

CHAPTER 3

THE CASES OF THE CLAIMANTS

3.1 INTRODUCTION

A number of claimant groups were represented at the hearing, all of which argued that the reconfirmation process was flawed. The criticisms of the reconfirmation process fell into three broad categories. First, general submissions were made by claimants challenging the legitimacy of the reconfirmation process as a whole, including criticisms of the consultation, the conduct of the reconfirmation hui themselves, and the failure to address accountability rules. Secondly, there were specific criticisms from certain iwi/hapu that the Crown and executive council had failed to recognise their resolutions to withdraw from the kaihautu. Thirdly, Ngati Makino and Waitaha argued that the Crown had failed to respond adequately to the Tribunal's suggestions that it negotiate contemporaneously with Ngati Makino, and afford priority status to Waitaha.

In this section, we run through the arguments of each claimant group in the order they appeared before us, beginning with the taumata. As much as possible we have tried not to repeat similar arguments made by different groups.

3.2 TE ARAWA TAUMATA

The taumata was the lead claimant in the inquiry. It was the taumata's request for resumption which was accepted by the Tribunal, and the taumata's submissions addressed the reconfirmation process as a whole.

Counsel for the taumata, Mr Taylor, opened his submissions by emphasising that the taumata's claim was focused not on the actions of the executive council, but on those of the Crown. He argued that the Crown had failed to discharge its duty to ensure that the reconfirmation process was implemented in an open, inclusive and robust manner. He repeated the Tribunal's August 2004 guidelines that the Crown must 'scrutinise actively every stage of the mandate process' and 'require the correction of errors and proper application of tikanga throughout the mandating process'.¹ He argued that this had not happened, and therefore that any flaws in the reconfirmation process were the responsibility of the Crown.

1. Paper 3.3.26, p3

3.2.1 Criticisms of the reconfirmation process

Mr Taylor then detailed what were, in his submission, the failures of the reconfirmation process:

- ▶ first, discussion, debate and consultation over the reconfirmation strategy had been inadequate, and the views of parties other than the executive council had not fairly and properly been made part of the debate;
- ▶ secondly, the ideas and support of the taumata had been marginalised in the process in spite of the support it enjoyed;
- ▶ thirdly, the Crown had focused on approving the executive council's reconfirmation strategy, rather than on the needs and interests of Te Arawa iwi/hapu;
- ▶ fourthly, the Crown had been driven by its desire to achieve a Te Arawa settlement within two years, rather than to ensure that the reconfirmation process was fair, robust and inclusive; and
- ▶ lastly, there were a number of other factors which further undermined the validity of the reconfirmation process, including the failure to address issues regarding Ngati Rangitihi and Ngati Whaoa, the failure to ensure that the reconfirmation document was circulated with sufficient notice prior to the regional hui, and the adoption of the four-region approach.²

The primary concern of the taumata, Mr Taylor argued, was that the reconfirmation process had been 'closed', and thus had not complied with the Tribunal's suggestion that the process must be open and robust. The views of the taumata had not been taken into consideration by the Crown and executive council, despite the taumata's willingness to engage in the reconfirmation process, its clear support among Te Arawa iwi/hapu, and the specific suggestion by the Tribunal that the executive council consult with the taumata.

Mr Taylor then responded to the Crown's counter argument that the taumata's views had been taken into account. He rejected the suggestion that the executive council had altered its reconfirmation strategy following consultation with the taumata. He pointed out the differences between the taumata's paper of 20 August and the executive council's 22 September reconfirmation document, with regard to composition and proportionality of the executive council.

Mr Taylor also argued that the Crown had failed to ensure that there was opportunity for groups to raise issues and alternative approaches at the regional reconfirmation hui. The executive council had given its own views priority over any others in the reconfirmation. First, the reconfirmation document circulated to kaihautu members presented the executive council strategy only. Secondly, at the regional reconfirmation hui, the reconfirmation document was formally tabled for discussion but competing perspectives, such as that of the taumata's, could be presented only from the floor. Thus, in counsel's submission, the executive council,

2. Paper 3.3.26, pp 4-5

in managing the reconfirmation process, had failed in its fiduciary duty to all of Te Arawa to provide all relevant information (including the perspectives of all groups in Te Arawa) to the kaihautu members in order for them to make informed decisions.

Mr Taylor then dealt with several of the taumata's specific concerns with the reconfirmation process. He argued that in their reports to the Ministers, OTS officials had deliberately omitted information about the taumata's paper of 20 August. Specifically, they left out the taumata's suggestion of a multi-stakeholder process incorporating the views of a number of groups into the reconfirmation strategy. The Ministers' endorsement of the executive council's reconfirmation strategy was, therefore, made without all relevant information.

Next, Mr Taylor argued that the reconfirmation process had been undertaken with undue haste, and that this seriously undermined its validity. According to Mr Taylor, kaihautu members had only seven days from the time they received the reconfirmation document in which to consult with their hapu, before voting at the reconfirmation hui.³

In his submission, the Crown should properly have adopted some strategy to ensure the continued participation of those groups which disagreed with the executive council process, such as dispute resolution or enforcing a slowing down of the process. Instead, counsel submitted, the Crown 'adopted a policy which simply cuts off those who do not agree with the Executive's take it or leave it approach'.⁴

Mr Taylor then referred to further criticisms of the reconfirmation process contained in the affidavit of taumata member, Pihopa Kingi. These criticisms related to the executive council's adoption of the four-region approach in the reconfirmation process. In his affidavit, Mr Kingi referred to the paper prepared by Ms Hall for presentation at the consultation hui of 9 and 14 September 2004.⁵ In the paper, Ms Hall had objected to the four-region approach on these grounds:

- ▶ that it diminished the power of larger hapu and concentrated power in certain smaller hapu;
- ▶ that the issue of the proportionality of the executive council affected all of Te Arawa and therefore could only be fairly and properly addressed by all hapu sitting together;
- ▶ that the four-region approach did not accord with Te Arawa tikanga, which has always seen decisions made by the confederation as a whole;
- ▶ that the decision to adopt the four-region approach was made by a small group of people in secret; and
- ▶ that the approach was based on a misapplication of historical research, and that this research was disputed in any case.⁶

3. Ibid, p5

4. Ibid, p15

5. Document c26

6. Document c26, attachment PK2

In his affidavit, Mr Kingi also argued that the executive council had failed to address a number of interrelated constitutional issues. These constitutional issues concerned the size and representivity of the kaihautu, and voting rules of the reconfirmation hui. Mr Kingi described the current proportionality of representatives on the kaihautu as ‘arbitrary’.⁷ He argued that because the proportionality of the kaihautu was itself imperfect, a simple majority of kaihautu members was not sufficient to make an important decision such as reconfirming the executive council mandate.

With respect to the size of the executive council, Mr Kingi argued that the executive council had underrated the importance of proportionality of representation, and was instead preoccupied with limiting its size to 21 members.⁸ A larger executive council would be necessary to appropriately reflect the proportionality of the different iwi/hapu of Te Arawa. Finally, in his affidavit, Mr Kingi argued that the executive council had failed to disclose to kaihautu members its commitment to withdrawing from the Waitangi Tribunal process in order to enter direct negotiations with the Crown.

Mr Taylor then submitted a reinterpretation of the voting results at the four regional reconfirmation hui, notwithstanding the taumata’s position that the reconfirmation process itself was fundamentally flawed.⁹ His reinterpretation was based on the premise that those kaihautu members who had resigned since the last hearing could be counted (hypothetically) as definite votes *against* the reconfirmation strategy. Using this approach, Mr Taylor concluded that barely 50 per cent voted in favour of the reconfirmation strategy. Adopting the same premise, Mr Taylor argued that approximately 45 per cent of the population of Te Arawa opposed the executive council mandate, the support of 15 per cent was contested by the taumata, and only 40 per cent of Te Arawa definitely supported the executive council.¹⁰ On the grounds of his reinterpretation of the reconfirmation hui, Mr Taylor submitted that support for the executive council within Te Arawa was marginal at best.¹¹

He argued that the Crown and executive council had together applied a double standard in requiring a higher ‘burden of proof’ of groups resolving to withdraw from the kaihautu than from those groups reconfirming their support for it:

The decision of Hapu representatives is sufficient for the ‘reconfirmation’ of the Executive Council, and alteration of the Executive Council’s proportionality, even where there is clearly not time to consult the Hapu membership, as in this reconfirmation process. Yet where, as with Ngati Rangiteaorere and other objecting Hapu, those Hapu representatives determine to withdraw from the Executive Council, that is not good enough.¹²

7. Document c26, p12

8. Ibid, p13

9. Paper 3.3.26, pp16–18

10. Ibid, p17

11. Ibid, p18

12. Ibid

In closing, Mr Taylor addressed the issue of cross claims which may arise from a settlement between the Crown and the executive council. He cited the Whakarewarewa village and geothermal area and the Whakapoungakau Ranges as examples of assets which were claimed by groups within and outside the executive council mandate. He argued that cross-claim issues:

will be a major concern now that there are two opposing Te Arawa groupings. As a matter of practicality, it is submitted, the only realistic way for the Crown to adequately inform itself [on cross-claim issues] is to ensure that there are mandated groups who can speak on behalf of these 'cross claimants'. This, it is submitted, is the only way to ensure that cross claim discussions are detailed, realistic, and properly identify the desires of cross claimant groups.¹³

He then made submissions in respect of the position of Ngati Rangiteaorere and Ngati Tuteniu. The taumata submitted that both Ngati Rangiteaorere and Ngati Tuteniu had resolved to withdraw from the kaihautu, and sought recommendations from the Tribunal, requiring either that the Crown must recognise the withdrawal of these iwi or that further hui-a-iwi must be held at which the iwi members may confirm their withdrawal.¹⁴

Mr Taylor then argued that, if the Crown would not negotiate with Te Arawa groups who were 'in the Tribunal process', then it should respect the unity of Te Arawa by 'refusing to negotiate with any part of the confederation for the short time that it will take to go through [the Tribunal CNI stage 1 inquiry process]'.¹⁵

3.2.2 Relief sought

Finally, by way of relief, counsel for the taumata sought the following findings and recommendations from the Tribunal:

- ▶ that the Crown withdraw the mandate from the executive council;
- ▶ that the withdrawals of Ngati Rangiteaorere and Ngati Tuteniu from the executive council be recognised;
- ▶ that there be facilitation between the different factions of Ngati Rangitahi;
- ▶ that a process be developed to resolve the issue of the uncoupling of jointly represented hapu, especially in respect of Ngati Whaoa and Ngati Tahu; and
- ▶ that an independent facilitator or team of facilitators be appointed to address and resolve outstanding issues with the overall mandate process.¹⁶

13. Paper 3.3.30, p13

14. Ibid, pp16-17

15. Ibid, p14

16. Ibid, pp20-21

3.3 NGATI WHAKAUE

Counsel for the Ngati Whakaue cluster, Mr Rangitauira, began his opening submissions with a chronology of events relating to the cluster's resolution to withdraw from the kaihautu, and efforts to have their withdrawal recognised by the executive council and Crown. We summarise that chronology here.

3.3.1 Ngati Whakaue cluster hui of 12 September

According to counsel, there was doubt among members of Ngati Whakaue as to the executive council reconfirmation process from an early stage. At the first consultation hui of 9 September 2004, Ngati Whakaue elder Dooley Kahukiwa raised a number of concerns regarding the iwi's representation on the executive council.

Soon afterwards, on 12 September, at a hui of Ngati Whakaue attended by 10 out of 11 kaihautu members, the iwi voted to withdraw from the kaihautu.¹⁷ According to witness Hamuera Mitchell, representatives of Ngati Te Roro o Te Rangi were present at the 12 September hui but did not vote or sign the attendance register.¹⁸ On 14 September, the Ngati Whakaue cluster informed OTS and the chairperson of the kaihautu of the decision.¹⁹

In a letter of 22 September 2004, OTS officials responded, asking for clarification on which hapu and registered claims were represented by the cluster, and documentation of the process by which the decision to withdraw was reached.²⁰ This material – minutes and attendance registers of the Ngati Whakaue cluster hui of 12 September and another cluster hui of 29 August at which kaihautu matters were discussed – was furnished by the cluster to OTS on 1 October.²¹ On 6 October, copies of the letters of resignation of all 11 Ngati Whakaue kaihautu members were forwarded to the executive council. At this time, the cluster also requested:

- ▶ that the executive council remove all references to Ngati Whakaue from the deed of mandate;
- ▶ that the Crown be notified of this, and that Ngati Whakaue be listed instead under the exclusionary clause of the deed;
- ▶ that the executive council vary its trust to remove any participation or inclusion of Ngati Whakaue; and
- ▶ that these changes be formalised within four weeks.²²

Meanwhile, Ngati Whakaue kaihautu members attended the east and west regional reconfirmation hui on 2 and 3 October. They did not cast votes at the hui but rather tabled a letter confirming Ngati Whakaue's withdrawal from the kaihautu.²³

17. Paper 3.3.23, p5

18. Document c16, para 7.6

19. Document c2, exhibit 38

20. Document c2, exhibit 39

21. Document c2, exhibit 41

22. Document c2, exhibit 40

23. Document c2, exhibit 17, pp153, 173

In their report of 21 October, OTS officials advised the Ministers of the Ngati Whakaue cluster's intention to withdraw, noting that the cluster represented the majority of key Ngati Whakaue registered claims, constituent hapu, and overall population. Officials considered that the withdrawal of Ngati Whakaue constituted a 'significant risk to the level of support for the mandate of the kaihautu executive council'.²⁴ They advised that the cluster had stated that it did not act for Ngararanui or Ngati Te Roro o Te Rangi, and therefore that 'the resignations impact on two of the five kaihautu executive council seats that affiliate to Ngati Whakaue'.²⁵ The two executive council seats referred to were those allocated to 'Ngati Whakaue Iwi' under the adjusted executive council composition approved at the regional reconfirmation hui. Officials did not consider that the cluster's withdrawal affected the three executive council seats which had been allocated to certain specific Ngati Whakaue hapu: Ngati Te Roro o Te Rangi, Ngati Tura/Ngati Te Ngakau, and Ngararanui.

When, on 27 October 2004, the executive council met to amend its trust deed to give effect to the outcome of the reconfirmation hui, the resulting amendment of trust did not incorporate the withdrawal of Ngati Whakaue, as requested by the cluster on 6 October.²⁶ We note that at this time MICOTOWN had not yet formally recognised Ngati Whakaue's withdrawal from the kaihautu.

3.3.2 Ngati Whakaue cluster hui of 21 November

A few weeks later, on 21 November, a 'well advertised' hui was held for Ngati Whakaue, with the purpose of bringing members up to date with the cluster's work. At the hui, a motion was put to reconfirm the resolution of the 12 September hui regarding Ngati Whakaue's withdrawal from the kaihautu, and was passed unanimously. According to the cluster, at least six members of Ngati Te Roro o Te Rangi were present at this hui. The hui minutes record Barney Meroiti, a member of Ngati Te Roro o Te Rangi, speaking in support of the cluster's withdrawal, but noting that his hapu was 'split over this decision'. On 24 November, the cluster wrote to OTS and the executive council advising them of the outcome of the hui, and attaching the minutes and attendance register of the hui.²⁷

On 23 November, OTS officials again reported to MICOTOWN and MOMA, and identified the withdrawal of Ngati Whakaue as a key development in the mandating process.²⁸ The report advised that Ngati Te Roro o Te Rangi continued to support the kaihautu.

On 26 November, MICOTOWN wrote to the cluster, formally recognising Ngati Whakaue's withdrawal from the kaihautu.²⁹ The letter listed the hapu of Ngati Whakaue that were

24. Document c2, exhibit 21, p10

25. Ibid

26. Document c5, exhibit 47

27. Document c2, exhibit 43

28. Document c2, exhibit 35

29. Document c2, exhibit 45

3.3.3

recognised as having withdrawn from the kaihautu: Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Te Kahu, Ngati Tunohopu, Ngati Pukaki, Ngati Karenga, Ngati Waoku, Ngati Rautao, Ngati Hika, Ngati Riri, and Ngati Te Rangiwaho. This list did not include Ngati Te Roro o Te Rangi.

The terms of negotiation between the Crown and the executive council were signed on 26 November. Clause 6 of the terms of negotiation included Ngati Te Roro o Te Rangi as one of the iwi/hapu included in the definition of 'Te Arawa' for the purposes of executive council–Crown negotiations.³⁰ The other Ngati Whakaue hapu included in clause 6 under the definition of Te Arawa were: Ngati Ngararanui, Ngati Tuteaiti, Ngati Tura, and Ngati Te Ngakau.

Clause 7 explicitly excluded the following Ngati Whakaue hapu from the terms of negotiation: Ngati Hurunga Te Rangi, Ngati Taeotu, Ngati Te Kahu, Ngati Tunohopu, Ngati Pukaki, Ngati Karenga, Ngati Waoku, Ngati Rautao, Ngati Hika, Ngati Riri, and Ngati Te Rangiwaho.

Clause 10 listed the following Ngati Whakaue registered claims as included in the terms of negotiation, in so far as they related to the definition of Te Arawa given in clause 6: Wai 268, Wai 316, Wai 317, Wai 533, and Wai 1101.

3.3.3 Further correspondence between the cluster and the Crown

On 15 December 2004, Ngati Whakaue wrote to MICOTOWN expressing their 'great regret and concern' at the inclusion of Ngati Te Roro o Te Rangi and the claims listed above in the terms of negotiation.³¹ The letter stated that the Ngati Whakaue cluster also wished to remove any suggestion that they would rejoin the kaihautu in the future.

On 20 December, OTS officials again reported to the Ministers.³² The report summarised the Ngati Whakaue cluster's letter of 15 December, providing the background to their withdrawal from the kaihautu. With regard to Ngati Te Roro o Te Rangi, officials advised the Ministers that because the 21 November hui resolved to endorse the resolutions of the earlier 12 September hui, and because representatives of Ngati Te Roro o Te Rangi did not vote at the earlier hui, the resolution of the 21 November hui did not include them either. Furthermore, officials noted the continuing support for, and active involvement in the kaihautu by, Ngati Te Roro o Te Rangi.³³ With reference to the inclusion of Ngati Whakaue registered claims in the terms of negotiation, officials noted that the terms of negotiation explicitly excluded, in whole or in part, the registered claims of those iwi/hapu which the Crown recognised to be outside the executive council mandate. Finally, officials advised that they would continue their dialogue with the cluster and, if appropriate, encourage them to rejoin the kaihautu.

30. Document c2, exhibit 46, p3

31. Document c2, exhibit 47

32. Document c2, exhibit 37

33. Ibid, p6

MICOTOWN wrote to the Ngati Whakaue cluster on 21 December expressing the view that the resolutions of the hui of 12 September and 21 November 2004 did not include Ngati Te Roro o Te Rangi, and that Ngati Te Roro o Te Rangi continued to support and participate in the executive council.³⁴ The letter then noted that the terms of negotiation included all registered claims in which mandated hapu (including Ngati Te Roro o Te Rangi) had an interest, and further that the terms of negotiation explicitly excluded the registered claims of groups which were not covered by the executive council mandate. Finally, MICOTOWN noted the wish of Ngati Whakaue to remove any suggestion that it may rejoin the executive council in the future, reminded Ngati Whakaue that the Government could not accord priority to separate negotiations with the iwi, and encouraged them to continue speaking with OTS officials.

3.3.4 Submissions

Having outlined the chronology of events given by counsel for Ngati Whakaue, we now turn to their submissions. Essentially, their argument was that the Crown had ignored Ngati Whakaue's decision to withdraw from the mandate, and that there was now a danger of prejudice to Ngati Whakaue arising as a result of their claims being negotiated by the executive council, outside their control and against their express wishes. In the submission of counsel, the terms of negotiation provided:

prima facie evidence of the Crown's continued recognition that [the executive council] has mandate for certain Ngati Whakaue cluster interests and/or claims, in whole or in part, against the expressed wishes of the cluster, wishes which were made abundantly clear throughout the reconfirmation process.³⁵

Mr Rangitauira then argued that MICOTOWN had 'intentionally disregarded' OTS officials' advice in their report of 23 November to sign a letter stating the cluster's claims would not be included in the terms of negotiation.³⁶ Instead, MICOTOWN's letter to the cluster of 26 November did not specify that Ngati Whakaue claims would be excluded from the terms of negotiation, and, in the submission of counsel, was deficient in that it did not provide for processes to ensure the protection of Ngati Whakaue interests in overlapping claims.

Thus, counsel submitted, by allowing Ngati Whakaue claims to be included in the terms of negotiation, the Crown had breached Treaty principles in the following ways:

- ▶ by undermining the mana and rangatiratanga of Ngati Whakaue over their whenua;
- ▶ by denying the right of Ngati Whakaue to freely elect properly mandated representatives and adopt strategies to progress their claims as they wish;

34. Document c2, exhibit 48

35. Paper 3.2.23, p18

36. Document c2, exhibit 35, p5

3.3.5

- ▶ by attempting to straitjacket the people of Ngati Whakaue into unnatural groups for the sake of convenience;
- ▶ by creating the potential for further loss of land and taonga by negotiating Ngati Whakaue's claims without consent; and
- ▶ by eroding claimants' faith in and relationships with the Crown and each other.

3.3.5 Ngati Te Roro o Te Rangi

Counsel then addressed the inclusion of Ngati Te Roro o Te Rangi in the terms of negotiation. He began by disputing the advice of OTS in its report to Ministers of 21 October that the Ngati Whakaue cluster had stated that it did not act for Ngati Te Roro o Te Rangi.³⁷ Ngati Whakaue tikanga, he argued, determined that Ngati Te Roro o Te Rangi, as a koromatua hapu of Ngati Whakaue, were implicitly expected to attend any hui of Ngati Whakaue, such as that of 12 September. He then cited the evidence of Hamuera Mitchell that members of Ngati Te Roro o te Rangi, including their kaihautu members, were present at the 12 September hui which resolved to withdraw from the kaihautu.³⁸ He noted also that members of Ngati Te Roro o Te Rangi were present and voted at the Ngati Whakaue hui of 21 November. In the submission of counsel, therefore, Ngati Te Roro o Te Rangi were part of the cluster, and participated in and supported the resolutions of the hui to withdraw from the kaihautu.³⁹

In closing submissions, Counsel responded to the view of Crown officials that the outcome of the 21 November hui did not demonstrate Ngati Te Roro o Te Rangi's desire to withdraw from the kaihautu, because the resolutions passed merely endorsed the decision of the 12 September hui, in which that hapu was not involved. He described this view as an 'extremely legalistic interpretation of the matter [which attempted to] distort these outcomes to enable the Crown to ignore and brush aside the concerns of the cluster'.⁴⁰ Instead, he argued, members of Ngati Te Roro o Te Rangi had participated fully in the well advertised hui of 21 November, and the outcome of that hui made it quite clear that the hapu concurred with the cluster's decision to withdraw from the kaihautu.

In response to the advice of officials that Ngati Te Roro o Te Rangi kaihautu members continued to participate in the executive council, counsel argued that the decisions of these members were 'at odds with the concerns of the cluster, and thus they could not be representative of the cluster's concerns'.⁴¹ Further, he argued, the Crown ought to have ascertained this through active scrutiny of the reconfirmation process, but instead it had relied on information provided by the executive council.

37. Paper 3.3.23, pp20–21

38. Ibid, p21

39. Ibid, p22

40. Paper 3.3.29, p10

41. Ibid, p19

3.3.6 Inclusion of Ngati Whakaue claims in terms of negotiation

Counsel then addressed the Crown's position that certain Ngati Whakaue registered claims were included in the terms of negotiation. The Crown policy is that all claims of any Ngati Whakaue hapu which are covered by the executive council mandate would be the subject of negotiations. He countered this argument on two grounds. First, he reiterated that Ngati Te Roro o Te Rangi were no longer part of the executive council mandate, so the Crown policy of including their claims should not apply. Secondly, and notwithstanding the first point, he noted that none of the members of Ngati Te Roro o Te Rangi were registered claimants for those claims included in the terms of negotiation.⁴² Therefore, Ngati Te Roro o Te Rangi did not have a mandate to represent any of those claims as listed in the terms of negotiation.

3.3.7 Misrepresentation of support for executive council

Counsel then argued that, despite the clearly expressed desire of the Ngati Whakaue cluster to withdraw from the kaihautu, the Crown and executive council had continued to emphasise that seats were being held open for them should they wish to rejoin. Such references had continued despite the cluster's specific and repeated requests that any suggestion that Ngati Whakaue may rejoin the kaihautu be removed.⁴³

Counsel argued that the Crown's failure to ensure that the cluster's concerns were addressed was intentional. He argued that the Crown had sought to create a façade of Ngati Whakaue participation in the kaihautu through:

- ▶ the inclusion of Ngati Te Roro o Te Rangi in the terms of negotiation;
- ▶ the inclusion of Ngati Whakaue registered claims in the terms of negotiation; and
- ▶ continuing to emphasise the availability of seats for Ngati Whakaue representatives on the executive council, and alluding to the possibility of Ngati Whakaue rejoining the kaihautu.⁴⁴

Counsel argued that the Crown sought to maintain this façade in order to pursue its agenda of a substantial settlement with Te Arawa through the executive council. In the opinion of counsel, the Crown's claim, outlined in the section below on Crown submissions, that the executive council represents a 'substantial portion' of Te Arawa, is inflated and misleading.⁴⁵ Counsel noted that only 36 out of 95 kaihautu members had voted in favour of the reconfirmation strategy, and argued that this did not constitute the 'broad support' of the Te Arawa people.⁴⁶

42. Ibid, p15

43. Paper 3.3.23, p25

44. Ibid, pp25-56

45. Ibid, p31

46. The footnote to table 3 (see p14) describes the difference in the number of kaihautu members listed in the executive council's December 2003 deed of mandate (98) and the number of kaihautu members listed in the 21 October 2004 ORS report on the outcome of the regional reconfirmation hui.

3.3.8

Counsel also argued that by asserting that Ngati Whakaue ‘did not participate’ in the reconfirmation process, instead of acknowledging Ngati Whakaue’s explicit opposition to the executive council mandate, the Crown had overstated the true level of support for the executive council.⁴⁷ While it was true that Ngati Whakaue kaihautu members had not voted at the reconfirmation hui, and their opposition to the executive council mandate was clear, counsel argued hypothetically that, if the 11 Ngati Whakaue kaihautu members were factored into the vote, there would have been 36 votes for the reconfirmation strategy and 33 against.⁴⁸ In counsel’s submission, this painted a very different picture of support for the executive council among the people of Te Arawa than the Crown’s ‘distorted calculations’.

3.3.8 Relief sought

Finally, by way of relief, Counsel asked for the following from the Tribunal:

- ▶ a finding that the Crown has breached the principles of the Treaty;
- ▶ a recommendation that the Crown undertake that none of Ngati Whakaue’s claims be negotiated, settled, or prejudiced in any negotiations or settlement between the executive council and the Crown;
- ▶ a recommendation that the Crown remove all references to Ngati Whakaue, Ngati Te Roro o Te Rangi, and all Ngati Whakaue’s registered claims from the executive council deed of mandate, the terms of negotiation, and other relevant documents;
- ▶ a recommendation that any suggestion that Ngati Whakaue will rejoin the kaihautu be removed;
- ▶ a finding that, contrary to the position of the Crown, the executive council does not represent ‘a substantial portion’ of Te Arawa; and
- ▶ a recommendation that the executive council only holds a mandate for those iwi/hapu that have clearly demonstrated their support for it.⁴⁹

3.4 NGATI HINEKURA, NGATI TUTAKI A KOTI, NGATI TUTAKI A HANE, NGATI RONGOMAI, NGATI RANGIUNUORA, TE TAKERE O NGA WAI, AND NGATI MAKINO

Ms Sykes and Mr Pou represented several claimant groups at the hearing. Their submissions dealt with the factual background to each group in turn, then made submissions making the same general points on behalf of all of their clients. In summarising their submissions, we have adopted the same approach.

47. Paper 3.3.23, pp27–30

48. Ibid, p29. We presume that Mr Rangitauri’s 33 hypothetical votes against the strategy consisted of the 19 members who voted against it at the hui, plus the three who abstained and the 11 Ngati Whakaue members who had resigned from the kaihautu before the vote was taken.

49. Ibid, pp33–34

3.4.1 Ngati Hinekura, Ngati Tutaki a Koti, Ngati Tutaki a Hane, Ngati Rongomai, and Ngati Rangiunuora

The first group represented by Ms Sykes and Mr Pou are a number of Ngati Pikiāo hapu – Ngati Hinekura, Ngati Tutaki a Koti, Ngati Tutaki a Hane, Ngati Rangiunuora, and Ngati Rongomai – that, it was argued, did not support the executive council mandate. Counsel argued that none of these hapu had the opportunity to meet independently or collectively to confirm its assent either to the proposed executive council reconfirmation strategy or to the inclusion of its claims in the executive council’s deed of mandate.⁵⁰

At the Coast Region reconfirmation hui of 2 October, a number of members of these hapu made known their dissatisfaction and concerns with aspects of the reconfirmation process. Their concerns related to:

- ▶ the haste of the process and the insufficiency of time available for kaihautu members to take the reconfirmation proposal back to their hapu for consultation;
- ▶ the sufficiency and appropriateness of Ngati Pikiāo representation on the executive council, particularly the need for more seats;
- ▶ the complex whakapapa relationships between Ngati Pikiāo and Ngati Rongomai;
- ▶ the voting rules which only allowed kaihautu members to vote and which did not allow proxy voting;
- ▶ the perception that the reconfirmation document was being presented by the executive council as a *fait accompli*, and that there was no scope for the strategy to be adjusted;
- ▶ the lack of information available to kaihautu members and iwi/hapu by which they might assess the extent of hapu claims and cross-claim issues;
- ▶ the lack of communication between kaihautu members and the iwi/hapu that they represent;
- ▶ the fact that some registered claimants objected to the inclusion of their claims among those to be negotiated by the executive council.⁵¹

The claims of these Ngati Pikiāo hapu relate to the Crown’s alleged failure to actively monitor the reconfirmation process by addressing the above issues and correcting any errors. Thus, it was submitted, the Crown had failed to meet its obligation to ensure that the reconfirmation process was undertaken in a fair, transparent way, in accordance with the *tikanga* of Te Arawa.

In the submission of counsel, the Crown had actively attempted to displace the *rangatira-tanga* of the hapu by allowing a reconfirmation process which breached *tikanga*. It did so by failing to allow the opportunity for all tribal members at the reconfirmation hui to vote on the reconfirmation process.⁵²

The affidavits of witnesses called in support generally argued:

50. Paper 3.3.24, pp2–3

51. *Ibid*, pp6–7

52. Claim 1.1.9, p7

3.4.2

- ▶ that hui-a-hapu should have been held at which each hapu of Ngati Pikiāo could have reached their own autonomous decisions with regard to the reconfirmation process;
- ▶ that all hapu members should have participated in the decision making, preferably by voting on reconfirmation; and
- ▶ that as a result of these deficiencies in the process, the claims of their hapu would now be negotiated by the executive council against their wishes.⁵³

More specifically, Ngati Rongomai claimants disputed the outcome of a hui held on 29 November, at which, according to the kaihautu member for Ngati Tarawhai/Ngati Rongomai, Ruka Hughes, the hapu resolved to reconfirm their support for the executive council mandate.⁵⁴ Ngati Rongomai registered claimant Dennis Curtis, however, disputed the validity of the outcome of the hui.⁵⁵ He argued that the hui had not been sufficiently notified, that information regarding the signing of the terms of negotiation had not been circulated to hapu members, and that a series of hui were required before the hapu of Ngati Pikiāo could commit to the executive council process. Similarly, witness Colleen Skerrett-White argued that the executive council did not have a mandate to negotiate the claims of Ngati Rongomai.⁵⁶

3.4.2 Te Takere o Nga Wai

The second group represented by Ms Sykes and Mr Pou were three registered claimants who are members of Te Takere o Nga Wai cluster. These claimants are: the Hodge whanau (Wai 1141), Tom Eric Walters (Wai 1195), and Kiri Potaka Dewes (Wai 319). The members of Te Takere o Nga Wai cluster have whakapapa links to Tuwharetoa and Raukawa as well as Te Arawa and on that basis do not wish their claims to be encompassed in the executive council mandate.⁵⁷

According to counsel, all three of these registered claimants advised Crown officials of their desire for their respective claims to remain outside the executive council's mandate. Attached to the affidavit of Kiri Dewes was a letter from her counsel to the director of ORS dated 30 January 2004, in which she requested that her claim remain outside the kaihautu mandate.⁵⁸ In his affidavit, Eric Hodge expressed the view that Rawiri Te Whare had accepted that the Hodge whanau claim was not included under the kaihautu mandate at the east region reconfirmation hui of 2 October.⁵⁹ The Te Takere o Nga Wai registered claimants consider that they should have been personally contacted about the inclusion of their claims in the executive council mandate, and argue that this never occurred.

53. See, for example, documents C9, C10, C12, and C20.

54. Document C4, exhibit D

55. Document C13

56. Document C8

57. Paper 3.3.24, p3

58. Document C14, attachment A

59. Document C21, p3

3.4.3 Ngati Makino

Ms Sykes and Mr Pou presented submissions on behalf of Ngati Makino. They began by referring to those sections of the 12 and 30 August OTS reports to Ministers, which outlined officials' concerns with the Tribunal's suggestion that the Crown negotiate with Ngati Makino (and, possibly, Waitaha and/or Tapuika) contemporaneously with the rest of Te Arawa.⁶⁰ In the reports, OTS officials were concerned that entering into separate negotiations with Ngati Makino would:

- ▶ risk the splintering of Te Arawa and the derailing of negotiations;
- ▶ set a policy precedent for the rest of the country and increase the total number of remaining settlements; and
- ▶ bring with it challenges such as negotiating jointly with groups such as Ngati Makino and Waitaha, which were not geographically contiguous.

Counsel noted that Ngati Makino had met with Waitaha in September 2004, and resolved to 'work together to progress their claims and to design an appropriate negotiation strategy which would respect the mana of their respective positions while recognising their close whakapapa and historical ties'.⁶¹ Ngati Makino advised OTS of this decision in a letter of 22 September.⁶² According to counsel, the Crown had not taken the opportunity to meet with Ngati Makino to discuss the negotiation process since this letter. Instead, in a letter of 4 November, OTS officials advised Waitaha that the Crown could not accord them the same priority in negotiations as it accorded to executive council negotiations, and that it was more likely to accord priority if Waitaha, Ngati Makino, and Tapuika joined together.⁶³

The position of the Ngati Makino claimants was that it was inappropriate for the Crown to insist that Tapuika be included in negotiations with Ngati Makino, since the inclusion of Tapuika 'blurs the historical alliances of the parties and ignores the realities of Raupatu and its effects on Waitaha and Ngati Makino'.⁶⁴ In other words, Ngati Makino was prepared to join together with Waitaha for the purposes of negotiations, based on their shared whakapapa and history, but was not prepared to join with Tapuika on the same grounds.

3.4.4 Generic submissions

Counsel then moved on to make generic submissions regarding the impact of the reconfirmation on the interests of their clients.

Counsel argued that the reconfirmation had not been fair and robust, and therefore that the Crown was incorrect in its decision to recognise the reconfirmation of the executive council mandate. Counsel then identified general flaws in the reconfirmation. It was argued that

60. Paper 3.3.24, pp 8–9

61. Ibid, p 9

62. Document c25, exhibit A

63. Document c2, exhibit 32

64. Paper 3.3.24, p 10

3.4.5

the Crown's monitoring of the reconfirmation had been driven by haste and convenience, and that it had failed in its duty to undertake an in-depth and independent inquiry of the status of each hapu, and the nature and extent of their interests.

As a result of the Crown's decision to accept the reconfirmation of the executive council mandate, registered claims had been included in the terms of negotiation against the wishes of the claimants themselves, and there was now a risk that the Crown would negotiate with the executive council over interests which the executive council did not genuinely represent. By doing so, the Crown would be displacing or usurping the rangatiratanga of the claimants, and therefore breaching the Treaty principles of good faith, partnership, and active protection.⁶⁵ The process had served to exacerbate inter- and intra-iwi/hapu disputes.

3.4.5 Relief sought

Counsel sought a finding from the Tribunal that the Crown had breached the principles of the Treaty in recognising the reconfirmation of the executive council mandate, and requested the following recommendations:

- ▶ the removal of claims from the terms of negotiation, where the named claimants wish their claims to be removed;
- ▶ the rectification of Crown settlement policy to ensure that it is consistent with Treaty principles;
- ▶ a Treaty-based framework and process for settlement of the claims of all hapu and iwi in CNI; and
- ▶ the cessation of negotiations until outstanding mandate issues are resolved.⁶⁶

3.5 NGATI TAMAKARI

Ms Patuawa presented the claim of David Whata-Wickliffe on behalf of Ngati Tamakari. The essence of his claim was that the Crown had breached the principles of the Treaty by recognising the reconfirmation of the executive council mandate.⁶⁷

In his evidence, Mr Whata-Wickliffe argued that he did not consider that the executive council held a mandate to negotiate the claims of Ngati Tamakari, a hapu of Ngati Pikiāo. He and his brother, Fred Whata, had been elected as kaihautu members for Ngati Pikiāo in July 2003. In order to make it clear that Ngati Tamakari did not support the executive council mandate, they both resigned from the kaihautu at the coast region hui of 2 October 2004.⁶⁸

65. Paper 3.3.24, pp10–11

66. Ibid, pp19–20

67. Paper 3.3.25

68. Document c23, p2

According to Mr Whata-Wickliffe, there were ‘no supporters of the Kaihautu from the hapu encompassed within Ngati Tamakari’.⁶⁹ Further, he disputed the outcome of the reconfirmation process as a whole for Ngati Pikiao, given the absence of a number of Ngati Pikiao kaihautu members from the coast region hui, and the low level of participation in the reconfirmation process in general.

On 3 October 2004, a hui-a-iwi for Ngati Pikiao was held. According to Ngati Pikiao kaihautu member and witness for the executive council Eva Moke, at this hui Ngati Pikiao resolved to ‘decline to give recognition to Ngati Tamakari as a hapu/tribal entity’.⁷⁰

The Ngati Pikiao hui-a-iwi was initially notified in a newspaper advertisement on 18 September, placed by Tutewehiwehi Kingi and Te Poroa Malcolm.⁷¹ A week later, on 25 September, Mr Whata-Wickliffe and Mr Whata placed an advertisement which purported to cancel the scheduled meeting, claiming that it would be rescheduled at another venue at a later date.⁷² Then, on 2 October, the day before the hui, Tutewehiwehi Kingi and Te Poroa Malcolm placed a third newspaper advertisement, confirming that the hui would go ahead as originally planned.⁷³

Neither Mr Whata-Wickliffe nor Mr Whata was present at the hui. In his evidence, Mr Whata-Wickliffe claimed that he did not know of the advertisement of 2 October, and therefore did not attend. He also argued that other key members of Ngati Tamakari were not present. He objected to a meeting of 27 people ‘wiping out the existence of [the] hapu’ in his absence.⁷⁴ According to Mr Whata-Wickliffe, Ngati Tamakari could no longer put its trust in the executive council to represent its claims.

Counsel submitted that, by permitting Ngati Pikiao to treat Ngati Tamakari in this way, the executive council had failed to show procedural fairness in its reconfirmation process. Therefore, she argued, the Crown’s acceptance of the reconfirmation of the executive council mandate was erroneous.⁷⁵

3.6 NGATI RANGITIHI

Mr Boast was counsel for the Wai 996 claimants of Ngati Rangitihi. He began his submissions by noting the August 2004 recommendation of the Tribunal that a further mandating hui be held for Ngati Rangitihi, which had been made because the outcome of the hui of 17 June 2004 was in dispute. Counsel submitted that this had not happened, but instead the Crown

69. Ibid, p2

70. Document C15, p 2

71. Document C15, exhibit A

72. Document C15, exhibit B

73. Document C15, exhibit C

74. Document C23, p4

75. Paper 3.3.25, p4

had accepted the outcome of the 17 June hui. He noted the Crown's view, expressed in the OTS officials' report to Ministers of 21 October, that 'the resolutions passed at the 17 June 2004 Ngati Rangitihi mandate hui clearly demonstrated that the Kaihoutu Executive Council has the mandate of the people of Ngati Rangitihi'.⁷⁶ Counsel noted that the Crown had admitted that the Tribunal's recommendation had not been accepted or implemented.⁷⁷

In support of his submissions, counsel referred to the affidavit of Andre Patterson, in which Mr Patterson described what he saw as the inadequacies of the 17 June hui. Briefly, Mr Patterson claimed that the hui had been held at a time that was very inconvenient for many members of Ngati Rangitihi, that the hui was inadequately notified and poorly attended, and that the hui was 'loaded' with executive council supporters, some of whom were not Ngati Rangitihi. Mr Patterson concluded that the outcome of the 17 June hui was 'completely unreliable as a gauge of support [for the kaihoutu] by Ngati Rangitihi as a whole'.⁷⁸ He also noted that, at the first Tribunal hearing of June 2004, the Wai 996 claimants had not been able to challenge the outcome of the 17 June hui, because the Crown itself at that point had not yet decided whether or not it was valid.⁷⁹

With respect to the outcome of the regional reconfirmation hui of 2 and 3 October, counsel submitted that these did not constitute 'mandate reconfirmation hui' because only kaihoutu members were allowed to vote – a situation he referred to as 'little short of farcical'.⁸⁰ This aspect of the reconfirmation hui voting rules affected the Wai 996 claimants in particular, he argued, because Ngati Rangitihi kaihoutu members refused to meet with them. There was, therefore, no proper mandate for the kaihoutu to represent and settle Ngati Rangitihi's claims.

In his evidence, Mr Patterson noted that representatives of the Wai 996 claimants had twice met with members of the executive council to discuss its negotiation and settlement plans, and their problem in communicating with the Ngati Rangitihi kaihoutu member, Henry Pryor. Despite some effort on the part of executive council members to resolve the issue, the Wai 996 claimants allege that Mr Pryor still refused to communicate with them.⁸¹

Mr Patterson argued that, as the Wai 996 claimants had never mandated the kaihoutu to negotiate their claims, they should be removed from the terms of negotiation. He noted that a letter had been sent by the Wai 996 claimants to the executive council and OTS to this effect, but that as yet there had been no reply.⁸²

Finally, counsel submitted that the way out of the situation was not for another reconfirmation hui to be held, but rather that the mandating process needed to begin afresh. He asked

76. Document c2, exhibit 21, p11

77. Paper 3.3.33, p2

78. Document c1, p4

79. Ibid, p5

80. Paper 3.3.27, p3

81. Document c1, p8

82. Ibid, p11

the Tribunal to call for submissions on a new process, then issue specific directions on building a restructured mandate for all of Te Arawa.

3.7 WAITAHA

Ms Feint acted as counsel for Waitaha. In support of her submissions, she referred to the evidence of Thomas McCausland.⁸³ Counsel opened her submissions by noting the views of both the Te Arawa Mandate and the Te Raupatu o Tauranga Moana Tribunals that the Crown should negotiate separately with Waitaha. She then noted that in September 2004 Ngati Makino and Waitaha had agreed to negotiate jointly with the Crown. While Crown officials had been informed of this decision by letter on 22 September, she argued, there had as yet been no direct response from the Crown.⁸⁴

In fact, Ms Feint argued that Crown officials had reached a decision as early as 12 August not to accept the Tribunal's recommendations, but made no attempt to inform Waitaha of this decision until 4 November. In her submission, the Crown had rejected 'out of hand' the suggestions of the Tribunal with respect to Waitaha and Ngati Makino.

Counsel then referred to the letter of 4 November 2004 from ORS to Waitaha which noted that the Crown could not accord the same priority to negotiations with Waitaha as to negotiations with the executive council, and that it was more likely to accord priority if Waitaha, Ngati Makino, and Tapuika entered joint negotiations.⁸⁵ In counsel's submission, the implication of this letter was that priority was conditional on Waitaha forming an alliance with both Ngati Makino and Tapuika.⁸⁶ Ms Feint argued that the Crown was focusing on matters of its own convenience, rather than working with 'natural' groupings.

Counsel then submitted that the Crown had acted in bad faith by failing to adopt the recommendations of the Tribunal. At the heart of the issue, she contended, was the Crown policy of settling with 'large natural groupings'. This policy, she argued, is inherently flawed and is inconsistent with the principles of the Treaty. She reiterated her submissions from the first hearing that existing Crown policy did not meet the needs of border tribes on the geographical and political margins of Te Arawa, and that flexibility in the application of the policy was required.⁸⁷ Furthermore, the Crown should give weight to the seriousness of the prejudice suffered by iwi when according priority to negotiations. Finally, she asked that the Tribunal undertake analysis of, and make findings on, whether the Crown's settlement policy was 'Treaty compliant'.

83. Document c7

84. Paper 3.3.22, p3

85. Document c2, exhibit 33

86. Paper 3.3.22, p4

87. Ibid, p5

3.8 NGATI WHAOA

Mr Taylor opened his submissions on behalf of Ngati Whaoa by arguing that the Crown had failed to follow the Tribunal's suggestions in the August 2004 *Te Arawa Mandate Report* that the kaihautu must address the issue of joint representation, or 'coupling', of hapu on the kaihautu. He noted that Ngati Whaoa adopted the general submission of the taumata in respect of the Crown's monitoring of the reconfirmation process.

Mr Taylor then set out the Ngati Whaoa claim. First, he disputed the outcome of the July 2003 mandating hui, which elected kaihautu members to jointly represent Ngati Whaoa and Ngati Tahu on the kaihautu. Secondly, there had been no communication from the Crown, executive council or Ngati Tahu, to ascertain the position of the members of Ngati Whaoa regarding mandate reconfirmation. Lastly, he argued that, to address the issue of the composition and proportionality of the executive council before addressing the uncoupling of Ngati Whaoa and Ngati Tahu, as the executive council had done, was 'back to front' and not in accordance with tikanga.⁸⁸

Counsel submitted that Ngati Whaoa had made their desire to uncouple from Ngati Tahu clear, and that neither the executive council nor the Crown had taken significant steps to address the issue. He argued that the only reference to the matter in executive council papers was the brief mention in the minutes of a meeting of 10 September, in which the outcome of the original mandate hui of July 2003, at which Ngati Tahu and Ngati Whaoa were 'coupled', was simply accepted at face value.⁸⁹ The matter was not discussed further at any subsequent executive council meetings.

Mr Taylor noted that Ngati Whaoa member Richard Charters had raised the issue at the south region hui of 3 October 2004. Mr Charters had made reference to the Tribunal's August 2004 suggestion that the matter be addressed in the reconfirmation process, but was advised by the chair that the matter was not on the hui agenda and could not be discussed.⁹⁰

Counsel submitted that the Crown had failed to ensure that the executive council address the issue, as had been suggested by the Tribunal, but instead, had simply relied on the executive council's position. This reliance was reflected in the OTS officials' report to Ministers of 23 November 2004, which advised that opposition to the executive council mandate from within Ngati Whaoa came only from a minority of individuals.⁹¹ Because no further scrutiny had been given to the matter, counsel argued that the Crown's position continued to be based on the disputed outcome of the July 2003 hui.

In his closing submissions, Mr Taylor referred to the outcome of a hui-a-iwi held on 22 January 2005, in order to form an independent administrative body for Ngati Whaoa. The hui was described in the affidavit of evidence of Michael Rika, filed on 26 January 2005.⁹²

88. Paper 3.3.28, p2

89. Document c5, exhibit 7

90. Document c2, exhibit 17, p164

91. Document c2, exhibit 35, p7

92. Document c38

Finally, by way of relief, Ngati Whaoa sought the removal of their claims from the terms of negotiation, and a recommendation from the Tribunal that the Crown negotiate separately with Ngati Whaoa. A further recommendation was sought, that Ngati Whaoa not be forced to bundle with any other iwi/hapu in the future for claims settlement purposes or otherwise.⁹³

3.9 SUMMARY

The key points made in this chapter are as follows:

- ▶ The taumata argued that it had been shut out of the reconfirmation process, despite the Tribunal's August 2004 suggestion that the executive council consult with it in developing a reconfirmation strategy. It further argued that the Crown had unfairly favoured the views of the executive council over other Te Arawa groups, and had been motivated primarily by haste when it approved the reconfirmation process.
- ▶ The taumata made further specific criticisms regarding the reconfirmation process. They concerned the adequacy of notification given by the executive council for the regional reconfirmation hui, the adoption of the four-region approach, the lack of representivity of the executive council, and the failure of the executive council to address rules governing its accountability to the kaihautu.
- ▶ Overall, the taumata claimed that the reconfirmation process had been neither fair nor robust, and therefore failed to meet the standards which the Crown should have applied in its monitoring of the process and its outcomes.
- ▶ The Ngati Whakaue cluster argued that the Crown and executive council had failed to recognise the withdrawal of all six koromatua hapu of Ngati Whakaue. As a result, Ngati Whakaue claims had been included in the terms of negotiation and would be negotiated and settled by the executive council, without Ngati Whakaue consent.
- ▶ Claimants from various Ngati Pikiāo hapu (Ngati Hinekura, Ngati Tutaki a Koti, Ngati Tutaki a Hane, Ngati Rongomai, Ngati Rangiuuora, and Ngati Tamakari) also objected to the inclusion of their claims in the terms of negotiation. They disagreed with the position of the Ngati Pikiāo kaihautu members, who had voted to mandate the executive council.
- ▶ Similarly, the Te Takere o Nga Wai claimants objected to the inclusion of their registered claims in the terms of negotiation without the consent of the named claimants.
- ▶ The Wai 996 claimants of Ngati Rangitihi argued that the Crown had failed to follow the Tribunal's August 2004 suggestion that another mandating hui be held for Ngati Rangitihi. They continued to dispute the outcome of the 17 June hui and objected to the inclusion of their claims in the terms of negotiation.

93. Paper 3.3.31, paras 20–22

- ▶ Both Ngati Makino and Waitaha argued that the Crown had failed to respond adequately to the Tribunal's suggestion that priority status be accorded to separate negotiations with them.
- ▶ Claimants from Ngati Whaoa argued that the Crown had failed to ensure that the issue of joint representation of hapu on the executive council be addressed by the executive council. As a result, Ngati Whaoa continued to be jointly represented on the executive council with Ngati Tahu, despite their wishes to be uncoupled from Ngati Tahu and to withdraw from the executive council mandate.