Detailed Submission on the Te Tau Ihu Claims Settlement Bill

by the

Ngāti Rārua Ātiawa Iwi Trust

31st July 2013

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Summary

The Ngāti Rārua Ātiawa Iwi Trust filed a submission dated 18 July 2013 in respect of this Bill, and when doing so advised that further detail would subsequently be provided. This expanded submission contains that detail.

This submission is filed for the Board of the Ngāti Rārua Ātiawa Iwi Trust by its Chairman, Mr Paul Morgan, on behalf of those mana whenua families who descend from the original customary owners of the Occupation Reserves and the Tenths Reserves of Motueka.

The Ngāti Rārua Ātiawa Iwi Trust **opposes** the enactment of the Te Tau Ihu Claims Settlement Bill ("the Bill") for the reasons set out in this submission. The reasons for the Ngāti Rārua Ātiawa Iwi Trust's opposition are summarised below:

- The Bill is discriminatory. It breaches fundamental human rights and the principles of natural justice and good faith. In particular, the Bill cuts across the legal rights of the mana whenua ki Motueka to resolve their claims with the Crown as they see fit.

- The trustees or beneficiaries of the Ngāti Rārua Ātiawa Iwi Trust have not been involved in the negotiation of the Treaty settlements outlined in the Bill and do not accept that the Bill settles their historic grievances.

- Those iwi representatives who negotiated and agreed to settle their Treaty claims on behalf of the iwi trusts have no mandate to settle the Ngāti Rārua Ātiawa Iwi Trust's claims.

- The Bill will not achieve its aim, which is to comprehensively resolve the Crown's breaches of the Treaty of Waitangi in Te Tau Ihu o Te Ika a Maui (Te Tau Ihu). In fact, the Bill and the process that is intended to lead to its enactment have created fresh grievances.

- The proposed settlement contained in the Bill is completely inadequate to settle the Crown's breaches of the Treaty of Waitangi in Te Tau Ihu. The financial redress offered is worth less than 1% in terms of value compared with the land and resources that were lost. Specifically, they fail to address the Crown breaches in Motueka. The settlements do not expressly address the failure to exclude the hapu lands from expropriation by the Crown, and nor do they provide appropriate redress **directly** to those affected.

- In particular, property rights are being removed from hapu and granted to iwi and to non-mana whenua bodies. Refer to clauses 161-191 (Rights of First Refusal in relation to RFR land) of the Bill. This creates a further grievance with the Crown.

- Mana whenua iwi are required by the terms of the settlements set out in this Bill to buy back commercial and forest land in Te Tau Ihu to make up the settlement, thus further detracting from the settlement that they should have received.

- The Waitangi Tribunal has recognised that the Crown has a responsibility to remedy the defects of the Ngāti Rārua Ātiawa Iwi Trust leases. In particular, the Waitangi Tribunal concluded that the Crown had breached its Treaty obligations to the Ngāti Rārua Ātiawa Iwi Trust by permitting or failing to correct the problem of unduly low valuations and persistently inadequate rentals (page 870). The 2010 an ex gratia payment from the Crown in respect of "Past Rental Losses", only covered not receiving fair market rents for the perpetually leased Whakarewa lands for the period 1 January 1977 - 1 January 1998 (which is a 21 year period). No other aspect of the historical claims regarding this land has been provided for by the Crown

- The Bill provides no Treaty settlement for the Ngāti Rārua Ātiawa Iwi Trust in respect of the perpetual lease regime. Instead it removes the right to claim for these well founded historical grievances: see clauses 21, 22 and 214: settlement of historic claims is final. Thus, what the Tribunal found historically continues today: *"... a very long history of Treaty breach associated with this land, compounded by the Crown's long-term failure to remedy an acknowledged grievance."*

- The terms of the Bill, as set out in the settlements, are poorly supported by Te Tau Ihu iwi members who descend from the two iwi associated with the Ngāti Rārua Ātiawa Iwi Trust (Ngāti Rārua, Te Ātiawa). This is illustrated by the analysis of the numbers of people attending ratification hui and voting: the participation rates for voting to sign the deeds of settlement were very low – 28% of registered persons for respectively for both Ngāti Rārua and Te Ātiawa.

- The paucity of the settlements means that the settlements will not be final. In combination with the sense of injustice created by the settlement process culminating in the passage of this Bill that outcome is inevitable.

Recommendations

The NGĀTI RĀRUA ĀTIAWA IWI TRUST seeks that:

- The Bill not be passed by Parliament into law in its present form.

- The Crown resumes the settlement process for those hapu and iwi disenfranchised by the proposed settlements, specifically the mana whenua ki Motueka, so as to avoid injustice to the mana whenua ki Motueka and prevent the establishment of further Treaty breaches by the Crown.

- The Trust's issues would be addressed by amending the Bill:

    - In clauses 21 (Meaning of historical claims), 22 (Settlement of historical claims final) and 214 (Settlement of historical claims final) providing an exemption for the Trusts's claims in respect of mana whenua ki Motueka lands;

    - To address the perpetual lease regime, or to provide an exemption from the clauses of the Bill that propose to prevent the historical grievances regarding the imposition of this regime from being settled; and

    - Remove those clauses in the Bill that purport to grant property rights in Crown Forest Lands to iwi and to non- mana whenua bodies.

For the reasons set out in this submission the Ngāti Rārua Ātiawa Iwi Trust does **not** support the Bill (with the exception of clause 214(6) of the Bill, which excludes Wakatu Incorporation's legal action from the final settlement of historical claims) in its present form.

The NGĀTI RĀRUA ĀTIAWA IWI TRUST **wishes to be heard** in support of this submission.

Structure of the submission

1. The structure of this submission is as follows:

   1.1 The submission begins with a mihi and introduction.

   1.2 There are three matters of immense concern to the Ngāti Rārua Ātiawa Iwi Trust regarding the Bill. They are:

   - Historical grievances and compensation;
   - The historical and future impact of the perpetual lease regime; and
   - The intent to include as part of the Te Tau Ihu settlements Crown Forest Licensed Lands that should be the subject of a resumption order in favour of the mana whenua ki Motueka.

2. Part 1 of this submission deals with historical grievances and compensation, including the process by which the settlement provisions included in the Bill were reached.

3. Part 2 deals with the Perpetual Lease regime. The Waitangi Tribunal has expressly found there to be a Treaty breach by the Crown in respect of the Ngāti Rārua Ātiawa Iwi Trust lands, yet this Bill removes the Ngāti Rārua Ātiawa Iwi Trust's future rights in respect of historical grievances whilst failing to make any redress for the Crown's breach.

4. Part 3 deals with the extinguishment of all rights to claim Crown Forest Lands or apply for resumption orders in respect of such lands. It also addresses those aspects of the Bill that provide acknowledgement and recognition to those hapū and iwi who have no mana whenua rights and responsibilities to particular areas, such as Motueka.

5. Part 4 deals with the recent ratification process that has led to the Bill. It highlights the poor voter turnout and the low number of Te Tau Ihu iwi members who participated in the ratification process. Based on these numbers, and applying the Crown's own tests, the Ngāti Rārua Ātiawa Iwi Trust does not accept that support for the Bill is sufficient for Parliament to, in good faith and conscience, enact the Bill.

6. This submission concludes in Part 5 with the **recommendations** that:

   - The Bill not be passed by Parliament into law in its present form.
   - The Crown resumes the settlement process for those hapu and iwi disenfranchised by the proposed settlements, specifically the mana whenua ki Motueka,

so as to avoid injustice to the mana whenua ki Motueka and prevent the establishment of further Treaty breaches by the Crown.

- The Trust's issues would be addressed by amending the Bill:
    - In clauses 21 (Meaning of historical claims), 22 (Settlement of historical claims final) and 214 (Settlement of historical claims final) providing an exemption for the Trusts's claims in respect of mana whenua ki Motueka lands;
    - To address the perpetual lease regime, or to provide an exemption from the clauses of the Bill that propose to prevent the historical grievances regarding the imposition of this regime from being settled; and
    - Remove those clauses in the Bill that purport to grant property rights in Crown Forest Lands to iwi and to non- mana whenua bodies.

Introduction

7. My name is Paora Te Poa Karoro Mokena. I am known as Paul Morgan. I am Ngāti Rārua on my father's side. My hapū is Ngāti Turangapeke. On my mother's side, I am Ngapuhi and my hapū is Te Mahurehure.

8. I belong to the Ngāti Rārua families who hold ahi kā over the Motueka area. I trace my descent from Ngāti Rārua through my paternal grandparents, Rore Te Tana Ruka and Pokipoki Riwai.

9. I am the descendant of a number of the principal rangatira (leaders) of Ngāti Rārua, who came to the northern South Island, (Te Tau Ihu o Te Waka a Maui ("Te Tau Ihu")) from the west coast of the North Island in the early 1800s, including Te Tana Pukekohatu, Turangapeke (Te Pehi), Riwai Turangapeke, Matana Ruka and Tamati Pirimona Marino.

10. I have been actively involved in issues relating to our lands in Te Tau Ihu and in particular the Nelson Tenths Reserves ("Tenths Reserves") for most of my personal and professional life.

11. I have been the Chairman of the Ngāti Rārua Ātiawa Iwi Trust since 1993, and prior to that I was a Trustee (from 1986) of the precursor to the Ngāti Rārua Ātiawa Iwi Trust i.e: the Whakarewa School Trust Board.

12. In 2008 I filed a Statement of Claim on behalf of Ngāti Turanga-a-Peke under the Treaty of Waitangi Act. This claim was not considered as part of the Waitangi Tribunal's 2008 Report on the Northern South Island Claims.

13. Together with Russell James Thomas, Emma Sky Park, John Te Rangi Okiwa Morgan, Melanie Hinekohu McGregor and Ropata Wilson Tamu Taylor, all of whom are trustees of the Ngāti Rārua Ātiawa Iwi Trust, in 2012 I filed on behalf of mana whenua ki Motueka applications with the Waitangi Tribunal for an urgent remedies hearing for claims under section 8HB Treaty of Waitangi Act 1975 and for a recommendation that the Crown not proceed to dispose of land pending the Tribunal's determination of the application under section 8HB.

14. By decision dated 15 May 2013 the Presiding officer declined the application for an urgent remedies hearing. That decision effectively removes the ability of the mana whenua ki Motueka to seek resumption of their lands under Crown Forest Licence, because the passage of this Bill will permanently dispose of those lands prior to the hearing of such an application and well before any chance of receiving a determination on a remedies hearing.

THE NGĀTI RĀRUA ĀTIAWA IWI TRUST and its' beneficiaries

15. To understand the reasons for this submission, and the depth of feeling behind it, one must understand the context: the origins of the Ngāti Rārua Ātiawa Iwi Trust and whom the Ngāti Rārua Ātiawa Iwi trust represents, our customary history, and the history of the Ngāti Rārua Ātiawa Iwi Trust's engagement with the Crown during the Waitangi Tribunal claims process.

16. The Ngāti Rārua Ātiawa Iwi Trust was established in 1993 as a charitable trust under the Ngāti Rārua-Ātiawa Iwi Trust Empowering Act 1993.

17. The Ngāti Rārua Ātiawa Iwi Trust came into existence as a consequence of the Anglican Church's return of the lands at Whakarewa – this was a private settlement, not a Crown/Treaty of Waitangi settlement. The Waitangi Tribunal in its 2008 Report on the Northern South Island Claims (WAI785) agreed with the approach in the Ngāti Rārua-Ātiawa Iwi Trust Empowering Act 1993 of returning the Whakarewa lands not to the beneficiaries of the tenths "*... but to those iwi more connected to the particular lands (the resident iwi of Motueka). Nonetheless the fact that this land has finally been returned does not settle their treaty claims either.*" This recognised that the Ngāti Rārua Ātiawa Iwi Trust beneficiaries have a Treaty claim.

18. The Waitangi Tribunal's Report on the Northern South Island claims found that the claims of Treaty breaches were well founded. Particular findings relevant to this submission are summarised in Appendix A attached to this submission.

19. The Ngāti Rārua-Ātiawa Iwi Trust Empowering Act 1993 specifies the Ngāti Rārua Ātiawa Iwi Trust's functions, powers and duties. That Act enshrines the Ngāti Rārua Ātiawa Iwi Trust's Trust Deed. That Deed, inter alia, provides for the trustees to bring proceedings relating to the property rights of the beneficiaries. The Ngāti Rārua Ātiawa Iwi Trust's role thus extends beyond the Whakarewa lands, and involves protecting the rights of its' beneficiaries more broadly, including the protection of their property rights.

20. Clause 2 of Schedule 3 of the Ngāti Rārua Ātiawa Iwi Trust Act states that: *"The beneficiaries of this Trust shall be those Maori people comprising members of the Ngāti Rārua and Te Ātiawa mana whenua ki Motueka tribes who can establish a direct lineal descent ... from the persons listed in Schedule 2 hereto being the original owners of the lands the subject of the Crown Grants dated 25th July 1853 and 4th August 1853 (such owners being listed in 1845 by Land Commissioner Spain and found in judgements of the Maori Land Court delivered in 1892) ..."*

21. The mana whenua of Motueka are the hapu of Ngāti Turangapeke, Ngāti Pareteata and Puketapu (Ngāti Rarua ki Motueka) and Ngāti Tawhirikuru and Mitiwai (Te Ātiawa ki Motueka). They are the duly recognised descendants of the persons listed in Schedule 2 of the Ngāti Rārua Ātiawa Iwi Trust Act. To put it another way, the Ngāti Rārua Ātiawa Iwi Trust represents the descendants of those members of the Ngāti Rārua and Te Ātiawa mana whenua ki Motueka iwi who have been identified by the Native Land Court as the original customary owners of Motueka.

22. The submission on this Bill filed on behalf of the Wakatu Incorporation contains two appendices:

- Appendix 1, entitled "Who We Are" sets out the customary history of western Te Tau Ihu (Nelson, Motueka and the surrounding area (that is, Tasman Bay) and Golden Bay), as well as the history of the establishment of Wakatu Incorporation, in detail.

- Appendix 2 sets out the history of Wakatu Incorporation's engagement with the Crown, including in respect of perpetual leases, with a focus on the recent negotiation and settlement process that has led to the Te Tau Ihu Claims Settlement Bill.

23. These appendices are referred to with respect, in support of the Ngāti Rārua Ātiawa Iwi Trust's submission, as the customary history and the engagement with the Crown during the Te Tau Ihu Claim process set out there equally applies to the Ngāti Rārua Ātiawa Iwi Trust. Rather than repeat the details, the Ngāti Rārua Ātiawa Iwi Trust adopts, as far as applicable, those appendices. However, in doing so, it emphasises that the Ngāti Rārua

Ātiawa Iwi Trust is not the Wakatu Incorporation. The two entities are different legal bodies established under different statutes. Whilst they have both some personnel and beneficiaries who are the same, they are independent of one another.

24. The Ngāti Rārua Ātiawa Iwi Trust acknowledges that the details in the Wakatu Incorporation submission are contained in Appendices not to sideline them, but to develop the detail that needs to be understood when considering the submission. This leaves the body of Wakatu's submission free to focus on the substantive provisions of the Bill.

25. The Ngāti Rārua Ātiawa Iwi Trust does not intend to provide a clause by clause submission on the Bill's provisions, as the Ngāti Rārua Ātiawa Iwi Trust's opposition to the Bill is far too fundamental to make that approach realistic. **It is the Bill itself, in its entirety, which is opposed in its present form.**

Part 1: Historical matters and compensation

26. The iwi who have entered into Treaty settlements in respect of Te Tau Ihu are not mandated to settle the historic Treaty breaches on behalf of the mana whenua ki Motueka.

27. The Ngāti Rārua Ātiawa Iwi Trust is the body that represents, through statute, those who have the right to seek resumption, being the beneficiaries, the mana whenua ki Motueka. The constitution of the Ngāti Rārua Ātiawa Iwi Trust requires the trustees to take steps to protect the property rights of the beneficiaries.

28. This submission is one such step – the Bill will, if passed, transfer property to iwi prior to the resolution of any resumption claims flowing from the Northern South Island Report.

29. At the outset of the Te Tau Ihu negotiations it was intended that matters relating to the loss of land suffered by those whānau and hapu ki Motueka would be addressed by Tainui Taranaki ki te Tonga Limited (TTKTT Ltd), the body mandated to negotiate a comprehensive settlement of all Te Tau Ihu claims.

30. TTKTT Ltd includes representatives from the four Tainui Taranaki iwi trusts **and WAI 56,** which initially encompassed the kaitiaki of the Nelson Tenths Reserves **and** the Ngāti Rārua Ātiawa Iwi Trust acting on behalf of the mana whenua ki Motueka.

31. In 2009, an agreement was reached between the Crown and the iwi trusts to split the Te Tau Ihu settlements into four separate iwi packages, which had the detrimental effect that the key issues relevant to the mana whenua ki Motueka 'fell through the cracks'.

32. In October 2010, the Crown suspended negotiations with TTKTT Ltd and each of the four Tainui Taranaki iwi trusts. Although settlement negotiations with each of the four Tainui Taranaki iwi trusts in Te Tau Ihu were eventually resumed and have been completed, TTKTT Ltd never resumed negotiations as an entity in its own right, in the way that was contemplated by the Crown and the people when it was established.

33. The result is that the Ngāti Rārua Ātiawa Iwi Trust has been excluded from the settlement process. The Bill effectively hands over to iwi all rights in respect of mana whenua ki Motueka and ignores the Ngāti Rārua Ātiawa Iwi Trust's statutorily mandated purpose and powers.

34. The Ngāti Rārua Ātiawa Iwi Trust's claims relating to pre-1992 Crown Treaty breaches, including the imposition of perpetual leases on the Ngāti Rārua Ātiawa Iwi Trust's land, are not settled by this proposed iwi settlement legislation. The Crown's position appears to be based on its view that although the Ngāti Rārua Ātiawa Iwi Trust and the landowners its represents will not benefit directly from the iwi settlements (nor will the Ngāti Rārua Ātiawa Iwi Trust's specific land claims be resolved), the Ngāti Rārua Ātiawa Iwi Trust beneficiaries will receive an indirect benefit because they are members of Ngāti Rārua and Te Ātiawa iwi.

35. That is a fundamental failure to recognise that the persons being recompensed for the Treaty breaches should be the direct descendants of the mana whenua. It should be a direct recompense, not 'you will receive compensation because you are part of a wider group so you will automatically get something'. It is a question of both recognition and scale. It is a question of justice.

36. This Bill creates further Treaty breaches. It does not settle them.

Part 2: The Perpetual Lease Regime

37. The fact that TTKTT ceased to be the negotiating body, plus the refusal of the Crown to negotiate with the mana whenua ki Motueka, has meant that discrete issues such as the Whakarewa leases and compensation issues associated with the lease regime have not been resolved by the respective iwi Deeds of Settlement. As a result the Bill fails to address or resolve the on-going discrimination that the Ngāti Rārua Ātiawa Iwi Trust's beneficiaries face as a result of unfair lease arrangements applying to Whakarewa lands.

38. The Ngāti Rārua Ātiawa Iwi Trust currently administers a number of leases under the Public Bodies Leases Act 1969. Almost all of the leases are perpetual leases, with no first right of refusal to the lessor when a lessee proposes to sell his or her interest. The rent review periods for the leases range from five years to twenty one years. The majority

of leases (17) have a seven year rent review period, while 13 leases have a 21 year rent review period.

39. The Tribunal found: *"The 1993 return of land to the Ngāti Rārua Ātiawa Iwi Trust was not a Treaty settlement but a private arrangement between the Anglican Church and Maori. It did not involve any compensation in respect of the lengthy delay in returning the lands to the local iwi"* (page 1442, 2008 Report).

40. The Waitangi Tribunal's view was that the Crown has a responsibility to remedy the defects of the Ngāti Rārua Ātiawa Iwi Trust leases: There is *"... a very long history of Treaty breach associated with this land, compounded by the Crown's long-term failure to remedy an acknowledged grievance. We recommend that the Crown enter into discussions with the Ngāti Rārua Ātiawa Iwi Trust about their concerns with a view to bringing the leases into line with current lease practices"*.

41. In particular, the Waitangi Tribunal concluded that the Crown had breached its Treaty obligations to the Ngāti Rārua Ātiawa Iwi Trust by permitting or failing to correct the problem of unduly low valuations and persistently inadequate rentals (page 870). As a result, the Crown should intervene to place the Ngāti Rārua Ātiawa Iwi Trust on the same footing as Wakatu Incorporation land (page 1442).

42. There has never been a Crown intervention to place the Ngāti Rārua Ātiawa Iwi Trust on the same footing as Wakatu Incorporation land. The Ngāti Rārua Ātiawa Iwi Trust leases are not in line with normal commercial leasing practices.

43. Although the Ngāti Rārua Ātiawa Iwi Trust received in 2010 an ex gratia payment from the Crown in respect of "Past Rental Losses", meaning losses the Ngāti Rārua Ātiawa Iwi Trust and its beneficiaries have suffered as a result of not receiving fair market rents for the perpetually leased Whakarewa lands for the period 1 January 1977 - 1 January 1998 (which is a 21 year period), that compensation did **not** cover pre-1977 losses or prejudice associated with the perpetual lease regime and its impact on landowners.

44. Nor did the payment settle any claims made against the Crown arising from Treaty breaches. The Deed of Settlement expressly acknowledges that.

45. **Where in the Bill is there a Treaty settlement for the Ngāti Rārua Ātiawa Iwi Trust in respect of the perpetual lease regime? There is nothing there. Instead, the Ngāti Rārua Ātiawa Iwi Trust has clause 214: settlement of historic claims is final.**

46. The Bill represents the Crown's failure to take into account the historical injustices associated with the imposition of the perpetual leases, or that the lease terms and

conditions are an unfair and discriminatory constraint on the Ngāti Rārua Ātiawa Iwi Trust's ability to deal with its land as it sees fit.

47. It is no answer to say that the Minister of Māori Affairs has undertaken to seek Cabinet approval to establish a Ministerial review of the Maori Reserved Lands Amendment Act 1997. It is no answer to say that the Ngāti Rārua Ātiawa Iwi Trust may in future seek to have its lands included in any future legislative amendments to the Māori Reserved Lands Amendment Act 1997.

48. The Ngāti Rārua Ātiawa Iwi Trust does not consider that it's claims are settled by some combination of the Treaty settlements, the 2010 ex gratia payment or the view of some officials that the lease terms and conditions are fairer than the previous Māori Reserved Lands leases.

49. There is a finding of a Treaty breach. **This Bill should not be passed without including appropriate recompense, including an apology, for that breach.**

50. The Bill provides no Treaty settlement for the Ngāti Rārua Ātiawa Iwi Trust in respect of the perpetual lease regime. Instead it removes the right to claim for these well founded historical grievances: see clauses 21, 22 and 214: settlement of historic claims is final. Thus, what the Tribunal found had happened historically still continues today: *"... a very long history of Treaty breach associated with this land, compounded by the Crown's long-term failure to remedy an acknowledged grievance."* [emphasis added]

Part 3: Crown Forest Lands

51. Under the Settlement agreements, and as recorded in the Bill, the Crown has agreed:

- to allocate 50% of the Crown Forest Licenced Land ("CFL Land") within the Te Tau Ihu Inquiry District to Ngāti Toa, a proportion of which is situated within the customary rohe of the mana whenua ki Motueka;
- to a transfer value of 50% of the CFL Land to Ngāti Toa, which will prejudice the mana whenua ki Motueka;
- to allocate 50% of the Crown Forest Licenced Land ("CFL Motueka Land") within the Te Tau Ihu Inquiry District and in the Motueka area to those iwi trusts representing Ngāti Tama, Ngāti Rārua and Te Ātiawa.; and
- to allocate Crown Forest Licenced Land within the Te Tau Ihu Inquiry District known as the Golden Downs Forest to those iwi trusts representing Ngāti Tama, Ngāti Rārua and Te Ātiawa.

52. This CFL Land is situated within the customary rohe of Ngati Rārua ki Motueka and Te Ātiawa ki Motueka (the mana whenua ki Motueka).

53. The allocation of CFL lands as set out above will prejudice the mana whenua ki Motueka in both the short term and the long-term.

54. In respect of these CFL lands the rights of resumption referred in s 8HA of the Act are vested in the hapu of mana whenua ki Motueka, The fact that it is these hapu who have the rights is so as a matter of Maori customary lore.

55. The Tribunal has recommended (refer 2008 Report, page 1262) that the Crown negotiate with the resident iwi to compensate them for its repeated failure to return this land, and the long-term prejudice suffered by them as a result.

56. The resident iwi means the "resident" iwi – being the mana whenua ki Motueka – not the wider iwi group, many of whom will have no interest in Motueka. The key point the Tribunal was making turned on the word "resident".

57. These findings were also supported by the findings of the High Court in *Wakatu*[1] where, after hearing 5 weeks of oral evidence and accumulating a common bundle comprising some 30 Eastlight folders, the Court held at [77]:

> ~~Thus whilst it was true that Ngati Koata, Ngāti Rārua, Ngati Tama and Te~~ Ātiawa were the iwi who held mana whenua in the Nelson settlement district in the early 1840s (and still do), it was important to recognise that not all whanau and hapu of those iwi had those mana whenua rights and responsibilities. For example, **in Motueka not all Te Ātiawa and Ngāti Rārua whanau had mana whenua rights and responsibilities there, as the Ngāti Rārua-Ātiawa Iwi Trust example illustrates. ...**
> [emphasis added]

58. These claims give rise to the right of the beneficiaries of the Ngāti Rārua Ātiawa Iwi Trust to seek resumption orders under the Act. That is because the particular Crown Forest Licensed Lands are within the rohe of the mana whenua ki Motueka, and accordingly can be subject to such claims.

59. Under the Bill the Claimants will no longer be able to seek recommendations from the Waitangi Tribunal in respect of their lands for:

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1 [2012] NZHC 1461, see paragraphs [74]-[189].

1. return of Crown Forest Land under section 8HB(1)(a) Treaty of Waitangi Act 1975 and section 36 Crown Forests Assets Act 1989 (binding resumption decision); or

2. compensation under section 8HB(3) Treaty of Waitangi Act 1975 and section 36(1)(b) and Schedule 1 Crown Forests Assets Act 1989.

60. Any such application for resumption orders will be defeated by the passage of this Bill, which permanently removes the lands from a claim by mana whenua ki Motueka. Clause 214 specifies that *"The historical claims are settled".* This is a denial of natural justice – mana whenua ki Motueka have been excluded from the negotiation process and given a 'solution' – grant of lands to iwi groups – that result in a miniscule benefit to them from the settlement process AND the permanent loss of their customary lands.

61. In particular, property rights are being removed from hapu and granted to iwi and to non-mana whenua bodies. Refer to clauses 161-191 (Rights of First Refusal in relation to RFR land) of the Bill. This creates a further grievance with the Crown.

62. In essence, the Bill forces the mana whenua ki Motueka to waive their legal rights pursuant to the Crown Forest Assets Act 1989 to seek resumption of the Crown Forest Licenced Land which is situated within their customary rohe. The Bill represents the ultimate denial of their mana whenua status.

Part 4: The Flawed Ratification Process

63. In the submission filed by the Wakatu Incorporation, Part 3 deals with the limited support for the Bill and the flawed ratification process. Obtaining statistics on actual voter turnout and voting, the Wakatu Incorporation has been able to analyse the very limited support base that the settlement process has obtained amongst iwi.

64. The Ngāti Rārua Ātiawa Iwi Trust acknowledges the work that the Wakatu Incorporation has put into obtaining this official information and in preparing its submission on this point, and adopts the submission as far as it relates to the problems with the ratification process.

65. The statistics for Te Ātiawa o Te Waka a Maui and for Ngāti Rārua show a participation rate of only 28% of those registered. The number registered is itself a low engagement/participation rate for the iwi beneficiaries, which compounds the problem even more.

66. It is also noted that that Crown officials and iwi trust representatives had doubts about whether iwi members would support the proposed deeds of settlement, and that with

respect to Te Ātiawa, the concern was serious enough for officials to consider a contingency plan should Te Ātiawa reject the settlement package. That is telling in itself, and of great concern.

67. The Ngāti Rārua Ātiawa Iwi Trust reiterates that the low level of turnout is not normal in Te Tau Ihu. Like the Wakatu Incorporation, its beneficiary attendance at hui and AGMs is high. Given the importance of these settlements to iwi in Te Tau Ihu, and the fact this is a culmination of generations of work, a much greater involvement in the ratification process was expected. That this did not happen indicates that the process was seriously flawed.

Part 5: Recommendations

68. This submission concludes with the **recommendations** that:

- The Bill not be passed by Parliament into law in its present form.
- The Crown resumes the settlement process for those hapu and iwi disenfranchised by the proposed settlements, specifically the mana whenua ki Motueka, so as to avoid injustice to the mana whenua ki Motueka and prevent the establishment of further Treaty breaches by the Crown.
- The Bill be amended in the following areas:
    - In clauses 21 (Meaning of historical claims), 22 (Settlement of historical claims final) and 214 (Settlement of historical claims final) providing an exemption for the Trusts's claims in respect of mana whenua ki Motueka lands;
    - To address the perpetual lease regime, or to provide an exemption from the clauses of the Bill that propose to prevent the historical grievances regarding the imposition of this regime from being settled; and
    - Remove those clauses in the Bill that purport to grant property rights in Crown Forest Lands to iwi and to non- mana whenua bodies.

69. For the reasons set out in this submission the Ngāti Rārua Ātiawa Iwi Trust does **not** support the Bill (with the exception of clause 214(6) of the Bill, which excludes Wakatu Incorporation's legal action from the final settlement of historical claims) in its present form.

70. The Ngāti Rārua Ātiawa Iwi Trust **wishes to be heard** in support of this submission.

Appendix A: extract of summarised findings from the Waitangi Tribunal's 2008 *Report on the Northern South Island Claims* (WAI785).

The Waitangi Tribunal has found that:

1. Failure to ensure whanau and hapu settlements, including cultivation lands, places used for harvesting food and resources, and wāhi tapu including urupa, were **protected and reserved** in accordance with Crown guarantees meant the owners of the land lost the land without payment or adequate consent (see page 869);

2. The Crown failed to ensure that the reserve estate comprised a full tenth, meaning 17,200 acres plus occupation lands (refer pages 849-851). This was a breach of the duties of active protection, acting in good faith, reciprocity and mutual benefit (see page 854) and resulted in insufficient land for the needs of Maori (see page 854 also).

3. In particular, the **occupation reserves** at Motueka and Moutere were inadequate to sustain the resident Maori population (see page 868);

4. The Crown's failure to exemp/except **occupation lands** from the tenths reserves was a critical omission, as the Crown acknowledged (refer page 85);

5. The Crown's failure to ensure that the full tenths estate was retained was a fundamental breach of the Crown's fiduciary obligations, compounded by its failure to make up the losses by providing an equivalent in land or revenue (see page 853), breached the Article 2 guarantee that lands would be retained, breached the duty of active protection and the duty to consult, and breached the principles of equity and of partnership (see page 855);

6. The tenths reserves were vested in the Crown as trustee without the agreement of Te Tau Ihu Maori, which was a clear breach of the Article 2 guarantee, as well as the principles of partnership, active protection and reciprocity (see page 857), and the Crown breached its fiduciary duties as trustee by failing to ensure adequate consultation with beneficiaries or enable their involvement in the administration of the trust (see page 862);

7. The imposition of the perpetual leasing regime, without consultation or consent, effectively resulted in the permanent alienation of the reserves and was a significant violation of the Crown's obligations to its Treaty partner. Unduly low valuations and long-term persistence of inadequate rentals were a significant

feature of the trust's administration after the imposition of perpetual leases and this resulted in sustained prejudice to the beneficiaries of the trust (see page 863);

8. The Crown's inclusion of occupation reserves in the trust estate, the failure to restore ownership over the occupation reserves and the failure to prevent the Public Trustee's increasing assumption of control over these reserves from the turn of the twentieth century was in breach of the Article 2 guarantee of rangatiratanga and the duty of active protection. The beneficiaries of the trust were prejudicially affected by this breach (see page 868);

9. Granting of land (Whakarewa) at Motueka without consent of the whānau and hapu, without proper compensation and in circumstances where more land was taken than was necessary for the purposes of the Anglican Church, and where the land was not returned when it was no longer required, was a breach of the Treaty;

10. Crown mismanagement of the land that was retained (the Tenths and occupation reserves) which led to further losses and Treaty breaches; and

11. There were further breaches associated with the Ngāti Rārua Ātiawa Iwi Trust leases. The Tribunal found in support of the Ngāti Rārua Ātiawa Iwi Trust's claims relating to the Crown's failure to distinguish the Ngāti Rārua Ātiawa Iwi Trust lands from other perpetually leased lands as part of the Maori Reserved Lands Amendment Act 1997, which meant the lands *"have not been put on a proper footing"*.