledge of Ngāti Rāhiri Tumutumu's disagreement with it'.<sup>24</sup> The claimants also described the high pressure environment in which the AIPE was finalised, alongside acquiring formal mandates to negotiate and progressing negotiations over Te Aroha, in order that the Collective would meet the July deadline for negotiation funding.<sup>25</sup>

Ngāti Rāhiri Tumutumu said that Crown officials did not communicate with them in the period between making the verbal offer of the 1,000-hectare vesting on 22 July 2011 and the written offer accompanied by an 'indicative map' on 4 August. Prior to that, the Crown and the Collective had been in negotiations about the amount of land to be transferred, and whether that transfer would be of fee simple title.<sup>26</sup> Ngāti Rāhiri Tumutumu pointed to a statement by Mr Dreaver in hearings that the vesting was restricted to 1,000 hectares partly so there would be enough land 'left over' for Ngāti Rāhiri Tumutumu, as evidence that the Crown was shaping their iwi-specific redress long before receiving information about their

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18. Document D1, p 6

19. Paper 2.135, paras 1.3, 24–25

20. Document D1, pp 8–9

21. Ibid, p 7; paper 2.135, paras 27–30

22. Document D1, p 9; doc E8, p 5

23. Paper 2.59, p 6

24. Paper 2.135, para 1.7

25. Document E8, p 4; paper 2.120, para 12

26. Paper 2.135, paras 18, 23, 37, 47

sites of significance on the maunga in September 2012.<sup>27</sup> This was in spite of, they said, their requests that work begin on examining their iwi-specific interests.

Not only did negotiations for iwi-specific and collective redress not occur in parallel as promised, they said, but the Crown made the offer to the Collective without having assessed and accounted for Ngāti Rāhiri Tumutumu's aspirations for the maunga.<sup>28</sup> Claimants submitted:

it was incumbent upon the Crown to ensure that iwi specific redress was carefully assessed and integrated with any intended offer to the Collective, since, according to the Crown, there could be no 'stepping back' once an offer to the Collective had been made.<sup>29</sup>

### **2.2.2 How did the Crown manage the conflict redress aspirations of the Collective and Ngāti Rāhiri Tumutumu?**

Ngāti Rāhiri Tumutumu submitted that the Crown took no steps to manage the conflict between the aspirations of the Collective and Ngāti Rāhiri Tumutumu for redress over Te Aroha maunga, either before or after making the offer of the 1,000 hectares to the Collective.

After making the offer, Ngāti Rāhiri Tumutumu submit that the Crown continued to suggest that it would address Ngāti Rāhiri Tumutumu's concerns but has proven unwilling to do so without the agreement of the Collective. In their eyes, the Crown's argument that altering the offer would risk unravelling the agreements reached with the other members of the Collective only goes to reinforce the enormity of the premature step the Crown took in offering the maunga to the Collective without first investigating Ngāti Rāhiri Tumutumu's interests.<sup>30</sup>

Ngāti Rāhiri Tumutumu said that, contrary to agreement on a 'parallel' collective and iwi-specific process, negotiations over Ngāti Rāhiri Tumutumu's iwi-specific redress did not commence until over a year after the Crown had made the offer to the Collective. They said the Crown communicated dishonestly about the nature of those negotiations, allowing Ngāti Rāhiri Tumutumu to believe that the redress they sought at Te Aroha was a possibility, when in fact the Crown was unwilling to step back from that offer without the agreement of the Collective.<sup>31</sup> They pointed to statements made by Mr Dreaver at the time, and to Ms Piper's evidence that she had been 'uncomfortable' OTS was not being 'completely consistent' with the messages it was giving to the Collective and Ngāti Rāhiri Tumutumu about the redress being sought at Te Aroha maunga. Working directly with Ngāti Rāhiri Tumutumu as a Crown representative, Ms Piper noted she had felt 'unclear' about 'what it was that we

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27. Ibid, para 35–36; doc E10, para 5

28. Paper 2.135, paras 23, 25, 26

29. Ibid, para 25

30. Ibid, para 2

31. Ibid, paras 42–48

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as an Office were prepared to offer.<sup>32</sup> Ngāti Rāhiri Tumutumu said that by May 2013 the Crown had adopted a ‘fixed position’ that its offer to the Collective could not be modified without the unanimous agreement of all the iwi of the Collective.<sup>33</sup>

**2.2.3 Did the Crown commit to the 1,000-hectare offer to the Collective without due regard for Ngāti Rāhiri Tumutumu?**

In submitting that the Crown clearly had not had due regard to Ngāti Rāhiri Tumutumu’s interests in the maunga, claimants noted the Crown’s statement that it did not receive suitably detailed information about the important sites of Ngāti Rāhiri Tumutumu on Te Aroha maunga until September 2012, over a year after making the offer.<sup>34</sup>

**2.2.4 What (if any) prejudice has been caused?**

Ngāti Rāhiri Tumutumu have not been able to seek appropriate redress for the Crown’s Treaty breach that adequately recognises their kaitiaki and mana whenua interests. Restoration for past wrongs, they said, is not simply a matter of ‘something being better than nothing’, but should involve a careful balancing of aspirations, interests, and experience of the prejudice caused by Crown Treaty breaches.<sup>35</sup> By failing to follow the processes laid out in the Tāmaki Report and prematurely finalising the offer of Te Aroha to the Collective, Ngāti Rāhiri Tumutumu submitted, the Crown had foreclosed the possibility of genuine engagement over their iwi-specific interests and of a genuine negotiation over boundaries in a common iwi and Collective discussion. Counsel also said that the Crown’s actions have severely damaged whanaungatanga or the relationships between the iwi of the Hauraki, and turned tikanga ‘on its head’.<sup>36</sup> Claimant counsel submitted that:

the Crown has not carefully weighed and judged redress to appropriately restore mana, balance interests, and not wipe out long standing tikanga, but has reduced mana, undermined tikanga, and has pitted iwi against each other, affecting whanaungatanga.<sup>37</sup>

When presenting her evidence, Ms Taylor made reference to the damage done to tikanga by suggesting that the negotiations process had led some iwi in the Collective to start asserting a level of interest in the maunga that they would not have previously.<sup>38</sup>

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32. Transcript 4.1, pp 124–127, pp 132–133

33. Paper 2.135, paras 54–55

34. Ibid, para 49

35. Ibid, para 50

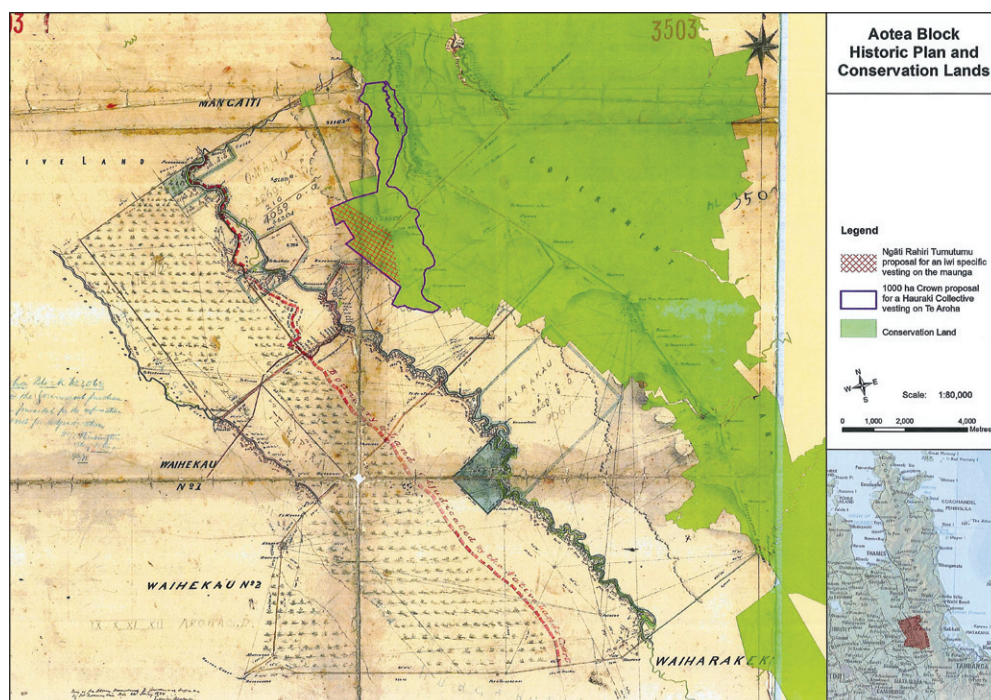
36. Ibid, paras 50–52; paper 2.126, para 1(a)

37. Paper 2.120, para 10

38. Transcript 4.1, p 78

THE PARTIES' POSITIONS

2.2.5



Map 2: Ngāti Rāhiri Tumutumu’s July 2013 proposal for vesting within the current collective area. Parties mention several types of land proposed as redress: the current 1,000-hectare collective area; the 250-hectare Ngāti Rāhiri Tumutumu proposal within that area. On the lower slopes are Crown-owned council managed reserves and further council administered reserves. In addition, Ngāti Rāhiri Tumutumu have been offered up to 250 hectares outside the collective vesting parcel.

**2.2.5 What (if any) recommendations should be made?**

In general terms, Ngāti Rāhiri Tumutumu sought a ‘stepping back’ from the Crown’s offer to the Collective and a fresh look at how the interests and aspirations of Ngāti Rāhiri Tumutumu can be appropriately addressed, including within the area of the Crown’s 1,000-hectare offer.

Specifically, they sought:

- ▶ To have Te Aroha maunga removed from the settlement and for the Crown to give an undertaking that it will be returned to the iwi of Hauraki, ‘subject to a process for determining which parts will be vested solely in Ngāti Rāhiri Tumutumu and which parts in all iwi who wish it’.
- ▶ A vesting in fee simple in all iwi who seek it of 1,000 hectares on the mountain and a vesting in Ngāti Rāhiri Tumutumu solely in fee simple of 250 hectares on the western face. They noted this would require ‘reshaping and an extension to’ the existing 1,000-hectare offer. The 250-hectare area proposed is marked out in map 2. It includes the land inside the current 1,000-hectare offer boundary that encompasses the western



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face, running up to the peak.<sup>39</sup> (The Ngāti Rāhiri Tumutumu proposal for a 250-hectare vesting – inside the area offered to the Collective – was discussed with the Crown and the Collective in July 2013. Agreement was not reached on the proposal.<sup>40</sup>)

- ▶ The vesting of the fee simple 1,000 hectares in an interim body and the establishment of a process for determining which parts will be vested solely in Ngāti Rāhiri Tumutumu and which parts in all iwi who wish it.
- ▶ The withdrawal of the Crown's offer of the wāhi tapu Ngā Tuki Tuki Ahi Kā Wera and Tangitu and the four reserves on Te Aroha (these are sites on Te Aroha that Ngāti Rāhiri Tumutumu has objected to having included in proposed iwi-specific redress for the other Hauraki iwi Ngāti Tamaterā and Ngāti Maru).<sup>41</sup>

The claimants also suggested that future negotiations could be assisted by the setting up of a panel of experts on tikanga values and their translation in modern settlements.<sup>42</sup>

### 2.3 THE CROWN'S CASE

The Crown argued that its process for negotiating a Hauraki regional settlement, including its negotiations with Ngāti Rāhiri Tumutumu, has been Treaty compliant. The Crown (with support from a number of other iwi in the Collective) said that it recognised Moehau and Te Aroha maunga as of significance to all iwi of Hauraki. Agreeing to the express wishes of the collective to transfer the maunga to the Collective was appropriate and consistent with the findings of the Tribunal in the *Tāmaki Report*. The Crown noted that this outcome does not preclude iwi-specific redress both within and outside of the area that it proposes to vest in the Collective. The Crown submitted that it has 'consistently proposed a number of redress options on Te Aroha Maunga' for Ngāti Rāhiri Tumutumu, that those negotiations remain ongoing, and that the door is open for Ngāti Rāhiri Tumutumu to return to them.<sup>43</sup>

Noting that this urgent inquiry was granted on narrow grounds, Crown counsel opposed what he described as the claimants' attempts to re-litigate the Crown's whole approach to the Hauraki negotiations. The process by which the Crown offered land on Te Aroha to the Collective was informed by the *Tāmaki Report*; the Crown was justified taking a collective approach to a vesting of Crown-owned land in the maunga.<sup>44</sup> On the Tribunal's specific issues the Crown's position can be summarised as follows:

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39. Transcript 4.1, pp 29, 185, 188, 244–245

40. Document E4, pp 76–78; transcript 4.1 pp 77–78, 85, 111, 358–359

41. Paper 2.126, para 5; doc E10, paras 7–44

42. Paper 2.126, para 3

43. Paper 2.123, pp 13–14

44. Paper 2.130, p 3

**2.3.1 How did the Crown identify the 1,000-hectare area offered to the Collective?**

The Crown emphasised that the genesis of the offer was a proposal from the Collective. All iwi signed the Framework Agreement stating that 'the iwi of the Collective . . . desire for the maunga [Te Aroha and Moehau] to be transferred to the Hauraki Collective'. The boundaries were based on the original mapping provided by the Collective. The boundaries were discussed in negotiations, changing as the Crown offer increased from 250 to 1,000 hectares.<sup>45</sup> The offer was made subject to resolution of overlapping claims and Cabinet approval. Indeed, the offer remains a proposal, made without prejudice and not yet formally established. Any amendment to the boundaries does however require agreement of the iwi of the Collective, not because the Crown has already agreed the boundaries but because any unilateral change by the Crown is incompatible with the principles of a collective negotiation. In the Crown's submission, negotiating with one iwi as if there was no collective defeats the collective approach and would result in each iwi withholding its particular layer of interest from the Collective to seek individual redress.

There are only two options available in relation to the location of the vesting: agreement by iwi of the collective, or Crown permanently withdrawing of the offer of the primary vesting. The Crown does not intend to withdraw the offer.<sup>46</sup>

The Crown stressed the necessity of a collective approach to Hauraki's densely layered sites of significance. 'The Crown's intention is to allow for all layers of interest to be recognised through negotiations, not for the return of certain redress items to indicate manawhenua.'<sup>47</sup>

The Crown was informed by the Tribunal's recommendations in the *Tāmaki Makaurau Settlement Process Report*. In relation to maunga, that Tribunal criticised attempts to assess a 'predominant' interest and said '[t]he various interests differ in kind and well as intensity, and are not susceptible to a qualitative assessment of any sort – certainly not one that is made by outsiders.'<sup>48</sup> Crown counsel argued the situation is even more complicated in Hauraki, owing to extremely close whakapapa links between iwi.<sup>49</sup> Therefore, in Mr Dreaver's view:

Te Aroha maunga is a place of layered interests. My understanding is that most Hauraki iwi would consider the dissection of the maunga through an overlapping claims process to be an insurmountable task, in particular, and it would likely precipitate the unravelling of other redress involving shared interests, starting with Moehau maunga.

The vestings of 1000 hectares at both Te Aroha and Moehau maunga in the Hauraki Collective, with the registration on title of those iwi who chose, is integral to achieving a fair

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45. Ibid, pp 5–6

46. Ibid, p 6

47. Ibid, pp 11–12

48. Ibid, p 9; Waitangi Tribunal, *Tāmaki Makaurau Settlement Process Report*, p 108

49. Ibid, p 9

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settlement for the iwi of the Collective. I consider any settlement that vests either of these maunga exclusively in an individual iwi of Hauraki would cause irreversible prejudice to other Hauraki iwi and would equate to the Crown permanently recasting tikanga.<sup>50</sup>

The 1,000-hectare offer on maunga Te Aroha was also influenced by a range of factors, including adjacent Tauranga settlement negotiations, the lease arrangements for a communications transmitter on the maunga, negotiations with local government over reserve lands, and relativities with other Treaty settlements.<sup>51</sup> Within this complex environment, the Collective worked out issues amongst themselves. Crown counsel regarded the Collective as a “safety valve” – when there is highly contested redress, the Collective can resolve issues together.’ The Collective made compromises and gained some real leverage through working together.<sup>52</sup>

The process . . . was undertaken by the Crown in the light of the various tikanga, customary interests and historical associations as set out in the Hauraki report, as advised by iwi and as advised by Crown historians, as well as in accordance with the guidance of the *Tamaki report* in relation to iconic sites, such as maunga with heavily shared and overlapping interests.<sup>53</sup>

In the Crown’s submission the use of the Collective to resolve cross claim issues was balanced by the Crown’s role and that of its Chief Negotiator, Mr Dreaver. Mr Dreaver did not take a passive approach: he met with individual iwi following the signing of AIPES, managed tensions, raised issues at Collective hui and encouraged the Hauraki Collective and Ngāti Rāhiri Tumutumu to engage. The Crown cited Mr Dreaver’s view that ‘his proactive role was at times met with refusal by Ngāti Rāhiri Tumutumu to engage with the Collective.’<sup>54</sup>

The Crown denied that the Framework Agreement process was rushed, foisted on interim inexperienced negotiators, or poorly understood. The Framework in fact ‘emanated from the iwi of the Collective.’<sup>55</sup> The collective approach was rather the result of an agreed acknowledgment that certain types of redress in Hauraki would be too hard for individual iwi to achieve on their own, whereas a collective approach would result in a more significant offer from the Crown due to accommodating overlapping interests.<sup>56</sup>

The Crown said all negotiators had equivalent resources, and that the signing of the documents were solemn and serious matters, with other iwi negotiators aware of the import of their undertakings. The Crown said the evidence of the Ngāti Rāhiri Tumutumu

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50. Document D3, pp 4–5

51. Paper 2.130, pp 5–6; doc E2, pp 954–955, 1004–1005, 1011, 1132–1133, 1089, 1183–1184 regarding Tauranga settlement

52. Paper 2.130, p 12

53. Paper 2.123, p 11

54. Paper 2.130, p 13

55. Ibid, p 14

56. Ibid, p 12



negotiators was contradictory. The Crown noted the evidence of one of the negotiators for Ngāti Tamaterā, Liane Ngamane who said:

I signed the Hauraki Collective Framework in 2010 because it gave leverage to secure a significant area of our tupuna maunga and because it locked in a commitment by the Crown to return our maunga and I supported and endorsed that positive achievement.<sup>57</sup>

The Crown pointed to the evidence of Mapuna Turner, one of the interim negotiators for Ngāti Rāhiri Tumutumu who had no difficulty working together with the Collective because she viewed Te Aroha as an integral and spiritually important aspect of the waka that all iwi of Hauraki identify with: 'I don't agree that we should split up the maunga. We should take the lot back as our tribal waka, our cultural spiritual waka.'<sup>58</sup>

The Crown argued Ngāti Rāhiri Tumutumu's 'steadfast resolve' to argue for exclusive title on Te Aroha Maunga was designed to 'slow down negotiations and try find more space for negotiating their iwi specific interests'. This 'was despite attempts by other iwi with kaitiaki relationship on the maunga to explore redress options.'<sup>59</sup>

### **2.3.2 How did the Crown manage the conflict redress aspirations of the Collective and Ngāti Rāhiri Tumutumu?**

The Crown argued that recording the tension between collective and iwi-specific redress over Te Aroha in the AIPES did not create the conflict, nor did it mean that it could not be addressed in negotiations.<sup>60</sup> Ngāti Rāhiri Tumutumu's apparent disagreement with the Collective vesting was not an obstacle to the AIPES being signed in July 2011.

While the AIPES were 'non-binding and aspirational'<sup>61</sup> they contained relevant caveats, particularly clause 18(e) of the iwi-specific chapter, which notes that the Crown is under no obligation to negotiate or provide certain redress.<sup>62</sup> There are three different types of clauses in the AIPES:

- ▶ "redress offers" repeated from the Framework Agreement: Cabinet has agreed to the substance of these offers;
- ▶ "offers to explore redress" – again, from the Framework Agreement, but more detailed; they had to be closely aligned to Treaty settlement policy

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57. Ibid, p 18

58. Ibid, p 21

59. Ibid, p 22

60. Ibid, pp 26–27

61. Ibid

62. Ibid, p 27. Clause 18(e) reads 'Statements regarding redress. Ngāti Rāhiri Tumutumu seeks represents the wishes of Ngāti Rāhiri Tumutumu and do not represent: a Crown endorsement of that type of redress; or a Crown Commitment to negotiate either the type of redress or the provision of the actual redress specified in the statement, or both.'

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- ▶ “redress iwi seek” ‘used to describe iwi redress aspirations where it was not clear substantive redress would be able to be negotiated, and because the timing was such that no negotiation had yet taken place on the relevant items’<sup>63</sup>

Crown counsel argued that ‘the tension between iwi specific and collective changed over time.’

This meant that the apparent conflict did not amount to a total inability for the Crown to continue negotiations. As conceded by Ms Taylor, NRTT did not oppose the vesting of the maunga in the Collective, but hardened their steadfast attitude when they considered they were not receiving attention from the CCN [chief Crown negotiator] on their iwi specific issues.<sup>64</sup>

The Crown relied on the evidence of Mr Dreaver, who said that the Ngāti Rāhiri Tumutumu negotiators’ position changed over time:

Over 4 years of tension – it changed – received different messages about nature of tension. At first, either supported or did not oppose collective redress. Other times, vehement oppositions, other times it was opposition for potential for reserves, or opposition to collective vesting unless management were resolved, or addressed – different messages. Yesterday they stated they never opposed a collective vesting.<sup>65</sup>

The Crown emphasised that AIPES are

important political agreements. NRTT negotiators cannot sustain the argument that the Framework Agreement and the AIPES are non-binding but then expect the Crown to fulfil all aspirations listed in the iwi specific section of the AIPES. The applicants cannot have it two ways.<sup>66</sup>

The Crown said that Ngāti Rāhiri Tumutumu’s ‘perception that they were not given the ability to have their claims negotiated [in] parallel with the Collective is a false one’. Ngāti Rāhiri Tumutumu appears to have ‘drawn a line in the sand as at mid 2011’. The Crown was clear that negotiations with iwi, including Ngāti Rāhiri Tumutumu did occur in parallel, albeit later than planned.<sup>67</sup> The delays were caused by other priorities in the region taking precedence (in Tāmaki for example), and also through later provision of suitable sites of significance reports. The Crown denied that it ever stated individual negotiations would proceed ahead of Collective ones; such an ‘illogical’ approach runs counter to the *Tāmaki Report* and the overall Crown strategy for Tāmaki and Hauraki.<sup>68</sup>

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63. Paper 2.130, pp 27–28

64. Ibid, p 28

65. Ibid

66. Ibid, p 17

67. Ibid, p 29

68. Ibid, p 30

Throughout our hearing, the Crown encouraged Ngāti Rāhiri Tumutumu to return to negotiations. Mr Dreaver emphasised that 'over and above' the 1,000 hectares vested in the Collective, Ngāti Rāhiri Tumutumu's iwi-specific interests could still be properly recognised through a negotiated settlement. The Crown, he said, 'retains a full suite of redress options including land transfers, overlay classifications, statutory acknowledgements and recognition within the Collective offer'.<sup>69</sup>

Crown counsel said:

The Crown has consistently proposed a number of redress options on Te Aroha Maunga for NRTT, including 250 hectares of individual exclusive vestings separate from the Collective and around 150 hectares of land on Te Aroha maunga administered by [the local council] in addition to exploring additional Crown owned [council] administered reserves. These remain options.<sup>70</sup>

Counsel and Mr Dreaver also noted there are a number of tailored redress options for Ngāti Rāhiri Tumutumu including a suite of creative solutions proposed in August 2013, shares in forest lands and Te Aroha township properties, and rights of first refusal over other properties.<sup>71</sup> Arrangements within the Collective for the maunga provide an opportunity for the particular interests of Ngāti Rāhiri Tumutumu to be recognised, through negotiating Ngāti Rāhiri Tumutumu's role in governance, in management and through various other means for expressions of iwi layers of interest.<sup>72</sup> The Crown perspective was that 'a fee simple offer has no impact on kaitiaki status'. The ultimate issue is that Ngāti Rāhiri Tumutumu 'see themselves as *the* kaitiaki, despite other iwi asserting that status'.<sup>73</sup>

### **2.3.3 Did the Crown commit to the 1,000-hectare offer to the Collective without due regard for Ngāti Rāhiri Tumutumu?**

The Crown said it has been aware of Ngāti Rāhiri Tumutumu's particular interests throughout the negotiations, as well as the relative interests of other iwi. Mr Dreaver told us that he had been involved in the Hauraki negotiations continuously since June 2009.<sup>74</sup> He stressed he took a proactive role throughout negotiations, acted in good faith, attended almost all of the Hauraki Collective hui and reminded the Collective to meet with individual negotiators as well, and was aware of the importance of maunga Te Aroha for the Hauraki Collective, as

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69. Document E6, pp 7–8

70. Paper 2.130, p 39

71. Ibid, p 30; doc E6, p 13; doc E2, p 1387; doc E3, p 38

72. Paper 2.130, pp 25–26

73. Ibid, p 32

74. Document E6, p 4

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well as the various iwi interests in the maunga.<sup>75</sup> Having helped Sir Douglas Graham with his 2009 proposal, Mr Dreaver told us he was focussed on a collective approach:

Ngāti Rāhiri Tumutumu have maintained consistent priorities during the course of their individual negotiations with the Crown, with the highest of these being an exclusive vesting of Te Aroha maunga including the tihi. I have been similarly consistent that the 1,000 hectares on Te Aroha maunga has been offered to the Hauraki Collective, that the Crown proposal includes the vesting of the tihi, and any departure from this model would require the agreement of the Hauraki Collective. I believe this position is consistent with the *Tāmaki Makaurau Settlement Process* report.<sup>76</sup>

Mr Dreaver said that it was on 7 July 2011, one day after Cabinet had approved the 1,000-hectare vesting and not long before the 22 July signing of the AIPPE, that he recalls being made aware of the Ngāti Rāhiri Tumutumu opposition to the return of maunga Te Aroha to the Hauraki Collective, after engagement for over 18 months: ‘This email of 7 July 2011 was the first time I can recall being made aware that Ngāti Rāhiri Tumutumu did not agree to the Collective offer. It was immediately apparent to me that this would need to be addressed in negotiations.’<sup>77</sup>

**2.3.4 What (if any) prejudice has been caused?**

The Crown pointed to the fact that Ngāti Rāhiri Tumutumu, like all iwi of the Collective, will receive the 1,000-hectare fee simple vesting by virtue of being a member of the Collective. That redress is part of the Ngāti Rāhiri Tumutumu package; accordingly the only thing ‘lost’ by Ngāti Rāhiri Tumutumu was the chance of exclusive redress in the form of the primary vesting of Te Aroha maunga. The Crown argued that the loss of a chance or opportunity in the context of an ultimate offer that would not have been achievable by a single iwi, does not in this circumstance amount to prejudice. The Crown further argued that if that chance of exclusive vesting had been left open it would not have been possible for Ngāti Rāhiri Tumutumu to achieve as a single iwi, given the multitude of overlapping claims on the maunga and its significance to all iwi of Hauraki.<sup>78</sup>

Crown counsel said Ngāti Rāhiri Tumutumu gained more as part of the Collective than they would have on their own. In any case, the Crown argued that the Collective and iwi-specific negotiations are ongoing:

the negotiations remain in parallel and there has always been the opportunity for NRTT to negotiate specific redress with the Crown and discuss their role on the maunga with the

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75. Document D3, p 5

76. Ibid

77. Document E6, p 7

78. Paper 2.130, p 33

other Hauraki iwi. The fact that NRTT negotiators think or feel that individual iwi negotiations commenced too late does not give rise to a process flaw, let alone a Treaty breach from which any identifiable prejudice has been suffered.<sup>79</sup>

### 2.3.5 What (if any) recommendations should be made?

The Crown argued that the Tribunal should not make recommendations that affect the current Collective offer.<sup>80</sup> Crown counsel also rejected the redress options advanced by counsel for Ngāti Rāhiri Tumutumu. The first option, 'starting afresh' with negotiations for maunga Te Aroha, was not considered realistic in light of the *Tāmaki Report* and the reality of Hauraki's intensely overlapped interests: 'Te Aroha maunga has great importance to all iwi of Hauraki and other iwi would never agree to a primary exclusive vesting in one iwi alone.' The Crown said shifting the boundaries of the 1,000 hectares on offer requires agreement from the Collective; doing so without such agreement and risks collapsing the negotiations. The Crown considered that the third option, of a re-examination of the 1,000 hectares, was unlikely to get traction within the Collective; any recognition of one iwi alone still needs Collective agreement.<sup>81</sup>

The Crown rejected requests for recommendations on four reserves outside the 1,000 hectares as being outside the scope of this inquiry. The Crown also rejects claimant counsel's call for an independent panel of tikanga experts. An 'external' panel is unlikely to be appropriate in any settlement. The Crown's role is not to determine manawhenua. Mr Dreaver expressed a strong preference not to get involved in the arrangements of the PGSE, 'as this creates "safety nets" where groups rely on the Crown to resolve issues rather than doing this themselves.'<sup>82</sup>

The Crown emphasised that it has consistently proposed a number of iwi specific options for Ngāti Rāhiri Tumutumu, and that these remain open. There are further creative solutions proposed that recognise Ngāti Rāhiri Tumutumu's manawhenua and kaitiaki status. 'These matters have been option for negotiations throughout 2013 and remain options now.'<sup>83</sup>

## 2.4 INTERESTED PARTIES' CASE

In our discussion of the application for an urgent inquiry in chapter 1, we noted the views expressed by different groups. Ngāti Porou ki Hauraki, supported the application;<sup>84</sup> Ngāti

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79. Ibid, p34

80. Ibid, p39

81. Ibid, pp 35–36

82. Ibid, pp 37–38, 40

83. Ibid, pp 39–40

84. Paper 2.43

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Maru, Ngāti Tamaterā and Ngāti Tara Tokanui opposed it; and three groups, Ngāti Hako, Whānau Mangakahia, and Ngāti Pū did ‘not oppose’ the application.<sup>85</sup>

Ngāti Maru, Ngāti Tamaterā, and Ngāti Tara Tokanui each made submissions to this inquiry.<sup>86</sup> The latter two parties’ procedural submissions were brief: each noted that they exercised mana whenua over Te Aroha maunga, alongside other iwi, and otherwise supported and endorsed the submissions of Ngāti Maru. Liane Ngamane, one of two mandated negotiators for Ngāti Tamaterā, and Amelia Williams, mandated negotiator for Ngāti Tara Tokanui gave evidence at our hearing.

Ngāti Maru opposed the Ngāti Rāhiri Tumutumu claim, and submitted that the Crown’s negotiation process with the Hauraki Collective and its constituent iwi was ‘Treaty compliant’. In response to the claimants’ key ‘complaints’, Ngāti Maru submitted that the negotiations were neither too quick, having taken five years to date, nor a departure from best practice. Rather, Ngāti Maru praised the Crown for ‘laudable innovation’ in adopting regional negotiations with iwi collectives, and using ‘bespoke solutions’ such as interim mandate recognition, framework agreements, and AIPES.<sup>87</sup>

Ngāti Maru submitted that the relevant evidence was as follows. Ngāti Rāhiri Tumutumu negotiators participated in discussions amongst the iwi of the Collective, and in negotiations with the Crown. They twice gave informed consent to the return of Te Aroha maunga to the iwi of Hauraki, first when Ms Turner and Ms Taylor signed the Framework Agreement with the Crown, and again when Ms Taylor and Ms Scott signed the Ngāti Rāhiri Tumutumu AIPES on 22 July 2011. Both documents stated that the Collective sought the fee simple return of the Crown’s land on Te Aroha.<sup>88</sup> Ngāti Maru submitted that the potentially conflicting provision in the AIPES, whereby Ngāti Rāhiri Tumutumu also sought fee-simple vesting of Crown land on Te Aroha maunga, had been satisfied through the Crown’s offer to Ngāti Rāhiri Tumutumu of the Crown-owned Council-administered reserves on Te Aroha.<sup>89</sup> Ngāti Maru submitted that Ms Taylor only belatedly opposed the transfer of Te Aroha maunga from August 2011, ‘out of frustration’, and in an effort to advance Ngāti Rāhiri Tumutumu iwi-specific negotiations with the Crown.<sup>90</sup>

Ngāti Maru emphasised that Ngāti Tara Tokanui and Ngāti Tamaterā have provided ‘direct and uncontroverted evidence that Ngāti Rāhiri Tumutumu do not have exclusive mana whenua or kaitiakitanga of Te Aroha maunga.’<sup>91</sup> Ngāti Maru opposed all three options for remedies proposed by Ngāti Rāhiri Tumutumu because they involved an exclusive vesting of some or all of the 1,000 hectares offered to the Collective.

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85. Papers 2.42, 2.46, 2.47

86. Papers 2.131, 2.132, 2.133

87. Paper 2.131, pp 2–4

88. Ibid, pp 3–4

89. Ibid

90. Ibid, p 5

91. Ibid

Ngāti Maru suggested, in closing, that the ultimate remedy for Ngāti Rāhiri Tumutumu instead lies in 'face to face engagement with their whanaunga within the legitimate collective transfer of Te Aroha maunga'.<sup>92</sup>

Liane Ngamane spoke about Ngāti Tamaterā's movement from opposition to the Hauraki Collective, and to the notion of collective vesting in maunga. Her iwi, she said, were the first (and largely the only one initially) to object to collective vesting of maunga (their concern initially related to Moehau, the prow of the waka symbolic of the landforms of Pare Hauraki.) Ms Ngamane also reminded us that 'at the kingitanga hui held in May-June 1857' it was Ngāti Tamaterā that 'symbolically pledged Te Aroha'.<sup>93</sup>

Ms Ngamane stressed the heavily overlapped nature of the maunga: 'Ngāti Tamaterā are mana whenua and kaitiaki at Te Aroha, as are a number of the other Iwi of Hauraki'.<sup>94</sup> She pointed out that the Tribunal's *Hauraki Report* also noted the Marutūāhu presence in the Te Aroha region was sustained.

Ms Ngamane said that the Hauraki Collective determined the boundaries for the 1,000-hectare offer.<sup>95</sup> She noted that all the Hauraki iwi of Ohinemuri and Te Aroha have worked together on resource management issues for over 20 years concerning Te Aroha:

Ngāti Tamaterā respects the kaitiaki relationship of Ngāti Rāhiri-Tumutumu in Te Aroha but it is not an exclusive one as they continue to purport. Ngāti Rāhiri-Tumutumu have to date refused to meaningfully explore how their kaitiaki role would look at a management and decision making level preferring to maintain their intractable stance around exclusive ownership for themselves and disrespecting every other Iwi's interest in the Maunga.<sup>96</sup>

Ms Ngamane emphasised that:

The collective redress of our tupuna maunga, Te Aroha and Moehau, is a direct outcome of the collective approach and would not have been achieved otherwise. It is also the right thing to do given their cultural significance to all the Iwi of Hauraki. Ironically the former Ngāti-Rāhiri Tumutumu negotiator, Ms Turner, was a strong advocate during her time at the table for the return of Te Aroha and Moehau as collective cultural redress.<sup>97</sup>

Ms Ngamane told us that a great deal of discussion occurred at the Hauraki Collective hui from March to October 2010, to try to work out ways to accommodate Ngāti Rāhiri Tumutumu's position, though often the Ngāti Rāhiri Tumutumu negotiators would say very

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92. Ibid, p 7

93. Leslie Kelly, *Tainui: The Story of Hoturoa and his Descendants* (Wellington: Polynesian Society, 1949), p 440 (cited in doc E12, p 2)

94. Document E12, p 8

95. Ibid, p 4

96. Ibid, p 6

97. Ibid, p 3



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little at those hui.<sup>98</sup> Ms Ngamane remains committed to a collective settlement and to collective redress. Indeed after years of mandate stalemate and now delays in the Tribunal, she was keen to progress settlement, and rejected Claire Piper's concerns about a rushed process.<sup>99</sup> She emphasised that:

Ngāti Tamaterā fundamentally opposes any changes to the collective redress area on the basis that some of the maunga should be made available to Ngāti-Rāhiri Tumutumu . . .

If any change is made to the collective redress area at Te Aroha maunga, Ngāti Tamaterā will not be initialling / signing the collective Hauraki deed of settlement. I understand that is also the position of at least 4 other iwi.<sup>100</sup>

Amelia Williams spoke of Ngāti Tara Tokanui's long association with the maunga, including farming on its foothills today:

'The importance of Te Aroha Maunga to Ngāti Tara Tokanui cannot be understated. Te Aroha Maunga is the vector of our iwi identity shaping who we are and where we come from . . . Without Te Aroha Maunga Ngāti Tara Tokanui would not exist as an iwi, without Te Aroha Maunga we would not exist as Hauraki'

She spoke of the iwi's 'occupation in and around Te Aroha Maunga' from the late 1500s.<sup>101</sup> During our hearing she reaffirmed the need for a collective approach to maunga Te Aroha:

should you recommend that parts be carved out of our maunga and provided to a single iwi on the perspective of tikanga how do you members of the Tribunal, how do you propose to carve up our tupuna? To carve up our tupuna koroua? How do you propose to do that?

From the statement yesterday that the western face should be carved out. The western face is the repository of a large number of our iwi urupā, pā and, once upon a time, kainga. Today there are geothermal spas. The waters are unique, they are unique to Hauraki. They are not replicated throughout New Zealand, not even Rotorua have these types of spa waters. They are geothermal. They must be enjoyed. They must be governed and managed by all of Hauraki. Because this is a Hauraki Taonga. It belongs not to one Iwi. It does not belong to Ngāti Tara Tokanui, it belongs to all of Hauraki. We wish for the Crown . . . to include the whole of Te Aroha maunga as collective redress to all of Hauraki iwi. It is ours, all of ours; it is not one single iwi's.<sup>102</sup>

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98. Document E12, p 4

99. Ibid, p 7

100. Ibid, p 8

101. Document D2, pp 3, 7

102. Transcript 4.1, pp185-186



**2.5 CONCLUSION**

Having presented the background to this inquiry, and the parties' submissions, we now set out the Tribunal's analysis of the relevant evidence and argument.



CHAPTER 3

ANALYSIS AND FINDINGS

**3.1 THE ISSUE: A FAIR PROCESS?**

In arriving at our decision on the evidence and arguments presented to us in this inquiry, the central issue we have considered is essentially a question of fairness. Although, in granting urgency, we posed five questions – all of which revolved around the Crown’s process leading to its offer to the Hauraki Collective – the issue is in fact quite simple: has the Crown acted fairly in dealing with the difference that has emerged between Ngāti Rāhiri Tumutumu and the other iwi of the Hauraki Collective over the proposed return of land at Te Aroha maunga?

Fairness, in this context, is informed by the same principles identified by other Tribunals inquiring into claims about the Crown’s process in achieving Treaty settlements. We agree that the resolution of long-standing Treaty grievances can only be achieved through a process that restores the principles that were once undermined. This particularly applies to the principle of partnership that underlies the Treaty relationship. At a minimum, application of these principles requires a process of genuine engagement with claimant groups, in a way that appropriately acknowledges their tikanga,<sup>1</sup> as well as clear and open communication on the form of negotiations.<sup>2</sup> But because the Crown is faced with the task of achieving settlements with numerous groups, it must approach each settlement with an eye to the wider picture. This involves equitable treatment in the allocation of redress, including timely engagement with other claimant groups who might also hold interests in a particular area.<sup>3</sup> It also requires having regard to whanaungatanga and the relationships between groups.<sup>4</sup> By having regard to these factors, the Crown will be able to conclude Treaty settlements with

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1. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua* (Wellington: Legislation Direct, 2005) p 21; Waitangi Tribunal, *Ngati Tuwharetoa ki Kawerau* (Wellington: Legislation Direct, 2003), p 47; Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2006), p 19

2. Waitangi Tribunal, *The Ngati Awa Settlement Cross-Claims Report* (Wellington: Legislation Direct, 2002), p 87; Waitangi Tribunal, *The Port Nicholson Block Urgency Report* (Wellington: Legislation Direct, 2012), p 61; Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, p 89; Waitangi Tribunal, *The Te Arawa Settlement Process Reports* (Wellington: Legislation Direct, 2007), p 255

3. For examples, see Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, p 89; Waitangi Tribunal, *The Ngati Awa Settlement Cross-Claims Report*, pp 80, 88.

4. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, p 101; Waitangi Tribunal, *The Ngati Awa Settlement Cross-Claims Report*, p 87

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claimant groups in a way that avoids creating new injustices.<sup>5</sup> Because of this, and because achieving Treaty settlements involves inevitable compromises on both sides, the Crown's approach ought to be flexible but also reasonable.<sup>6</sup> Pragmatism must be balanced with fairness.<sup>7</sup>

**3.1.1 The Tāmaki report**

The process for negotiating fair and equitable cultural redress identified in the *Tāmaki Makaurau Settlement Process Report* is particularly important in this inquiry, as all parties have noted. We need not traverse the findings and recommendations of that report in any detail here, except to note that its force lay in the idea that (so far as cultural redress was concerned) fair and durable Treaty settlements are best achieved through a transparent process involving all groups who hold interests in the area being settled. Those who hold interests in sites of cultural significance would have responsibility to decide amongst themselves the form those interests would take in any redress offered by the Crown, according to their own tikanga.<sup>8</sup>

**3.1.2 The collective approach**

Having considered the evidence in this light, we find ourselves in broad agreement with the Crown that its conduct in the particular question raised in this case is consistent with the requirements of negotiating Treaty settlements. While it is apparent that the Crown adopted a high risk strategy in Hauraki by departing from its standard approach, and instead initiating a collective approach to negotiations prior to the finalisation of the mandating process, it is a risk that all Hauraki iwi took on. The fact that this was a risk assumed by all parties is an important factor in our overall conclusion that no substantive unfairness has resulted for Ngāti Rāhiri Tumutumu from the process by which the Crown came to offer 1,000 hectares of conservation land on Te Aroha maunga to the Hauraki Collective.

We reach this conclusion having been informed of the reasons that motivated the Hauraki iwi to adopt the collective approach when they did. The evidence demonstrates that all 12 Hauraki iwi came to recognise that a collective approach was needed to break a long-standing stalemate over who would represent them in settlement negotiations. By acting collectively, the iwi also recognised they stood a chance of securing more substantive redress than would otherwise have been possible had they negotiated with the Crown on an iwi by iwi basis. These possibilities were signalled to the iwi in the June 2009 proposal of Sir Douglas

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5. Waitangi Tribunal, *The Ngāti Awa Settlement Cross-Claims Report*, p 87

6. Waitangi Tribunal, *Te Arawa Mandate Report: Te Wahanga Tuarua*, p 72

7. Waitangi Tribunal, *The Ngāti Awa Settlement Cross-Claims Report*, p 76; Waitangi Tribunal, *The Ngāti Kahu Remedies Report* (Wellington: Legislation Direct, 2013), pp 113, 114

8. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, p108; doc E6, p16

Graham. While it is to the Crown's credit that significant progress has resulted from its response to the Tribunal's *Tāmaki Makaurau Settlement Process Report* in settlement negotiations with the iwi of Tāmaki and Hauraki, the most relevant fact for this inquiry is that it was the Hauraki iwi themselves who agreed to work together in mutual recognition of both the momentum that could be gained and the potential benefits that would ensue. By early May 2010, all 12 iwi of Hauraki had joined what they appropriately called the Hauraki Collective.

It is equally relevant that in entering into this collective forum, the Hauraki iwi also recognised that momentum could only be maintained by achieving early agreements on key items of redress, both with the Crown and with each other. They did so by agreeing to proceed with interim negotiators, who would negotiate and agree on the parameters of the redress sought. The agreement they negotiated and executed with the Crown in October 2010 expressed in clear terms their wish to seek a range of commercial and cultural redress as collective iwi, including the transfer of Crown-owned parts of Te Aroha and Moehau maunga to the Collective itself. The position on their aspirations for collective redress had been arrived at over a number of months, and was formalised, on terms that all interim negotiators ultimately agreed to.

### 3.1.3 The Framework Agreement

While it is true that the Framework Agreement is expressed as non-binding and made without prejudice, it undoubtedly represented a significant commitment on behalf of the parties to the negotiations, one that was designed to maintain momentum. The fact that it was signed by interim negotiators does not diminish its significance. All iwi had agreed that progress could be made in advance of achieving a formal mandate, and interim negotiators developed the collective position on the redress they would seek on this basis. We have seen no evidence that the interim negotiators for Ngāti Rāhiri Tumutumu disagreed with, misunderstood, or objected to the process or the proposed redress set out in the Framework Agreement, prior to or at the time they signed it in October 2010. Collective negotiations commenced and substantial momentum was achieved following execution of the Framework Agreement. It is also relevant to note that while the Framework Agreement expressly reserved to the Crown and to each iwi of the Collective the right to withdraw, we were advised at hearing that to date no party has exercised that right.<sup>9</sup> This suggests that that the parties were able to cement cornerstone agreements to the range of redress available, from which subsequent negotiations could proceed.

All parties rightly acknowledge that the significant change in the Crown's position on the extent of redress for Te Aroha and Moehau maunga came about due to the strength

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9. Transcript 4.1, p147

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of the collective approach.<sup>10</sup> This stemmed from the position adopted in the Framework Agreement, which noted that the Collective sought transfer to itself of the Crown owned parts of the maunga on the grounds that the maunga have always been fundamental to the identity of all Hauraki iwi.<sup>11</sup> We agree with Crown counsel that this position represented an acknowledgement by the collective iwi that certain types of redress would be too hard for individual iwi to achieve on their own and that a collective approach would result in a more significant offer from the Crown. The Hauraki iwi, as Crown counsel also noted, appear to have decided to ‘front foot’ overlapping and shared interests and to negotiate those difficult redress issues as a collective, thereby achieving a more significant outcome for all.<sup>12</sup> It is notable that this was one of the first collective decisions reached by the iwi, who were at that time focussed on moving beyond the disagreements that had previously divided them. The position they developed on redress for Te Aroha and Moehau maunga was therefore not just designed to provide recognition for the interests of all Hauraki iwi according to their agreed tikanga, but was also made in recognition of the circumstances of the negotiations, particularly the need for momentum that could be gained from early agreements on key items of redress.

**3.1.4 Collective redress on Te Aroha maunga**

Based on the position adopted by the iwi in the Framework Agreement in October 2010, the Crown and the Collective quickly arrived at an agreement about the extent of redress that would be available at Te Aroha and Moehau maunga. The Collective had sought return of all available Crown-owned land on both Te Aroha and Moehau from the tihi to the base, which amounted to some 7,900 hectares at Te Aroha. The Collective was then able to move the Crown from an original position where it was unwilling to make any offer of ownership to an initial offer of 250 hectares at Te Aroha, and finally to an offer of 1,000 hectares (with sole governance of the land, and receipt of the Kordia lease monies. As we understand it, this was the starting point. Once the Collective had secured the return of the maunga, there would be further negotiation over how iwi-specific interests were to be recognised and accommodated.

By early August, after the Crown made its written offer to the Collective, the negotiations turned to identifying the exact area of the 1,000 hectares. The boundary proposed at that time follows the contour lines down from the tihi encompassing all four sides of the maunga; on its western face, it follows the boundary of the conservation land above Te Aroha Township. There was one variation to the idea of following the contour lines down, which was made in order to avoid an area of land contaminated by old mining activities.

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10. Document E12, p 3–4; transcript 4.1, pp 194

11. Document D3(a), p 6

12. Paper 2.130, p 12

Through this process the proposed area of 1,000 hectares on Te Aroha was identified well in advance of any iwi-specific negotiations with Ngāti Rāhiri Tumutumu over their redress aspirations on Te Aroha.<sup>13</sup>

### 3.1.5 Ngāti Rāhiri Tumutumu opposition

Ngāti Rāhiri Tumutumu began expressing concern about how a Collective vesting would work about six months after the execution of the Framework Agreement. This subsequently became direct opposition. Concerns were raised initially by one of the interim negotiators, Jill Taylor, in late March 2011. Ms Taylor raised questions with the Collective about how the redress aspirations of Ngāti Rāhiri Tumutumu would be reconciled with what the Collective sought, given that they sought 'the maunga in its entirety as well as the summit'. She also queried how the protection and return of wāhi tapu sites as iwi-specific cultural redress would be dealt with and whether that would mean the area returned to the Collective would be less the iwi-specific sites.<sup>14</sup>

Subsequent communications to both the Collective and the Crown in July and August 2011 recorded express opposition to the proposal to vest 1,000 hectares of Te Aroha maunga in the Collective.<sup>15</sup> This change appears to have been precipitated by the completion of the mandating process, which saw the interim negotiator who continued to support the Collective position replaced. From this time more concerted opposition was expressed. The change also appears to reflect growing frustration at the lack of information and responses to questions about how their iwi-specific objections were to be addressed.

The basis for the opposition of Ngāti Rāhiri Tumutumu to a vesting in the Collective has however been at times unclear. In oral evidence their mandated negotiators told us that they had not opposed the idea of a collective vesting per se, but rather that their opposition only came out of frustration that their iwi-specific redress aspirations for an exclusive vesting had not been accorded priority in the negotiations.<sup>16</sup> During their direct negotiations with the Crown in 2013, however, the Ngāti Rāhiri Tumutumu negotiators signalled that they opposed the vesting of the area that had been identified for return to the Collective on the grounds that Ngāti Rāhiri Tumutumu is the only iwi with mana whenua interests in the maunga and the only iwi whose kaitiaki status had been recognised by the Waitangi Tribunal (in the *Hauraki Report*).<sup>17</sup> Some months later, in July 2013, Ngāti Rāhiri Tumutumu

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13. Nicola Scott said iwi specific negotiations began in February 2013: doc E10, para 7. Mr Dreaver said that iwi specific negotiations in Hauraki began 'in earnest' after a May 2012 visit from the Minister for Treaty of Waitangi Negotiations, while negotiations with Ngāti Rāhiri Tumutumu became 'more intensive' from February to June 2013: doc E6, pp 11–12.

14. Document D1(c), p 1

15. Ibid, pp 7, 13, 16, 23; doc E2, pp 799–800

16. Transcript 4.1, pp 107, 109

17. Document D1(c), p 72

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negotiators proposed a compromise by which they would receive a fee simple vesting of 250 hectares within the proposed Hauraki Collective area on the western face of maunga Te Aroha (see map 2).<sup>18</sup>

**3.1.6 Some issues with the process**

Nonetheless, standing back, it does seem to us that the Crown should have done more at the time Ngāti Rāhiri Tumutumu negotiators first raised direct opposition to the prospect of a collective vesting on Te Aroha. The chief Crown negotiator, Michael Dreaver, appeared surprised by this turn of events in July 2011, and he noted the need to add a clause ‘so that the tension is clear and we know we have to address that.’<sup>19</sup> No clause was in fact added to the AIPÉ but more importantly we see little evidence of contemporaneous effort to address the tension. The assumption appears to have been that it would be addressed during iwi-specific negotiations and/or should be first addressed within the Collective.

The fact that the Framework Agreement and the AIPÉs were light on detail as to how such a conflict would be addressed and resolved compounded the problem and may have contributed to what appears to be a rapid polarisation of positions within the Collective. Similarly, for Ngāti Rāhiri Tumutumu nothing like ‘parallel’ iwi-specific negotiations occurred. This was no doubt a factor in the positions they adopted against the collective redress on Te Aroha. Once again, lack of clear guidance in the negotiation documents about how tensions between collective and iwi-specific redress were to be addressed has proved problematic. We think it became an aggravating feature in this case because of the size of the Collective and the fact that so much depended upon the availability of Mr Dreaver, who was carrying a heavy load across this and the Tāmaki negotiations.

It is also unclear to us whether the mandate process carried out after execution of the Framework Agreement was in accord with clause 64 of the Framework Agreement.<sup>20</sup> Did all iwi in the Collective (including Ngāti Rāhiri Tumutumu) undertake a mandating process that not only appointed the mandated iwi negotiators but also mandated the Hauraki Collective to negotiate Hauraki Collective redress? Execution by all iwi of the AIPÉ documents a short time later would suggest that this must be so.<sup>21</sup> It is the fact that this is not clear that raises a question.

It is relevant to note at this point that the OTS official guide to negotiations (the so-called *Red Book*) has been well and truly overtaken by the negotiation processes adopted in

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18. Document E2, pp 1560–1569

19. Document D1(c), p 7

20. Document D3(a), p 12

21. Document E5, pp 9–10



Tāmaki and Hauraki.<sup>22</sup> We note that a number of other Tribunals have recommended that the Red Book be updated to reflect current practice.<sup>23</sup> This application again highlights the need.

### 3.1.7 Was the process unfair?

The position adopted by Ngāti Rāhiri Tumutumu during the period in which the 1,000-hectare area was developed and offered to the Collective ran counter to the agreements reached between the members of the Collective in preceding months, in which Ngāti Rāhiri Tumutumu had been a willing and knowledgeable participant. Counsel for Ngāti Rāhiri Tumutumu submit that in developing and entering into the Framework Agreement, the interim negotiators did not give up any rights to seek the return of the fee simple in iwi-specific negotiations.<sup>24</sup> Counsel argued that if the Tribunal accepts that Ngāti Rāhiri Tumutumu 'should have understood that iwi-specific redress could be subject to collective approval', then the Crown must 'ensure that iwi-specific redress was carefully assessed and integrated' with any offer to the Collective. In counsel's submission this responsibility stems from the fact that 'there could be no "stepping back" once an offer to the Collective had been made', as the Crown itself acknowledged.<sup>25</sup>

The Framework Agreement did not require Ngāti Rāhiri Tumutumu to surrender the right to seek the exclusive return of the fee simple of the mountain. It was however a negotiation position freely adopted that was likely to impact upon prospects for realisation of that objective. Nor do we think that by entering the Framework Agreement, the redress allocated to Ngāti Rāhiri Tumutumu thereby became subject to collective approval. That is to overstate the effect of the Framework Agreement and the steps that follow: Ngāti Rāhiri Tumutumu were in fact free to object to the offer of 1,000 hectares to the Collective and to assert their aspirations to have Crown-owned land at the maunga returned to them – a position that was recorded in their AIPÉ in July 2011. The fact that the Crown and other members of the Collective would not agree to change the redress offered to the Collective does not necessarily signify a process by which Ngāti Rāhiri Tumutumu's entitlement to a fair opportunity to negotiate iwi-specific redress has been arbitrarily overridden by the power of the Collective.

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22. Office of Treaty Settlements, *Ka Tika ā Muri, Ka Tika ā Mua: He Tohutohu Whakamārama i ngā Whakataunga Kerēme e pā ana ki Te Tiriti o Waitangi me ngā Whakaritenga ki Te Karauna – Healing the Past, Building a Future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, 2nd ed (Wellington: Office of Treaty Settlements, 2002)

23. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, pp 86, 108–111; Waitangi Tribunal, *The East Coast Settlement Report*, pp 55–58, 66–67

24. Paper 2.135, para 23

25. *Ibid*, para 25

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To the extent that the Crown (through the AIPES) created a mechanism for individual iwi to express redress aspirations that were different from those of the Collective, it did not guarantee a process through which those aspirations would be realised through negotiations. For this reason, the AIPES cannot be construed as a commitment that Ngāti Rāhiri Tumutumu redress aspirations in Te Aroha maunga would be resolved as of right, particularly if they impinged on positions that had been formed at the Collective table. The consequence is that it was for Ngāti Rāhiri Tumutumu to raise and resolve their differences at the Collective table, not with the Crown. They did so from the end of March 2011, as the Collective and the Crown began to arrive at an agreed position on redress. However, the agreement reached at the Collective table – a compromise for many at the table – was that redress in Te Aroha and Moehau maunga would be held collectively, from which individual iwi aspirations would be accommodated. This was a position the iwi had reached during the course of 2010. It did not change as the Crown began to concede more ground.

The simple fact is that the redress aspirations developed by Ngāti Rāhiri Tumutumu negotiators during this period would never have been agreed to by all Hauraki iwi, no matter what process was put in place. It follows that the Crown would have never made the type and extent of redress available that it did had the path proposed by Ngāti Rāhiri Tumutumu been pursued. In the context in which the negotiations commenced, all iwi came to agree that a vesting in the Collective was the most appropriate way to secure a return of the maunga to iwi, and to provide momentum for further negotiations. In light of the significance of Moehau and Te Aroha to all iwi of Hauraki the Crown would have invited immediate challenge had it proposed a fee simple return of any significant area of land on those maunga to one iwi. Given the shared significance of these maunga a collective approach was realistically the only way in which such substantial redress could be negotiated in such a timely way. In light of the nature of the difference that emerged between the redress aspirations of Ngāti Rāhiri Tumutumu and that of the Collective, we do not think it is the kind of situation where the Crown was required, as claimant counsel argues, 'to ensure that iwi specific redress was carefully assessed and integrated with any' intended offer to the Collective.<sup>26</sup> Such assessment and integration was not possible given the nature of the difference.

We acknowledge the potential for prejudice if the matters complained of centred upon particular sites within the 1,000-hectare area which were or may have been compromised by the way the Crown went about its offer to the Collective. However, the evidence does not show a focus on specific sites within the Collective vesting. Ngāti Rāhiri Tumutumu were instead seeking all of the Collective vesting area, and in the alternative a substantial portion of the western face (see map 2). We note in particular that the Ngāti Rāhiri Tumutumu 'sites of significance' document that we were provided with at the hearing appears to show one

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26. Paper 2.135, para 25

wāhi tapu and possibly one other specific site within the 1,000-hectare area or on the western face of the maunga (aside from the tihi).<sup>27</sup> We accept that it can and should be possible to negotiate iwi-specific recognition and protection of such sites within the context of a collective vesting, but again note the lack of clarity around process and the respective roles of the Hauraki Collective and the Crown.

It is notable that the Ngāti Rāhiri Tumutumu historical account presented to OTS for review records the maunga as ‘very sacred’ to Ngāti Rāhiri Tumutumu and all the tribes of Hauraki.<sup>28</sup> This was the position put to us at the hearing by other iwi of the Collective.

### 3.1.8 Redress on Te Aroha for Ngāti Rāhiri Tumutumu

The Crown has in fact responded to the position of Ngāti Rāhiri Tumutumu in the course of iwi-specific negotiations by withdrawing approximately 180 hectares of Crown-owned Council-administered reserves that had initially been proposed as potential Collective redress. These are located on the lower slopes of Te Aroha maunga, just below the 1,000-hectare area.<sup>29</sup> We are told the Crown proposes to offer these to Ngāti Rāhiri Tumutumu as iwi-specific redress.<sup>30</sup> In addition, prior to the commencement of these proceedings, the Crown had also offered to explore with Ngāti Rāhiri Tumutumu the possibility of a further vesting of up to 250 hectares of conservation land outside of the 1,000-hectare area.<sup>31</sup> This would potentially enable Ngāti Rāhiri Tumutumu to pursue return of particular sites within the conservation area that are of significance and that they wish to have returned. Unfortunately it appears that the focus on a fee simple return of the collective vesting area and the fact of these proceedings has stalled negotiations over these items of additional redress.

### 3.1.9 Exclusive interests?

At the heart of the Ngāti Rāhiri Tumutumu claim is the concern that the Crown’s offer to the Collective has forestalled or prevented their ability to secure the return of fee simple over all or some of the area earmarked for return to the Collective. The assumption underlying this is the belief that only the return of fee simple ownership would be sufficient to remedy the past loss of the maunga and to recognise and restore Ngāti Rāhiri Tumutumu’s mana whenua and kaitiaki status over it. Those assumptions are contested by a number of other iwi in the Collective who claim comparable interests. A failure to reach agreement with the Crown over the redress they have sought does not automatically imply bad faith on behalf

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27. Document E6(a), p13

28. Document E2, p1156

29. Document E6, p13

30. Paper 2.130, p30

31. Ibid

of the Crown. On the evidence before us we are not convinced that the Crown's refusal to agree has come about because the process has been unfair to Ngāti Rāhiri Tumutumu.

We are not without sympathy for the situation faced by Ngāti Rāhiri Tumutumu. They are a small iwi, with significant interests in Te Aroha maunga, seeking to secure appropriate redress for their long-held Treaty grievances alongside their kin around the negotiating table. However, we have not been convinced that the Crown's refusal to abandon its offer to the Collective has arisen out of a failure of process that amounts to a breach of Treaty principles. There is a more straightforward explanation: there was support from all iwi, including Ngāti Rāhiri Tumutumu, to the idea of a transfer of Crown-owned lands on Te Aroha to the Collective based on a mutual recognition of their shared interests and a need to advance the negotiations. Similarly, we have seen no evidence to support the view that the process adopted reserved or contemplated primacy for iwi-specific interests to the extent that they might clash with the collective redress negotiated with the Crown. As we see it, Ngāti Rāhiri Tumutumu accepted the collective approach at the outset and have benefited from it. While Ngāti Rāhiri Tumutumu negotiators may have cause to feel frustrated at delays and difficulties achieving engagement on the Ngāti Rāhiri Tumutumu iwi-specific matters, we do not see substantive unfairness in the process by which the 1,000 hectares on Te Aroha maunga came to be offered to the Collective.

### 3.2 FINAL REMARKS: WHERE TO FROM HERE?

Having carefully considered the evidence we have come to the conclusion that there is no breach of Treaty principles on the part of the Crown in this case. Accordingly, that brings our inquiry function to an end. Jurisdiction to make recommendations does not arise.

We are nonetheless left with considerable unease about the implications of the imminent settlement for Ngāti Rāhiri Tumutumu. We offer the following observations and suggestions in the hope that they may assist all parties. An unfortunate side effect of this application has been that Ngāti Rāhiri Tumutumu have remained outside negotiations at a critical time when the collective redress is being finalised and preparations are well underway for initialling deeds of settlement with most (if not all) other iwi of the Collective.

We understand that as matters currently stand Ngāti Rāhiri Tumutumu would still be entitled to receive the benefits of collective redress, but their iwi-specific negotiations will be delayed, most likely until next year. Of immediate concern is the fact that collective redress over Te Aroha may be concluded in circumstances where it remains unclear how and when Ngāti Rāhiri Tumutumu's redress will be negotiated, over this, their core claim. We understand the argument that to the extent prejudice may arise as a result of delays associated with this application, it should fall upon Ngāti Rāhiri Tumutumu, rather than the other iwi of the collective who have been working hard and in good faith to achieve final settlement

of their historical grievances. We do not however think that is a sufficient answer. Hard though it may be, the Treaty relationship requires more.

We consider that Mr Dreaver and the OTS team supporting him have successfully maintained momentum and delivered significant redress to the iwi of Tāmaki and Hauraki. The progress achieved is a credit to the Crown and the iwi involved.

Nonetheless, resolving the tension between collective and iwi-specific redress was always likely to be one of the more significant challenges arising from the innovative approach to settlement negotiation in Tāmaki and Hauraki that was introduced by Sir Douglas Graham and implemented by Mr Dreaver and his team.

On 7 May 2013, Mr Dreaver sent by email a list of ideas about how the Ngāti Rāhiri Tumutumu interests on Te Aroha might be given what he described as ‘special place in Hauraki Collective Treaty settlement management arrangements for Te Aroha.’ He went on to list the following ideas which he suggested the Ngāti Rāhiri Tumutumu negotiators ought to raise with the Collective:

- ▶ establishment of a subcommittee of the Hauraki Iwi Authority responsible for the management of Te Aroha maunga;
- ▶ provision of a dedicated seat for Ngāti Rāhiri Tumutumu on that Te Aroha management committee;
- ▶ express recognition of the Ngāti Rāhiri Tumutumu kaitiaki status in the settlement legislation;
- ▶ express recognition of the Ngāti Rāhiri Tumutumu kaitiaki status in the reserve (or other) status of Te Aroha;
- ▶ recognition by Crown of a set of Ngāti Rāhiri Tumutumu values for Te Aroha (achieved through an Overlay Reserve over Crown owned land but with the statement of values having wider focus);
- ▶ a requirement that the functioning of the Te Aroha management committee provides appropriately for the Ngāti Rāhiri Tumutumu interest;
- ▶ a requirement that any management plan developed for Te Aroha provide expressly for the Ngāti Rāhiri Tumutumu interest; and
- ▶ specific deed provisions around Ngāti Rāhiri Tumutumu input into management of Te Aroha and access to customary activities.<sup>32</sup>

Regrettably, that discussion did not take place and further discussion between the Ngāti Rāhiri Tumutumu negotiators and the Crown did not occur because on the day that email was sent Ngāti Rāhiri Tumutumu instructed their legal counsel to commence this application.

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32. Document D1(c), p78

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3.2

Mr Bennion annexed to his closing submissions an email dated 14 June 2013 from Mr Dreaver to the chair of the Hauraki Collective (Mr Majurey). In that email, Mr Dreaver records that at a recent Collective meeting there was support from 11 of the 12 iwi for the collective vesting of 1,000 hectares at Moehau and Te Aroha. Mr Dreaver notes that for some of the 11 iwi this support was conditional upon the Crown committing to explore how to recognise iwi-specific interests within collective vestings and iwi-specific interests (including vestings) outside the collective vesting area. All 12 iwi supported such recognition and Mr Dreaver confirmed that the Crown intends to pursue how to recognise iwi-specific interests both within and outside collective vestings. Mr Dreaver confirms the Crown's intention that the 1,000-hectare area on each maunga is to be transferred to the Collective subject to any negotiated iwi-specific arrangements. He concludes noting that the Crown intends to honour requests for the recording of any names on the certificate of title for collectively vested lands.<sup>33</sup>

The importance of that kaupapa for Ngāti Rāhiri Tumutumu, and indeed for all iwi of Hauraki, is such that the frustrations that led to this application and those arising because of it must be set aside. The absence of Ngāti Rāhiri Tumutumu from the discussions described by Mr Dreaver is problematic given their particular association with Te Aroha. For their part, the Ngāti Rāhiri Tumutumu negotiators must face up to the fact that appropriate recognition of the Ngāti Rāhiri Tumutumu relationship with Te Aroha maunga is not mutually inconsistent with recognition of the interests they share with other iwi of the Collective. Neither is it a straightforward adjunct to legal title. Ngāti Rāhiri Tumutumu must turn and face their whanaunga in the Collective and work with them to see that the appropriate balances are struck. The Collective too must reconcile with Ngāti Rāhiri Tumutumu and recognise that the burden of history weighs heavily on all who sit at the table.

The place for Ngāti Rāhiri Tumutumu to further explore recognition of its particular interests and its kaitiaki role in the Collective vesting area, lies primarily within the Collective as it develops the detail of the governance arrangements that are to apply post-transfer. We see this as a discussion that ought to be resolved by tikanga and then (as needed) implemented by appropriate legal instruments.

Nonetheless, given what we understand to be the strained relationships within the Collective and the relatively limited time before settlement, we think the parties will require assistance. We acknowledge Mr Bennion's suggestion of a panel of independent tikanga experts, but are of the view that an enduring solution requires agreement amongst the iwi themselves. We do not think this is a matter that can or should be determined by the Tribunal, a Court, or independent experts (assuming they could be found).

An independent facilitator or mediator may, however, assist the parties to focus on the core issues in a timely way.

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33. Paper 2.135(b)

In this regard, while we understand the basis for Mr Dreaver's opinion that resolution of iwi-specific interests on Te Aroha is primarily a matter for the iwi of the Collective, without the 'safety net' of Crown involvement, it seems to us that further assistance from the Crown is likely to be necessary. This will certainly be the case if, for example, the ideas proposed by Mr Dreaver (as set out above) are to be taken further.

The Tāmaki Tribunal highlighted the importance of cultural redress because it 'serves the vitally important function of recognising the tangata whenua status of mandated groups' and 'their special relationship with features of the natural landscape of their area'. The Tāmaki Tribunal stressed that 'it is vitally important that cultural redress not be deployed in a manner contrary to tikanga Māori'.<sup>34</sup> We can only agree. We therefore encourage the Crown to do all it reasonably can to assist the iwi of the Collective to conclude arrangements for recognition of iwi-specific interests on Te Aroha. This could include 'in principle' agreements or a combination of agreed commitments and agreed processes by which outstanding matters are to be addressed. We suggest immediate focus on this before execution or initialling of deeds of settlement in order to ensure that the settlement itself does not diminish the incentive for iwi to devise a durable solution or compromise their ability to do so.

We also feel compelled to point out that the pending settlement should be recognised as a major turning point for both Ngāti Rāhiri Tumutumu and the other iwi of the Collective. Combined, they have negotiated offers for the return of close to 1,500 hectares on Te Aroha. That is a major achievement and opens up real opportunity for all the iwi to restore and enhance their relationship with their tūpuna maunga. There can and should be opportunities for collaboration over governance of the collectively owned parts of Te Aroha and those areas that are to be returned as iwi-specific redress to Ngāti Rāhiri Tumutumu.

In concluding, we turn to the following whakataukī as a guide for Ngāti Rāhiri Tumutumu, the Hauraki Collective and the Crown in navigating through to settlement: 'Kaua e rangiruatia te hāpai o te hoe; e kore tō tātou waka e ū ki uta – *Do not lift the paddle out of unison or our canoe will never reach the shore.*'

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34. Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report*, pp104–105





Dated at Wellington this 13th day of June 2014



Judge Michael Doogan, presiding officer



Dr Rawinia Higgins, member



Professor Sir Hirini Mead KNZM, member





APPENDIX I

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(b) Amendment to claim 1.1, 18 February 2000

**2. Papers in proceedings**

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2.2 Notice of claim, 21 March 1997

2.3 Memorandum registering amendment to claim, 18 December 1997

2.4 Notice of amendment to claim, 19 December 1997

2.5 Memorandum concerning consolidation or aggregation of Wai 686 and withdrawing claims Wai 110, Wai 148, Wai 174, Wai 177, Wai 285, Wai 289, Wai 326, Wai 355, Wai 369, Wai 373, Wai 418, Wai 464, Wai 475, Wai 563, Wai 661, Wai 663, Wai 693, and Wai 694 from Wai 406, 20 January 1998

2.6 Memorandum appointing Dame Augusta Wallace presiding officer to Hauraki claims, 3 April 1998

2.7 Memorandum constituting Tribunal for Hauraki claims, 22 May 1998

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- 2.21 Counsel for Wai 148, Wai 174, Wai 285, Wai 418, Wai 464, Wai 661, and Wai 663, memorandum concerning technical witnesses intended to be called for hearings, 26 April 1999
  
- 2.22 Memorandum releasing Dion Tuuta's report 'Te Aroha Gold Fields Township, 1875–1925' (doc A1), 15 April 1999
  
- 2.23 Notice of seventh Hauraki hearing on 21–25 June 1999, 31 May 1999
  
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- 2.26 Notice of eighth Hauraki hearing on 2–6 August 1999, 12 July 1999
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- 2.34 Counsel for Wai 100 and others, memorandum concerning closing submissions, 2 September 2002
- 2.35 Counsel for Wai 100 and others, memorandum concerning Tribunal's jurisdiction to hear Waikato claims to Maramarua, 5 November 2002
- 2.36 Memorandum directing consolidation or aggregation of claims, 28 February 2004
- 2.37 Tom Bennion, memorandum applying for urgent remedies hearing, 14 October 2013
- 2.38 Tom Bennion, memorandum supporting application for urgent remedies hearing, 14 October 2013
- (a) *Mason-Riseborough v Matamata–Piako District Council* [1998] 4 ELRNZ 31
- 2.39 Chief Judge Wilson Isaac, memorandum directing Crown and interested parties to file submissions in response to application for urgent remedies hearing, 14 October 2013
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- 2.46 Charl Hirschfeld (Wai 686), memorandum concerning the application for urgent remedies hearing, 29 October 2013
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- 2.48 Paul Majurey (Wai 686), memorandum concerning application for urgent remedies hearing and recusal, 30 October 2013
- 2.49 J McEnteer (Wai 686), memorandum concerning application for urgent remedies hearing and recusal, Friday 1 November 2013, 30 October 2013
- 2.50 Judge Michael Doogan, memorandum granting the leave sought by Paul Majurey (Wai 686) and J McEnteer (Wai 686) to file their memoranda late and to file submissions in response by midday, Friday 1 November 2013, 30 October 2013
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**2.63** Tom Bennion (Wai 663) counsel for applicant, outline of submissions for pre hearing judicial conference, 4 December 2013

**2.64** Tom Bennion (Wai 663) counsel for applicant, Ngāti Rāhiri Tumutumu sites of significance 2011, maps, 4 December 2013

**2.65** A Williams (Wai 686) annotated notes of A Williams inserted and underlined in to original submissions in reply of Tom Bennion (paper 2,59), 4 December 2013

**2.66** Judge Michael Doogan, memorandum concerning proposed mediation, 5 December 2013

**2.67** Tom Bennion (Wai 663), memorandum concerning without prejudice discussion, 9 December 1

**2.68** Jason Gough and M Gaudin (Crown), memorandum in response to mediation proposal, 9 December 2013

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**2.71** Judge Michael Doogan, memorandum concerning facilitated discussions, 18 December 2013

**2.72** Charl Hirschfeld (Wai 686, Wai 663), memorandum indicating that Ngāti Hako wish to participate in facilitated discussions, 23 December 2013

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- 2.78** Tom Bennion (Wai 663) for Ngāti Rāhiri Tumutumu seeking decision on request for urgent hearing, 17 February 2014
- 2.79** Judge Michael Doogan, memorandum advising of conclusion of facilitated discussions and seeking responses to questions, 21 February 2014, 18 February 2014
- 2.80** Jason Gough (Crown), memorandum responding to paper 2.79, 19 February 2014
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- 2.83** Jason Gough (Crown), memorandum opposing Ngāti Rāhiri Tumutumu's application for leave to file affidavit (paper 2.81), 25 February 2014
- 2.84** Tom Bennion (Wai 663), memorandum concerning urgency application, 25 February 2014
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- 2.90** Jason Gough and M Gaudin (Crown), memorandum concerning the tribunal decision of 7 March 2014 (paper 2.87) and advising of the Crown's intended next steps in relation to the Hauraki Collective Settlement, 14 March 2014
- 2.91** Paul Majurey (Wai 686), memorandum concerning substance and process and other matters, 17 March 2014
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- 2.95** Jason Gough and M Gaudin (Crown) responding to paper 2.94, 25 March 2014
- 2.96** Judge Michael Doogan, memorandum appointing Rawinia Higgins and Sir Hirini Mead members of Wai 663 panel, 27 March 2014
- 2.97** Paul Majurey (Wai 686), memorandum concerning the clarification of several matters by the tribunal, 25 March 2014
- 2.98** Tom Bennion (Wai 663), memorandum responding to paper 2.95 and concerning hearing dates, 26 March 2014
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- 2.113** Paul Majurey (Wai 686) for Ngāti Maru, memorandum concerning hearing related issues of hearing date and summons, 27 April 2014
- 2.114** J McEnteer (Wai 686) for Ngāti Tamaterā, memorandum supporting paper 2.113, 27 April 2014
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- 2.116** Tom Bennion (Wai 663), memorandum concerning timetabling and discovery issues, and requesting extension to file late openings and further briefs of evidence, 30 April 2014
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- 2.118** Tom Bennion (Wai 663), memorandum requesting leave to cross examine witnesses Webber and Michael Dreaver, 1 May 2014, 2 May 2014
- 2.119** Jason Gough and M Gaudin (Crown), memorandum concerning cross examination, further discovery requested, and confidentiality of Briefs of Evidence, 2 May 2014
- 2.120** Tom Bennion (Wai 663), opening submissions for Ngāti Rāhiri Tumutumu, 2 May 2014
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- (b) Appendix: Claimant chronology of non-confidential Crown documents, 7 May 2014
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- 2.121** J McEnteer (Ngāti Tamaterā mandated negotiator), memorandum concerning evidence of L Ngamane, 5 May 2014
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- 2.133** A Williams (Wai 686) Ngāti Tara Tokanui, closing submissions, 15 May 2014
- 2.134** Judge Michael Doogan, memorandum directing concerning the draft transcript and granting leave for parties to file submissions solely on editorial amendments by midday, Thursday 22 May 2014, 15 May 2014
- 2.135** Tom Bennion / L Black (Wai 663) Ngāti Rāhiri Tumutumu, closing submissions, 20 May 2014
- (a) Attachment A: Te Aroha Western Reserves Map – Archives MA 13-86-1, 20 May 2014
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**2.137** Paul Majurey (Wai 686) for Ngāti Maru, memorandum concerning misrepresentation of the Ngāti Maru submission, 27 May 2014

**2.138** Jason Gough and M Gaudin (Crown), memorandum responding to paper 2.136, concerning clarification on a number of documents, 27 May 2014

**2.139** Judge Michael Doogan, memorandum concerning paper 2.138, 3 June 2014

**3. Research commissions**

**3.1** Memorandum commissioning Dion Tuuta to prepare research report concerning Te Aroha lands, 22 April 1998

**4. Transcripts**

**4.1** Crown Law Office, transcript of 7-8 May 2014 hearing, 10 June 2014

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\* Document confidential and unavailable to public without order of Tribunal

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**A Documents received up to first Hauraki hearing**

**A1** Dion Tuuta, 'Te Aroha Gold Fields Township, 1875-1925' (commissioned research report, Wellington: Waitangi Tribunal, 1998)

**A2** Dion Tuuta, brief of evidence concerning Te Aroha gold fields township, November 1999

**A3** Wai 663 counsel, opening submissions concerning Ngāti Rāhiri Tumutumu, 8 December 1999

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**B1** Closing submissions on behalf of Ngāti Rāhiri Tumutumu – the Wai 663 claims,  
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**C Documents received up to end of twenty-seventh Hauraki hearing (22 November 2002)**

**C1** Submissions on behalf of Wai 100, Wai 96, Wai 148, Wai 174, Wai 285, Wai 373, Wai 418,  
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**D Documents received from October 2013**

**D1** J Taylor and N Scott, affidavit supporting application for urgent remedies hearing,  
14 October 2013 (filed by Tom Bennion)

(a) Exhibit A: Tom Bennion, letter to Michael Dreaver, chief Crown negotiator, 22 May  
2013

(b) Exhibit B: N Scott and J Taylor, letter to Chris Finlayson, 23 August 2013

(c)\* Indexed bundle of documents (CB – Hauraki Collective), 1 May 2014

**D2** Amelia Williams, affidavit opposing application for urgent remedies hearing,  
25 October 2013

**D3** Michael Dreaver, affidavit, 1 November 2013

(a) Exhibit A: Hauraki Collective and Crown, Framework Agreement, 1 October 2010

(b) Exhibit B: Ngāti Rāhiri Tumutumu and Crown, agreement in principle equivalent, July  
2011

**E Documents received after April 2014**

**E1** Vacated

THE TE AROHA MAUNGA SETTLEMENT PROCESS REPORT

**App1**

- E2\*** Indexed Crown bundle of documents (CB – Hauraki Collective Iwi), 24 April 2014
- E3\*** Indexed Crown bundle of documents (CCB – Ngāti Rāhiri Tumutumu), 24 April 2014
- E4\*** Supplementary indexed Crown bundle of documents (CB – Hauraki Collective), 29 April 2014
- E5\*** G Webber, brief of evidence (Crown), 29 April 2014
- E6\*** Michael Dreaver, brief of evidence (Crown), 29 April 2014
- (a)\*** P and S Barker, email to J Doig with accompanying Ngāti Rāhiri Tumutumu sites of significance sheets, 19 September 2012
- (b)** NRTT identified matters missing from the original Crown bundles related to Michael Dreaver emails, 8 May 2014
- (c)** Sir Douglas Graham, report to Minister for Treaty of Waitangi Negotiations and to iwi and hapū of the Kaipara, Tāmaki Makaurau, and the Coromandel, 24 June 2009
- E7\*** Supplementary indexed Crown bundle of documents (CCB – Ngāti Rāhiri Tumutumu), 29 April 2014
- E8** J Taylor, brief of evidence, 1 May 2014
- (a)** Attachment A: Hauraki Collective hui summary, 1 May 2014
- (b)** Attachment B: Hauraki: milestones and phases, 1 May 2014
- E9** M Turner, brief of evidence, 1 May 2014
- E10** N Scott, brief of evidence, 1–2 May 2014
- E11** C Piper, brief of evidence in response to summonses, 2 May 2014
- E12** L Ngamane, brief of evidence, 5 May 2014
- (a)** Appendixes 1 and 2 and three maps, 5 May 2014

GLOSSARY

*aroha* love, yearning, compassion

*hapū* sub-tribe, clan

*iwi* tribe

*kaitiaki* guardian, trustee

*kaitiakitanga* guardianship

*maunga* mountain

*mana whenua* customary rights and authority over land and taonga

*tīhi* summit or peak

*tikanga* custom

*tupuna, tūpuna* ancestor, ancestors

*urupā* burial ground

*wāhi tapu* sacred sites

*waka* canoe

*whanaunanga* family, kin

*whanaungatanga* kinship, relationship, family connection

*whakapapa* genealogy, lineage

