

CHAPTER 2

THE APPLICATIONS FOR RESUMPTION AND THE PARTIES INVOLVED

2.1 APPLICATIONS FOR RESUMPTION

In our August 2004 *Te Arawa Mandate Report*, we gave the claimants ‘the opportunity to return to the Tribunal, without further application for urgency, should the Crown fail to make an adequate response to our suggestions’.¹ Between September and December 2004, a number of requests for the resumption of the inquiry were received by the Tribunal.

2.1.1 Initial resumption request and Crown response

The first request was made by the taumata in a memorandum dated 10 September 2004, on the basis that the regional reconfirmation hui discussed above had been scheduled for 2 and 3 October, but the executive council had not yet made available its reconfirmation document.²

In a memorandum of 14 September, the Crown responded to the taumata memorandum.³ It stated that the taumata had been given an opportunity to participate in the reconfirmation, through the consultation hui and through the opportunity to provide written submissions during the process. It argued that to have resumed the inquiry at that stage would have been premature.

The taumata responded to the Crown’s memorandum the next day.⁴ It denied that the resumption request was premature, and reiterated in more detail its objections to the reconfirmation on the following grounds:

- ▶ that the executive council’s consultation was ‘a sham’, and that key decisions such as the adoption of the four-region approach had been taken before consultation with the taumata had occurred;
- ▶ that to allow the reconfirmation hui to proceed on a basis that had been strongly objected to, then seek to have the Minister overturn the process, would be ‘ridiculous’ and ‘an irresponsible waste of resources’;

1. Waitangi Tribunal, *Te Arawa Mandate Report* (Wellington: Legislation Direct, 2004), p ix

2. Paper 3.2.2

3. Paper 3.2.3

4. Paper 3.2.4

2.1.2

- ▶ that the executive council was proceeding with undue haste, for example by planning for the signing of terms of negotiation by mid-October; and
- ▶ that the Crown's decision to accept the outcome of the 17 June hui of Ngati Rangitahi was in direct conflict with the suggestion of the Tribunal.

2.1.2 Parties file responses to initial resumption request

On 16 September, the Tribunal then requested that all counsel file replies to the recent taumata and Crown memoranda, regarding the taumata's resumption request. The executive council filed its response on the required date of 20 September 2004.⁵ In its response, the executive council outlined its consultation process and the reconfirmation strategy, advising that the reconfirmation document was to be circulated to kaihautu members no later than 22 September. The executive council considered that to resume the Tribunal inquiry before the reconfirmation hui had taken place would be premature.

In a memorandum also dated 20 September, the taumata restated its objections to the reconfirmation process. It also referred to a joint letter received that day from OTS and the executive council which advised of the outcome of the consultation hui, outlined amendments to the reconfirmation strategy, and asserted that the executive council had followed the Tribunal's suggestions in developing its reconfirmation strategy.⁶

In addition to the points it raised in its initial memorandum of 10 September, the taumata argued that the executive council had failed properly to address the issue of its own proportionality, that the taumata should have had greater input into the reconfirmation, and noted that a number of groups had withdrawn or were considering withdrawal from the executive council as a result of their dissatisfaction with the process.

Subsequently, on 21 September and 23 September, the taumata filed further memoranda attaching relevant documentation: first, the executive council's notification of the regional reconfirmation hui, and secondly, the executive council's reconfirmation document.⁷ The 23 September memorandum set out the taumata's specific criticisms of the reconfirmation document:

- ▶ that the lack of proportional representation of iwi/hapu on the kaihautu would potentially allow 'completely unrepresentative domination' of the reconfirmation hui by smaller groups with large numbers of Kaihautu members;⁸
- ▶ that the reconfirmation document had been provided to kaihautu members with insufficient notice, less than 10 days' notice as opposed to the Tribunal's suggested 14 days;

5. Paper 3.2.5

6. Paper 3.2.6, exhibit A

7. Papers 3.2.10, 3.2.12

8. Paper 3.2.10, p2

- ▶ that the Ministerial endorsement attached to the reconfirmation document was ‘a cynical attempt to influence the kaihautu’;
- ▶ that Ngati Whakaue had been split into two regional hui, against their wishes;
- ▶ that the process would not allow the views of Ngati Wahiao to be heard as they had been unwillingly clustered with other groups; and
- ▶ that the result of the final 20 October hui-a-kaihautu would be irrelevant, as the voting on reconfirmation would already have occurred at the four ‘isolated’ regional reconfirmation hui.⁹

2.1.3 Tribunal requests further updates from parties

On 24 September, Judge Wickliffe issued a direction giving counsel the opportunity to file memoranda responding to the documentation filed by the taumata.¹⁰ These memoranda were due on 27 September, in order that the Tribunal would have time to make a decision on the taumata’s request for resumption before the scheduled regional reconfirmation hui on 2 and 3 October.

Memoranda were received by a number of claimant groups in reply, advising the Tribunal of their positions regarding the reconfirmation and the taumata’s request for resumption. We summarise those here.

A memorandum was filed by the Ngati Whakaue cluster on 27 September noting that the executive council had not yet complied with Ngati Whakaue’s request that specific changes be made to the reconfirmation process (relating to references to Ngati Whakaue hapu and registered claims in executive council documentation).¹¹ This request had been made in an earlier memorandum of 20 September, which also notified the Tribunal of Ngati Whakaue’s decision to withdraw from the executive council mandate.¹²

On 20 and 27 September, two memoranda were filed by Michael Rika on behalf of Ngati Whaoa, which claimed that neither the executive council nor the Crown had sought to address the issue of the uncoupling of Ngati Tahu and Ngati Whaoa. He endorsed the taumata’s request for a resumption of the inquiry.¹³ A third memorandum on behalf of Ngati Whaoa in support of the taumata’s request was filed by Peter Saite on 27 September.¹⁴

Counsel for the Wai 996 claimants of Ngati Rangitahi filed memoranda on 21 and 27 September expressing his clients’ doubts as to the ability of the kaihautu member for Ngati Rangitahi to fairly represent their interests, objecting to the Crown’s acceptance of the outcome of

9. Paper 3.2.12

10. Paper 2.3.30

11. Paper 3.2.20

12. Paper 3.2.9

13. Papers 3.2.8, 3.2.17

14. Paper 3.2.18

2.1.4

the 17 June mandating hui for Ngati Rangitahi, and supporting the taumata's request for a resumption.¹⁵

On 27 September, counsel for Ngati Makino filed a memorandum in support of the taumata's request for a resumption, arguing that OTS had done little or nothing to implement the Tribunal's recommendation that they be afforded priority in negotiations.¹⁶

A memorandum was filed by counsel for Tuhourangi on 28 September in support of the reconfirmation.¹⁷ Finally, counsel for Tapuika filed a memorandum noting that they would not be participating in an urgent hearing.¹⁸

Both the Crown and executive council filed brief memoranda in response, holding to the views they had expressed earlier.¹⁹ Both parties opposed the taumata's request for urgency on the grounds that it would be premature to resume the inquiry before the reconfirmation hui had been held.

2.1.4 Tribunal direction of 1 October

In a direction of 1 October, Judge Wickliffe responded to all memoranda from claimants, the Crown and the executive council regarding the requests for resumption.²⁰ The direction summarised the memoranda received from counsel to date, and declined the request for resumption on the following grounds:

- ▶ that it was open for the kaihautu members to reject the reconfirmation document at the regional reconfirmation hui, and for the Tribunal to intervene before this discussion had taken place would not be helpful;
- ▶ that the views of the taumata were likely to be considered by the executive council and the Crown in their consideration of the outcome of the hui;
- ▶ that, while the Tribunal was concerned that no further hui had been held for Ngati Rangitahi, consultation between the Ngati Rangitahi Wai 996 claimants and the executive council was underway;
- ▶ that Ngati Whakaue had not yet made a decision as to whether a resumption of the inquiry was necessary;
- ▶ that the concerns of Ngati Whaoa were due to be addressed at the regional reconfirmation hui; and
- ▶ that the concerns of Ngati Makino could be deferred until the outcome of the reconfirmation hui.

15. Papers 3.2.11, 3.2.19

16. Paper 3.2.14

17. Paper 3.2.21

18. Paper 3.2.24

19. Papers 3.2.22, 3.2.23

20. Paper 2.3.32

Finally, the direction invited reports to the Tribunal from the taumata, the executive council and the Crown with respect to the outcome of the regional reconfirmation hui of 2 and 3 October.

2.1.5 Reports on the regional reconfirmation hui

The reports to the Tribunal were filed by the Crown, the executive council and the taumata on 6 October 2004. The Crown report noted that OTS and TPK officials had yet to report to Ministers on the reconfirmation hui, that the hui-a-kaihautu had yet to be held, and that the Crown would file a further memorandum once officials had obtained the views of the Ministers.²¹ The executive council advised that it would provide a full report on the reconfirmation process as soon as possible after the hui-a-kaihautu scheduled for 20 October.²²

The taumata memorandum provided more detail on the outcome of the regional reconfirmation hui.²³ It noted:

- ▶ that all four regional reconfirmation hui voted to adopt the executive council's reconfirmation strategy;
- ▶ that prior to the regional reconfirmation hui, Ngati Whakaue had withdrawn from the kaihautu;
- ▶ that kaihautu members for Ngati Rangiteaorere, Ngati Rangiwewehi, Ngati Wahiao, and Ngati Te Takinga (a hapu of Ngati Pikiāo) voted against the reconfirmation strategy; and
- ▶ that Ngati Rongomai representatives abstained from voting as they objected to the composition of the executive council.

The taumata argued that there had been insufficient support shown for the executive council at the regional reconfirmation hui to continue with the Te Arawa-wide mandate, and requested that the inquiry be reconvened.

In addition to these reports, several other claimant groups filed memoranda in respect of the outcome of the reconfirmation hui. On 6 October, Michael Rika filed a memorandum objecting to the coupling of Ngati Whaoa and Ngati Tahu.²⁴ The next day, counsel for the Wai 996 claimants of Ngati Rangitihī filed a memorandum outlining their frustration at the unwillingness of the Ngati Rangitihī kaihautu member to consult, or even meet, with them in relation to mandating issues. Despite some efforts on the part of the executive council, there had been no improvement in the situation.²⁵

On 12 October, counsel for Ngati Tamakari, a hapu of Ngati Pikiāo, filed a memorandum advising of the resignation at the coast region reconfirmation hui of kaihautu members

21. Paper 3.1.130

22. Paper 3.1.131

23. Paper 3.1.132

24. Paper 3.1.133

25. Paper 3.1.134

2.1.6

David Whata-Wickliffe and his brother, Fred Whata.²⁶ Both had been elected as kaihautu members for Ngati Pikiāo at the July 2003 Ngati Pikiāo mandating hui but had resigned because of the executive council's refusal to address the issues of separate representation for Ngati Tamakari. The memorandum also stated Ngati Tamakari's continuing support for the taumata.

Then, in a memorandum of 20 October, the taumata advised parties of the resignation of the Ngati Rangiteaorere and Ngati Wahiao members of the kaihautu.²⁷ A further memorandum was filed by the taumata on 26 October, in response to correspondence from MICOTOWN which had expressed the view that the reconfirmation process was undertaken in a fair and open manner, and that the executive council continued to have the broad support of the people of Te Arawa.²⁸ The memorandum noted the withdrawal or pending withdrawal of a number of groups from the executive council mandate, and again requested a resumption of the inquiry on the basis of the number of groups which had sought to withdraw.

2.1.6 Tribunal direction of 28 October

In a direction of 28 October, Judge Wickliffe commented on the Crown and executive council reports on the regional reconfirmation hui, and on the taumata's further request for a resumption of the Tribunal inquiry.²⁹ The direction noted that the reports of the Crown and executive council had provided relatively little information on the regional reconfirmation hui and the hui-a-kaihautu, asked both parties to provide further reports on the process within seven days, and requested that these reports be as full and informative as possible. In particular, the judge requested information on whether the executive council considered that its mandate still covered hapu who claimed to have withdrawn, and the current target date for the signing of the terms of negotiation.

On 1 November, the Tribunal received a memorandum from Ngati Rangiwewehi advising that they had recently voted to 'withdraw unconditionally from the current direct negotiations being conducted by Nga Kaihautu O Te Arawa Executive Council'.³⁰

On 5 November, the executive council filed a memorandum in response to the judge's direction of 28 October, attaching the reports of the executive council chairperson and the independent chair on the regional reconfirmation hui.³¹ The chairperson of the executive council considered that the suggestions of the Tribunal's August 2004 report had been complied with, and noted that the executive council had not received sufficient information from those groups who had purported to withdraw from the kaihautu to recognise their

26. Paper 3.1.135

27. Paper 3.1.136

28. Paper 3.1.137

29. Paper 2.3.33

30. Paper 3.2.25

31. Paper 3.1.138

withdrawal. The executive council considered that the application to resume the inquiry should be declined, as the Tribunal's August 2004 suggestions regarding the reconfirmation process had been followed.

The same day, the Crown filed a memorandum on the progress of the reconfirmation, attaching an affidavit of evidence from OTS manager Heather Baggott.³² With respect to Ngati Wahiao, Ngati Rangiteaorere, Ngati Rangiwewehi and Ngati Whakaue, Ms Baggott noted that processes relating to these iwi were still underway. Attached to the affidavit were a number of relevant documents. These included a copy of the OTS officials' report to Ministers of 21 October 2004 (referred to in section 1.3.11). Also attached were:

- ▶ letters from MICOTOWN to the executive council and taumata, advising that the Crown had recognised the result of the regional reconfirmation hui;
- ▶ letters to Ngati Makino, Tapuika and Waitaha advising them that the Crown would not accord priority to separate negotiations with each of them, but that it would be 'more likely' to accord priority if all three iwi joined together for negotiations;
- ▶ the TPK report on the regional reconfirmation hui;
- ▶ correspondence from Donna Hall notifying OTS and the executive council of the withdrawal of Ngati Rangiteaorere and Ngati Wahiao from the kaihautu;
- ▶ correspondence from Te Maru o Ngati Rangiwewehi notifying OTS and the executive council of the withdrawal of Ngati Rangiwewehi from the kaihautu;
- ▶ correspondence from the Ngati Whakaue cluster notifying OTS of the withdrawal of Ngati Whakaue from the kaihautu; and
- ▶ responses from OTS to the letters from Ngati Rangiwewehi and Ngati Whakaue.

The memorandum addressed Judge Wickliffe's questions on whether or not the executive council still represented groups which had sought to withdraw from the kaihautu. It noted that the executive council and Crown were continuing to work to resolve outstanding mandate maintenance issues, and that the Crown required that any group wishing to withdraw from the mandate would have to meet the same standard required to attain recognition of the mandate in the first place. Finally, it argued that as the Crown and executive council were continuing to monitor the mandating process, there was no need to resume the inquiry.

2.1.7 Tribunal direction of 10 November

On 10 November, Judge Wickliffe issued a direction following the receipt of the further reports from the Crown and executive council.³³ The direction noted that a number of the Tribunal's August 2004 recommendations had been adopted in the reconfirmation process, but that there was still significant mandate work to be done. In particular, Judge Wickliffe

32. Paper 3.1.139; doc B8

33. Paper 2.3.34

noted that there were issues to be addressed with regard to the executive council's mandate to represent certain iwi/hapu, specifically: the Ngati Whakaue cluster, Ngati Rangiwewehi, Ngati Rangiteaorere, Ngati Wahiao, Ngati Rangitihi, Ngati Whaoa, and four hapu of Ngati Pikiao (Ngati Tamakari, Ngati Te Takinga, Ngati Rongomai, and Ngati Hinekura). Essentially, these were the groups whose opposition to the executive council was identified in the 21 October OTR report to Ministers. The direction stated that there would be little to be gained by resuming the inquiry at that time, and finally requested that the Crown provide copies of the officials' reports to MICOTOWN and MOMA referred to in the Crown memorandum.

On 12 November, the Ngati Whakaue cluster filed a memorandum in response to the issues raised in the executive council memorandum of 5 November, regarding the validity of Ngati Whakaue's withdrawal from the kaihautu.³⁴ The memorandum set out the process by which Ngati Whakaue sought to withdraw from the kaihautu, including the hui of 12 September at which representatives of all Ngati Whakaue hapu and registered Treaty claims resolved to withdraw, and noted that a further hui had been scheduled for 21 November to seek further endorsement of the resolution of the 12 September hui.

On 16 November 2004, a letter from Mita Pirika (acting kaihautu representative for Ngati Tuteniu) to Rangitauira and Company (counsel for Ngati Whakaue) was copied to the Tribunal.³⁵ The letter advised that, at hui-a-hapu on 11 September and 12 November 2004, Ngati Tuteniu had reaffirmed their support for the kaihautu.

Counsel for Ngati Whakaue and the taumata made submissions at a judicial conference of the Tribunal's CNI inquiry on 17 November 2004, when they commented on the reconfirmation process to date.³⁶ In their submissions, both parties sought a resumption of the Te Arawa mandate urgent hearing in light of the imminent signing of the terms of negotiation by the Crown and executive council. Also at the CNI judicial conference, the executive council filed a memorandum which listed all the registered claims which it understood currently to be in support of the executive council mandate.³⁷

On 19 November, Judge Wickliffe issued a direction acknowledging the submissions made at the CNI judicial conference on behalf of Ngati Whakaue, the taumata and the executive council.³⁸ She requested that a memorandum be filed by the Crown in 'response to the issues related to the Te Arawa mandate urgency claim' by 24 November.

On 23 November, the Crown filed a memorandum as an interim response to the judge's directions of 10 and 19 November.³⁹ The Crown's memorandum argued that it would be

34. Paper 3.1.147

35. Paper 3.2.26

36. Papers 3.1.142, 3.1.143. A number of the parties which had chosen to withdraw from or remain outside the executive council were pursuing their claims through the Waitangi Tribunal CNI inquiry. In late 2004, judicial conferences were being held for the CNI inquiry in order to prepare for the hearings, which were due to begin in early 2005.

37. Paper 3.1.141

38. Paper 2.3.35

39. Paper 3.1.144

inappropriate to provide copies to the Tribunal of officials' reports to Ministers within 24 hours of their provision to Ministers, and before the Ministers had taken decisions on them. The Crown did commit to providing copies or extracts of these reports 'within a reasonable time after Ministers have taken decisions on them' and after a copy had been provided to the mandated group.

The same day, the Ngati Whakaue cluster filed a memorandum regarding the outcome of the Ngati Whakaue hui of 21 November.⁴⁰ The outcome of this hui, counsel argued, clearly demonstrated the desire of Ngati Whakaue to withdraw from the kaihautu. The memorandum requested that the executive council amend its deed of trust, deed of mandate, and proposed terms of negotiation, to recognise the withdrawal of Ngati Whakaue.

2.1.8 Response to signing of terms of negotiation

On 26 November, the executive council and Crown signed terms of negotiation. On 30 November, the taumata filed a memorandum in response.⁴¹ According to the taumata, some of the claimants whose registered claims had been included in the terms of negotiation had not been made aware of this until three days before the signing. The memorandum outlined the recent High Court litigation by the taumata, Ngati Rangiwehehi, Ngati Rangitearere, and Ngati Wahiao against the executive council in respect of the signing of the terms of negotiation. It also noted that the signing brought up new issues:

- ▶ Whether the Crown should continue to use the name Te Arawa in relation to negotiations with the executive council;
- ▶ Whether the Crown had any intention to negotiate with Te Arawa groups outside the executive council; and
- ▶ Whether the Crown would use the threat of delayed negotiations to force groups to rejoin the executive council.

The taumata argued that should the Crown undertake direct negotiations with the executive council without 'protection' for other groups in Te Arawa, discrimination and prejudice for those groups outside the executive council would result. It suggested that the urgent inquiry should be resumed in the week of 10 January 2005.

2.1.9 Application for resumption is granted

In a direction of 7 December, Judge Wickliffe granted the taumata's application for a resumption of the urgent inquiry into the Crown's recognition of the mandate of the executive council.⁴² The request was granted on the basis of the inadequacy of the information supplied

40. Paper 3.1.145

41. Paper 3.2.27

42. Paper 2.3.36

by the Crown and executive council in their reports of 23 and 26 November. In particular, the Tribunal was concerned by the Crown's failure to provide the officials' reports to Ministers which had been requested. Without this information, the Tribunal could not be sure that the Crown had responded adequately to its August 2004 suggestions and the various concerns raised by claimant counsel in their memoranda. The Tribunal decided that a resumption of the inquiry was necessary to consider the matter properly. A one-day hearing was set for 12 January 2005, to be held at Wellington.

2.1.10 The January 2005 hearing

In a direction of 17 December, Judge Wickliffe outlined the scope of the reconvened inquiry and identified key issues to be addressed at the hearing.⁴³ First, the hearing would focus on whether the substantive recommendations of the *Te Arawa Mandate Report* had been addressed by the Crown and executive council. Secondly, the hearing would be an opportunity for the Tribunal to receive an update from the Crown and executive council on recent developments in the mandating process. She directed that broader issues – for example, the matter of the Crown's 'large natural groupings' policy – would be outside the scope of, and time available for, the hearing. At the teleconference of all counsel held immediately prior to the 17 December direction, Judge Wickliffe had made it clear that the Tribunal would hear evidence and submissions on the particular application of Crown policy as it affected particular claimants.

The hearing was held in the hui room of the Tribunal, at its offices in Wellington, on Wednesday 12 January 2005. The Tribunal sat from 9am to 5pm. Counsel for claimants and respondents presented their opening submissions orally, and responded to questions from the Tribunal members. Closing submissions of claimant counsel were filed in writing on 24 January, and those from the Crown and executive council on 26 January. Claimant submissions in reply were filed on 28 January.

2.2 PARTIES TO THE JANUARY 2005 HEARING

2.2.1 Claimants

(1) *The Te Arawa taumata*

The Wai 1150 claim was filed by Pihopa Kingi, Pirihira Fenwick, and Malcolm Short on behalf of the *Te Arawa taumata*.

The term 'taumata' was originally used in respect of the three Wai 791 claimants referred to in section 1.2. In early 2002, the 'VIP taumata', as it was called, was expanded to nine members,

43. Paper 2.3:37

three for each of the three regions. The three members for the northern district were Bishop Whakahuihui Vercoe, Sir Howard Morrison (whose place was later taken by Pihopa Kingi), and Pirihira Fenwick. This group effectively constituted a Rotorua district, or Te Arawa taumata within the larger vīp taumata. The named claimants in Wai 1150, Pihopa Kingi, Pirihira Fenwick, and Malcolm Short, are in a sense the successors to the Te Arawa representatives on the original vīp taumata.

At the June 2004 Tribunal hearings, the taumata had opposed the Crown's recognition of the executive council's mandate. They argued that the Crown had failed to recognise the mandate they held at the beginning of 2003, and 'sidelined' the taumata, preferring to deal with Rawiri Te Whare, and later with the executive council. The taumata's claims in this inquiry relate to what it argues are fundamental flaws in the executive council's reconfirmation process, and the failure of the Crown to correct these errors.

(2) Ngati Whakaue cluster

Ngati Whakaue is one of the two largest (with Ngati Pikiao) iwi/hapu of Te Arawa. The Ngati Whakaue cluster, or Te Kotahitanga o Ngati Whakaue, represents a number of claims committees, responsible for the following claims: Wai 94, Wai 155, Wai 268, Wai 293, Wai 316, Wai 317, Wai 335, Wai 384, Wai 391, Wai 410, Wai 533, Wai 693, Wai 893, Wai 1101, and Wai 1204. It represents the majority of Ngati Whakaue hapu. According to Hamuera Mitchell's affidavit, the cluster represents all six koromatua hapu of Ngati Whakaue: Ngati Pukaki, Ngati Te Roro o Te Rangi, Ngati Tunohopu, Ngati Hurunga Te Rangi, Ngati Taeotu, and Ngati Rangi i Waho.⁴⁴

Mitchell stated that the cluster was first established in late 2001, and re-emerged in February 2004 as 'a forum for all claimants and Ngati Whakaue in general to participate in full discussion on the progress of their claims'. The claims of the Ngati Whakaue cluster concern the inclusion of the Ngati Te Roro o Te Rangi hapu and certain Ngati Whakaue registered claims in the executive council's terms of negotiation.

(3) Ngati Makino

In our first report, we found that Ngati Makino had a legitimate expectation of entering their own separate negotiations. We suggested that the Crown must find a way to negotiate with them contemporaneously with the rest of Te Arawa. In September 2004, Ngati Makino and Waitaha agreed to join together for the purposes of negotiations. Their claim in this inquiry relates to the Crown's failure to implement the Tribunal's August 2004 suggestions.

(4) Te Takere o Ngai Wai

Te Takere o Nga Wai are a cluster of claimants with whakapapa links to Raukawa and Tuwharetoa as well as Te Arawa. Three registered claimants from Te Takere o Nga Wai cluster

44. Document c16

2.2.1(5)

are claimants in this inquiry: the Hodge whanau (Wai 1141), Tom Eric Walters (Wai 1195) and Kiri Potaka Dewes (Wai 319). Their claims here concern the inclusion against their wishes of their registered claims in the terms of negotiation, and the lack of consultation on the matter from the Crown or executive council.

(5) *Ngati Hinekura, Ngati Tutaki a Koti, Ngati Tutaki a Hane, Ngati Rongomai, and Ngati Rangiunuora*

Ngati Hinekura, Ngati Tutaki a Koti and Ngati Tutaki a Hane, and Ngati Rangiunuora are hapu of Ngati Pikiāo who oppose the executive council mandate. The Ngati Rongomai hapu are closely related to Ngati Pikiāo, although they held a separate mandating hui in July 2003, and were listed as a separate iwi/hapu in the terms of negotiation. The claims of all these groups relate specifically to the lack of provision for separate reconfirmation hui for each hapu and in general to flaws in the executive council's reconfirmation process.

(6) *Ngati Tamakari*

Ngati Tamakari is a hapu of Ngati Pikiāo. The named claimant in Wai 1173 is David Whata-Wickliffe, who was elected as a kaihautu member at the Ngati Pikiāo mandating hui of 15 July 2003. The claims of Ngati Tamakari relate to their opposition to the executive council mandate and the refusal of the Ngati Pikiāo Kaihautu Committee to recognise Ngati Tamakari as a hapu.

(7) *Ngati Rangitihi*

The Wai 996 claimants belong to Ngati Rangitihi. The named claimants, Andre Patterson and David Potter, do not support the kaihautu. They argue that they have been sidelined by the Ngati Rangitihi Wai 524 claim. One of the named claimants in the Wai 524 claim, Henry Pryor, is also a Ngati Rangitihi member on the kaihautu. The Wai 996 claimants object to being represented by kaihautu members who, they argue, cannot properly speak on their behalf. The Wai 996 claimants also dispute the validity of the outcome of the hui of 17 June 2004, at which the majority of Ngati Rangitihi voted to support the executive council mandate. Their claims relate to the Crown's failure to implement the Tribunal's suggestion that a further mandating hui be held for Ngati Rangitihi.

(8) *Waitaha*

Waitaha are a coastal Bay of Plenty iwi. The position of Waitaha is that they are of the Te Arawa waka, but they are not part of the Te Arawa confederation, and that their raupatu claim is wholly unrelated to the claims of Te Arawa. The Tauranga Moana Tribunal recommended that Waitaha's claims be negotiated separately from those of Te Arawa. The named claimant in Wai 1180 is Tame McCausland. In September 2004, Waitaha and Ngati Makino agreed to join together for the purposes of negotiations. Like those of Ngati Makino, the claims of

Waitaha in this inquiry concern the Crown's unwillingness to discuss a way forward towards separate negotiations.

(9) Ngati Whaoa

Ngati Whaoa are a hapu of Te Arawa which, for the purposes of mandating, have been coupled with Ngati Tahu. At the mandating hui of 17 July 2003, eight kaihautu members were elected for Ngati Whaoa-Ngati Tahu. The claims of Ngati Whaoa concern their desire to be uncoupled from Ngati Tahu.

2.2.2 Other parties

(1) Executive council

The subject of the first Te Arawa mandate hearing was the Crown's recognition of the executive council mandate. In our August 2004 report, we suggested that the executive council undertake a process to reconfirm its mandate. While the claims before us at the resumed urgency inquiry were directed at the Crown, they obviously related to the actions of the executive council as well. Counsel for the executive council presented submissions in defence of the reconfirmation process, and filed an affidavit of evidence from Rawiri te Whare in support of these submissions.

(2) The Crown

At the hearing, the Crown was represented by the Crown Law Office, and Heather Baggott of OTS appeared as a witness.

2.3 SUMMARY

The key points made in this chapter are as follows:

- ▶ In our August 2004 *Te Arawa Mandate Report*, we gave the claimants 'the opportunity to return to the Tribunal, without further application for urgency, should the Crown fail to make an adequate response to our suggestions'.
- ▶ The first request for a resumption of the inquiry was made by the taumata on 10 September 2004, on the basis that inadequate notification of the regional reconfirmation hui had been given by the executive council.
- ▶ On 1 October, the Tribunal issued a direction declining the taumata's request for resumption, on the grounds that it would not be helpful for the Tribunal to intervene before kaihautu members had had the chance to vote on the executive council's reconfirmation document at the regional reconfirmation hui of 2 and 3 October.
- ▶ On 6 October, the taumata reported back on the regional reconfirmation hui, and again

requested a resumption of the inquiry, on the grounds that the reconfirmation hui had demonstrated that the executive council no longer had sufficient support to continue towards conducting Te Arawa-wide negotiations with the Crown.

- ▶ On 5 November, the executive council and Crown filed a memoranda and evidence relating to the reconfirmation hui. Both were satisfied that the hui had been conducted in such a way as to comply with the Tribunal's August 2004 suggestions.
- ▶ In a direction of 10 November, the Tribunal declined the taumata's request for resumption, and requested that the Crown provide the Tribunal with copies of OTS officials' advice on mandating issues.
- ▶ The taumata filed a memorandum on 30 November, again requesting a resumption of the inquiry, on the grounds that in the 26 November terms of negotiation, the Crown and the executive council were seeking to negotiate claims outside the executive council mandate.
- ▶ In a direction of 7 December, the Tribunal granted the taumata's request for a resumption of the inquiry. The request was granted on the grounds that the Crown had failed to provide the Tribunal with officials' reports as requested, and that only by a resumption of the inquiry could the Tribunal properly assess whether or not the Crown had responded adequately to its August 2004 suggestions. The hearing date was set for 12 January 2005.