

WAITANGI TRIBUNAL

Wai 552

CONCERNING

the Treaty of Waitangi Act 1975

AND

an application for an urgent hearing by the Wai 552 claimants on behalf of the Araukuku hapū

DECISION OF THE HONOURABLE SIR DOUGLAS KIDD**Introduction and procedural history**

1. This decision concerns an application for an urgent remedies hearing and an urgent inquiry filed with the Tribunal on 4 February 2015 by Tom Bennion, counsel for Wai 552, the Ahitahi/Araukuku Hapū Claim (Wai 552, #2.11).
2. The application concerns:
 - a) The exclusion of Araukuku from Ngā Hapū o Ngāruahine Iwi Incorporated (Ngā Hapū), the group mandated to negotiate the settlement of Ngāruahine's historical treaty claims;
 - b) Araukuku's imminent loss of the opportunity to pursue resumption as a remedy in relation to the Taranaki Combined Cycle Power Station (TCC Power Station) when Ngāruahine's claims are settled; and
 - c) Araukuku's potential loss of mana and rangatiratanga as a constituent hapū of Ngāruahine.
3. The applicants seek:
 - a) The cancellation of the Crown's proposed settlement of the Wai 552 claim under the Ngāruahine Deed of Settlement, including the proposed settlement in respect of surplus Crown lands in the Araukuku rohe;
 - b) The return to Araukuku of all surplus Crown lands within their rohe;
 - c) Resumption orders over the section 27B memorialised land in the former Waipuku-Patea block; and
 - d) A quantum commensurate with their loss of land, mana and people in the Crown's land wars in Taranaki in the 1860s and aftermath.
4. On 9 February 2015, the Deputy Chairperson directed the Crown to file submissions in response to the application by 23 February 2015 (Wai 552, #2.12).

5. On 17 February 2015 Mr Bennion filed a memorandum of counsel further particularising this application (Wai 552, #2.13). This was accompanied by an affidavit of Lewis Ata Turahui (Wai 552, #A3).
6. On 23 February 2015, Crown counsel filed a memorandum seeking an extension to file their response (Wai 552, #2.14). The extension was granted and counsel were directed to file their response by 2 March 2015 (Wai 552, #2.15).
7. On 24 February 2015, Mr Bennion filed a memorandum requesting that the Crown's submissions outline the timetable for the introduction of the Ngāruahine settlement legislation to the House of Representatives (Wai 552, #2.16).
8. On 3 March 2015, the Crown filed submissions opposing both the application for an urgent remedies hearing and the application for urgency (Wai 552, #2.17).
9. On 3 March 2015, the Deputy Chairperson issued a memorandum-directions (Wai 552, #2.18) instructing that:
 - a) Ngā Hapū should be added to the distribution list, and given the opportunity to respond to the application as an interested party by 17 March 2015; and
 - b) The applicant should reply to the submissions of the Crown and of interested parties by 31 March 2015.
10. On 4 March 2015, the Crown filed an affidavit of Glenn Webber, with accompanying appendices, opposing the current application (Wai 552, #A4 and A4(a)).
11. On 10 March 2015, the Chairperson delegated to me the task of determining this application (Wai 552, #2.19).
12. On 17 March 2015, the Tribunal received a memorandum of counsel on behalf of Ngā Hapū seeking an extension for the filing of their submissions (Wai 552, #2.20). The Tribunal also received a memorandum of counsel on behalf of Te Rūnanga o Ngāti Ruanui (Te Rūnanga) seeking to be added to the application as an interested party (Wai 552, #2.21).
13. Ngā Hapū were granted an extension for filing their submission until 24 March 2015 (Wai 552, #2.22), and Te Rūnanga were added to the application as an interested party, and were also directed to file their submissions by 24 March 2015 (Wai 552, #2.23). In light of this I extended the applicant's time provided to respond to 7 April 2015 (Wai 552, #2.23).
14. On 7 April 2015 the counsel for the applicants filed a memorandum of counsel seeking an extension for the filing of their submissions in reply to 10 April 2015 (Wai 552, #2.27). This extension was granted (Wai 552, #2.28).
15. On 14 April 2015 I issued a memorandum-directions convening a judicial teleconference on 16 April 2015 to hear from parties on the application. In attendance

at the teleconference were Mr Bennion for the applicants accompanied by Hori Manuirirangi; Deborah Edmunds and Tai Ahu for Te Rūnanga and Ngā Hapū accompanied by Daisy Noble; and Geoff Melvin and Caitlin McKay for the Crown accompanied by Office of Treaty settlements officials.

Background

The applicants' claim

16. The applicants are claimants for Wai 552, the Ahitahi/Araukuku Hapū Claim. In the applicants' submissions they note that Araukuku is a hapū that affiliates to both Ngāruahine and Ngāti Ruanui in the Taranaki District (Wai 552, #2.11, para 2).
17. The original statement of claim for Wai 552 was filed on 4 October 1995 by Lewis Turahui on behalf of Ahitahi/Araukuku and registered on 25 November 1995 (Wai 552, #1.1). A fuller amendment to the Wai 552 claim was filed on 21 November 1995 (Wai 552, #1.1(a)). The claimant group was now defined as Te Hapū o Araukuku and the lands to which the claim related were stated as:

The northern boundary being the Waipuku Stream, eastern boundary being a straight line from the Waipuku Stream and Manganui River intersection, which carries on in a straight line to the Kahouri Stream and the Patea River, carrying on down south to the Tawhiti Stream and Ohangai Road; from the Tawhiti Stream across to the Waingongoro River, turning here and following the river to the top of the Maunga.

18. The subject matter of the claim concerns Araukuku lands, namely:
 - a) The Waipuku-Patea block, in particular a deed of cession through which the Crown purchased the block in an area that had previously been confiscated.
 - b) The TCC Power Station, which is located within the Waipuku-Patea block, and which the claimants sought a recommendation from the Tribunal that this land be returned to Araukuku ownership.
 - c) The inadequate protection provided under the State-Owned Enterprises Act 1986 framework.
 - d) A 700-acre reserve within the Waipuku-Patea block that was meant to be set aside for Araukuku, who instead were forced to accept an alternative block of land of lower value.
 - e) The failure by the Crown to provide an adequate land base for Araukuku through reserves on the Tiroitiromoana block as promised.
 - f) Illegal purchases and confiscation under the takoha system that robbed Araukuku of their link to their tupuna, Taranaki Maunga.
19. Although not detailed in an amended claim, the applicants list a number of further Crown actions to which they say their claim relates and because of which the Tribunal ought to grant an urgent remedies hearing and an urgent inquiry.
20. These additional Crown actions specifically relate to their negotiations with Ngāruahine, in particular:

- a) The Crown's failure to engage with Araukuku about the inclusion of their claim in the Nga Hapū mandate;
 - b) The inclusion of Wai 552 within those claims to be settled by the Ngāruahine settlement, despite the exclusion of Araukuku from the hapū listed in the settlement's definition of Ngāruahine.
21. By way of background the applicants provide further detail of Araukuku's involvement in the Ngāruahine and Ngāti Ruanui treaty settlements.
 22. Ngāti Ruanui settled all of their historical treaty claims with the passing of the Ngāti Ruanui Claims Settlement Act 2003. Wai 552 is partially settled under this legislation insofar as it relates to Ngāti Ruanui. This Act did not remove the section 27B memorial from the TCC Power Station land.
 23. Ngāruahine are now progressing towards the settlement of their historical treaty claims. In August 2014 the Ngāruahine Deed of Settlement (DOS) was signed. Araukuku is not included within the definition of Ngāruahine in these documents; however, the Wai 552 claim is listed amongst others to be partially settled by the settlement. Again, this settlement will not remove the memorial from the TCC Power Station land.
 24. The applicants submit that *The Taranaki Report – Kaupapa Tuatahi* "held that the Wai 552 claim is well-founded" (Wai 552, #2.13). The applicants submit that the Tribunal can rely on these findings to proceed to an urgent remedies inquiry in respect to the memorialised land on which the TCC Power Station now stands.

The Taranaki Report

25. A number of claims were consolidated into the Taranaki district inquiry. The Taranaki Report listed 21 claims. These included claims by the Taranaki Māori Trust Board, Ngāti Tama, Ngāti Maru, Ngā Rauru Kitahi, Te Pakakohi, the Wellington Tenths Trust, the Palmerston North Reserve Trust, Te Whana Whānau Trust, Ngā Mahanga and Ngāti Haumiti, Parininihi-ki-Waitotara Incorporation, Ngāruahine, Ngāti Ruanui, Te Atiawa, Tangahoe, Ngāti Haumia, Ngāti Okahu, Te Iwi o Mokau, Ahitahi/Araukuku, as well as claims representing Ngā Iwi o Taranaki as a whole.
26. The Wai 552 claim was received and registered after the conclusion of hearings for this district, which were held from September 1990 to June 1995. The claim was, however, included on the Wai 143 record of inquiry and the claimants were directed to file written submissions, to include information on the hapu involved and the area of land claimed. The registration direction indicated that research would be required before the claim could be heard (Wai 552, #2.1).
27. The *Taranaki Report – Kaupapa Tuatahi* is a generic, interim report which provided preliminary views only on the Taranaki claims. The main issues covered in the report related to confiscation/raupatu and Parihaka. The report did not make any findings in relation to specific claims, nor were any recommendations made.

28. The applicants rely on the findings of the Taranaki inquiry. I will examine later in this decision whether, in these circumstances, that can be done.
29. The applicants rely on the findings of the Taranaki Tribunal in its *Taranakai Report – Kaupapa Tuatahi*, which include the following general conclusion on Crown actions in Taranaki:

12.2 THE RELATIONSHIP IN TARANAKI

The whole history of Government dealings with Maori of Taranaki has been the antithesis to that envisaged by the Treaty of Waitangi.

....

As for the confiscation plan, it was in fact not a scheme to secure peace by occupation, as the legislation claimed, but a strategy to take the territory for the benefit of settlers. Constantly expanding in proportion to the ambitions of its designers, the confiscation plan was immoral in concept and unlawful in implementation throughout the length and breadth of the land.

....

Throughout the post-war period to the Parihaka invasion of 1881, when Taranaki Maori had uncertain land rights, if any at all, and were under threat of extermination, the Government embarked on a macabre buying spree of lands both inside and outside the confiscation boundaries. Such were the post-war circumstance of those purchases, the materially different expectations of the parties to fraud and corruption that none of those purchases met the required terms. As contracts they were nullities for lack of common understandings.

Like the pre-war purchases, these too should be treated no differently from the land confiscations.

....

By the processes described, Taranaki Maori were plundered of their resources. The little left to them cannot sustain the cultural basis of their society for the future. This situation arose from the attitude of the Europeans in departing so entirely from the promises on which the government of the country was established. Generous reparation policies are needed to remove the prejudice to Maori, to restore the honour of the Government, to ensure cultural survival, and to re-establish effective interaction between the Treaty partners.....

The applicant's submissions

30. On 17 February 2015 Mr Bennion filed a memorandum of counsel further particularising this application for urgency (Wai 552, #2.13). This was accompanied by an affidavit of Lewis Turahui (Wai 552, #A3).
31. The applicant submits that the application meets the criteria for an urgent hearing (Wai 552, #2.13 at [17] – [21]), specifically:
- a) They are able to demonstrate significant and irreversible prejudice as:

- i. The Ngāruahine Settlement legislation will extinguish their right to have resumption orders made by the Tribunal to the TCC Power Station land; and
 - ii. Araukuku will suffer a loss of mana and rangatiratanga if is not allowed to participate fully in the Ngāruahine settlement as a constituent hapū of Ngāruahine.
 - b) There is no alternative remedy available to the applicants, as:
 - i. The Ngāruahine settlement will be extinguished without reference to the applicants; and
 - ii. Previous engagements with the Crown by Araukuku have been unsuccessful.
 - c) The applicants are ready to proceed urgently to hearing.
32. The applicants further submit that the current application meets the criteria for an urgent remedies hearing (Wai 552, #2.13 at [24] – [28]), specifically:
- a) The *Taranaki Report – Kaupapa Tuatahi* held that the Wai 552 claim is well-founded;
 - b) The applicants represent over 700 people;
 - c) The remedies sought are directly connected to the original Treaty breaches identified by the Taranaki Tribunal in its report; and
 - d) The Crown and Ngā Hapū have failed to address the remedies sought by the applicants through their negotiations.
33. The applicants request (Wai 552, #2.13 at [29]) that:
- a) The Crown cancel the proposed settlement of the Wai 552 claim under the Deed;
 - b) The Crown return to Araukuku all surplus Crown land within their rohe;
 - c) The Tribunal make resumption orders over the TCC Power Station memorialised land; and
 - d) The Crown provides a quantum commensurate to Araukuku's loss of land, mana and people.
34. The applicants state that Araukuku have consistently asserted that they are a hapū of both Ngāti Ruanui and Ngāruahine (Wai 552, #2.11 at [2], and Wai 552, #2.13 at [5]).
35. They say that while the Ngāti Ruanui Claims Settlement Act 2003 may have partially settled Wai 552, to the extent that it related to Ngāti Ruanui, on 12 January 2001 Crown officials assured Araukuku that Wai 552 was settled only in respect of Ngāti Ruanui and that it could continue to be progressed as far as it related to Ngāruahine (Wai 552, #2.13 at [7], and Wai 552, #A3(a), pp 38-39).
36. In May 2010 Ngā Hapū sought a mandate from Ngāruahine to negotiate with the Crown the settlement of their historical claims. The applicants say that the Deed of

Mandate did not include Araukuku as a hapū of Ngāruahine, and did not mention the Wai 552 claim (Wai 552, #2.11 at [13] and [14]). On 31 May 2010 the chair of Araukuku Hapū Inc made a submission expressing concern regarding the status of Araukuku under the proposed mandate (Wai 552, #A3(a), p 58). The Crown did not immediately respond, but on 24 August 2010 recognised the mandate of Ngā Hapū to negotiate the settlement of Ngāruahine's historical claims (Wai 552, #2.11 at [16]).

37. In the meantime, on 3 June 2010 Araukuku applied to the Māori Land Court for a determination under section 30 Te Ture Whenua Maori Act 1993 of who should represent Ngaruahine for settlement negotiations. At a hearing on 8 September, shortly after recognition of their mandate, counsel for Ngā Hapū stated to the court that the Crown considered Araukuku's historical claims to have been settled in the Ngāti Ruanui DOS. The court dismissed the application (Wai 552, #A3, pp 7-8).
38. On 6 May 2011 the Crown finally responded to Araukuku's submission on the mandate (Wai 552, #A3(a), p 117). The Crown outlined its understanding that Araukuku were aligned with Ngāti Ruanui for the purposes of Treaty of Waitangi settlements and that in as far as individual members of Araukuku had whakapapa connections to Ngāruahine they could benefit from that settlement.
39. From February 2013 to July 2014, members of Araukuku sent emails to OTS opposing the mandate, the Agreement in Principle and the (at that time) forthcoming Deed of Settlement. The Crown encouraged Araukuku to work with Ngā Hapū to resolve any differences, and maintained that Araukuku would in any case benefit from any settlement as individuals with affiliations to Ngāruahine. (Wai 552, #A3(a), pp 119-135)
40. On 1 August 2014 the Ngāruahine DOS was signed (Wai 552, #2.13 at [11]). The DOS did not contain any reference to Araukuku as a hapū of Ngāruahine, but did include Wai 552 as a claim included in the settlement. The applicants submit that the Ngāruahine area of interest detailed in the Deed is only possible through the inclusion of the Araukuku takiwā (Wai 552, #A3, pp11-12).
41. Following ratification of the Deed, the applicants obtained signatures from over 700 people stating that:
 - a) They are Ngāruahine; and
 - b) Araukuku is one of the recognised hapū that makes up Ngāruahine and is based at Kete Marae (Ngarongo Marae/Ketemarae Pa).

This has been placed before the Tribunal as evidence of support for this application (Wai 552, #A3(a), p 197).

The Crown's submissions

42. The Crown opposes the application for an urgent hearing (Wai 552, #2.17). Crown counsel submit that the applicants have not demonstrated that they will suffer significant and irreversible prejudice, specifically:

- a) The Crown recognised the mandate of Ngā Hapū to settle the claims of Ngāruahine, including those of Araukuku to the extent that they are based on an affiliation to Ngāruahine, following a robust mandating process; and
 - b) The Ngāruahine settlement enables members of Araukuku to benefit from the settlement. Members of Araukuku who whakapapa to Ngāruahine are beneficiaries of that settlement through their whakapapa links to Kanihi-Umutahi and Okahu-Inuawai hapū.
43. Furthermore, the applicants have not put forward any evidence as to the extent of support amongst Araukuku for the application, and the extent of opposition to the absence of Araukuku hapū representation in the Ngāruahine post-settlement governance entity (PSGE) is inconclusive. In contrast, the results of the ratification of the PSGE demonstrate there is strong support for the PSGE amongst the claimant community.
44. The Ngāruahine Deed of Settlement was signed on 1 August 2014 and counsel argue that the delay in bringing this application for urgency should weigh against the granting of urgency.
45. The Crown also opposes the application for an urgent remedies hearing on the following grounds (Wai 552, #2.17 at [6]):
- a) The applicants are not able to point to a specific finding of the Tribunal in which the Wai 552 claims is acknowledged as being well-founded. *The Taranaki Report – Kaupapa Tuatahi* was preliminary and introductory in nature, and made no findings as to the specific claims in Wai 552;
 - b) The applicants are not able to show that they are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened;
 - c) The situation of the applicants can be differentiated from the claimants in *Haronga* on a number of grounds, including:
 - i. The applicants have not demonstrated on any robust basis the size of the group they represent, and the support for the application; and
 - ii. There is no evidence that the claimants of Wai 552 are of a dimension or composition that makes them suitable to receive the remedies they seek.
46. The Ngāruahine Deed of Mandate does not list Araukuku as a hapū of Ngāruahine (Wai 552, #A5(a), p 6). Counsel's view is that the Deed of Mandate was supported by the claimant community on that basis (Wai 552, #2.17 at [16]). The consistent message that the Crown has received from Ngāruahine is that Araukuku is affiliated to Ngāruahine through two Ngāruahine hapū, Kanihi-Umutahi and Okahu-Inuawai, and is not a stand-alone hapū of Ngāruahine. The Deed of Mandate put forward by Ngā Hapū and mandated by Ngāruahine was based on that approach (Wai 552, #2.17 at [30.4]). The PSGE was ratified and approved by 93.51% of those who voted (Wai 552, #2.17 at [17]).

47. The Crown took steps to clarify Araukuku's position in relation to Ngāruahine throughout the negotiations (Wai 552, #2.17 at [30.5]). In summary:
- a) The chair of Araukuku Hapū Inc, Mr Ngatai, provided a submission on the Deed of Mandate on 1 June 2010 objecting to the mandate of Ngā Hapū;
 - b) Officials from the Office of Treaty Settlements (OTS) met with Mr Ngatai and the Wai 552 claimant Lewis Ata Turahui at a hui on 11 July 2010 to hear their concerns;
 - c) The Crown wrote to Mr Ngatai on 6 May 2011 explaining the Crown's understanding that Araukuku had aligned with Ngāti Ruanui for the purposes of Treaty of Waitangi settlements. It advised that to the extent that individual members of Araukuku affiliate to Ngāruahine their claims would be settled through the Ngāruahine settlement;
 - d) OTS encouraged Mr Ngatai to discuss participation in the settlement process with Ngā Hapū and offered to provide a facilitator for such discussions; and
 - e) Leading up to the signing of the DOS officials continued to consider and discuss matters raised by members of Araukuku relating to the inclusion of Wai 552 in the Ngāruahine settlement. The Crown consistently communicated that, to the extent that individual members of Araukuku affiliate to Ngāruahine, their claims would be settled through the Ngāruahine settlement, and they would be entitled to be beneficiaries of that settlement.
48. In *Attorney-General v Mair* [2009] NZCA 625 the Court of Appeal confirmed that an ability to demonstrate support is highly relevant when considering an urgency application, particularly where an iwi or hapū are divided. The Tribunal and courts have been clear that numbers matter in such circumstances (Waitangi Tribunal, *East Coast Settlement Report*, pp 48 – 50).
49. The applicants have filed a document described as a petition supporting a declaration that 'Araukuku hapū is one of the recognised hapū that makes up the Ngāruahine Iwi and is based at Kete Marae.' The Crown submits, however, that the Tribunal cannot treat this document as demonstrating support for the urgency application because:
- a) The petition includes numerous names that have been listed without the named person's signature;
 - b) The petition requests signatories to declare that they are of Ngāruahine descent , but does not require them to identify as being affiliated to Araukuku; and
 - c) The petition cannot be taken as an indication of opposition to the Ngāruahine settlement as that is not what the petition asks signatories to declare (Wai 552, #2.17 at [34]).
50. The Crown submits that the Tribunal has not made a finding that the Wai 552 claim is well founded. The applicants have only pointed to the general findings of the Tribunal. The *Taranaki Report – Kaupapa Tuatahi* contains only one reference to the Waipuku-Patea block. Furthermore, there are no specific findings in respect to Waipuku-Patea block or Araukuku (Wai 552, #2.17 at [44]).

51. In terms of timetabling and the introduction of settlement legislation, the Crown indicated that the earliest the Ngāruahine Claims Settlement Bill would be introduced into the House of Representatives was May 2015 (Wai 552, #2.17 at [51]).

Ngā Hapū's submissions

52. On 24 March 2015 the Tribunal received submissions from Ngā Hapū (Wai 552, #2.25(a)) opposing the application on the grounds that the applicants had not demonstrated that they would suffer significant and irreversible prejudice (Wai 552, #2.25(a) at [2.1]):
- a) Since August 2010 it has always been Ngāruahine's position that Araukuku are beneficiaries of the Ngāti Ruanui settlement and not the Ngāruahine settlement;
 - b) The claimant definition of Ngāti Ruanui in section 13 of the Ngāti Ruanui Claims Settlement Act 2003 recognises Araukuku as a constituent hapū;
 - c) The Ngāti Ruanui settlement has settled the claims of Araukuku;
 - d) The Wai 552 claim insofar as it relates to Araukuku as a hapū has been settled by the Ngāti Ruanui settlement;
 - e) Since 2010 Ngā Hapū has followed a rigorous process to settle its outstanding grievances;
 - f) Members of Araukuku who also descend from ancestors of Ngāruahine are beneficiaries of the Ngāruahine settlement; and
 - g) To the extent that the Wai 552 claim does include claims which arise from descent from Ngāruahine ancestors, it will be validly extinguished by Ngāruahine's settlement legislation.
53. Ngā Hapū submits the definition of 'Ngāti Ruanui' for the purposes of the Ngāti Ruanui Claims Settlement Act 2003 includes Araukuku and all individuals who are members of that group. As Araukuku are listed as a hapū of Ngāti Ruanui within this Act, their historical claims have been settled (Wai 552, #2.25(a) at [3.10] – [3.11]).
54. As members of Ngāti Ruanui, Araukuku are fully entitled to benefit from the commercial and cultural redress in the Ngāti Ruanui settlement, and have enjoyed those benefits since 2003. Furthermore, Araukuku are represented on the Ngāti Ruanui PSGE for that purpose (Wai 552, #2.25(a) at [3.12]).
55. Section 14(c) of the Act lists claims which are broad-based iwi claims, generic in nature or multiple iwi and hapū claims that do not relate exclusively to the group setting. They further submit that the practice of the Crown is to list these claims in a class which are partially settled so far as they relate to Ngāti Ruanui (Wai 552, #2.25(a) at [3.15] – [3.16]).
56. In 1997 the Wai 552 Claim was amended to include claims relating to Ngāti Turi (Wai 552, #1.1(b)). As such, it was classified as being one which related to multiple hapū/iwi. Ngā Hapū submits that this is why Wai 552 was only partially settled by the Act (Wai 552, #2.25(a) at [3.16]).

57. Ngā Hapū further states that Araukuku has never been included in the definition of Ngāruahine (Wai 552, #2.25(a) at [4.5]). This was also the position taken by the Māori Land Court at the time of the section 30 case referred to by the Wai 552 applicant (*Manuirirangi v Katene and others* (2010) Chief Judge's MB 355 (2010 CJ 355)).
58. Daisy Noble, the chief negotiator for Ngā Hapū, notes that Ngāruahine understood that for the purposes of Treaty settlements Araukuku were associated with Ngāti Ruanui (Wai 552, #A5 at [3.5] – [3.9]).
59. In respect of the area of interest Ngā Hapū note that the applicant's marae is not within the Ngāruahine area of interest and neither is the TCC Power Station land over which the applicants seek resumption orders. These both fall squarely within the Ngāti Ruanui area of interest (Wai 552, #2.25(a) at [5.2] – [5.3]).

Te Rūnanga o Ngāti Ruanui's submissions

60. On 24 March 2015 the Tribunal also received submissions opposing the application from Te Rūnanga o Ngāti Ruanui (Wai 552, #2.26 at [2.1]). Te Rūnanga submits that the application for an urgent hearing should not be granted on the grounds that the applicants have not demonstrated that they will suffer significant and irreversible prejudice:
 - a) Throughout the Ngāti Ruanui settlement negotiations it was contemplated that Araukuku were to be beneficiaries of the Ngāti Ruanui settlement;
 - b) The claimant definition in section 13 of the Ngāti Ruanui Claims Settlement Act 2003 recognises Araukuku as a constituent hapū of Ngāti Ruanui, and as such entitles Araukuku to benefit from the commercial and cultural redress in Ngāti Ruanui's Settlement as beneficiaries; and
 - c) Araukuku are sufficiently accommodated within Te Rūnanga and actively participate in making decisions that affect the welfare of Araukuku.
61. Like Ngā Hapū, Te Rūnanga also submits that Araukuku are a hapū of Ngāti Ruanui, and as such, all historical Araukuku claims have been settled under the Ngāti Ruanui Claims Settlement Act 2003 (Wai 552, #2.26 at [3.16]).
62. The Trust Deed which established Te Rūnanga as the PSGE trust for Ngāti Ruanui provides for voting rights for Araukuku members. Araukuku board members have been supported by the hapū, and have been actively involved in making decisions on behalf of Araukuku (Wai 552, #2.26 at [4.2]).
63. Further, Te Rūnanga submits that there is no general opposition to Araukuku having a seat on Te Rūnanga's board. Rather, there is regular communication and interaction between the hapū representative and the hapū (Wai 552, #2.26 at [4.3]).
64. Te Rūnanga submits that Araukuku as a hapū are sufficiently accommodated within Te Rūnanga and actively participate in making decisions that affect the welfare of Araukuku (Wai 552, #2.26 at [4.4] – [4.5]).

The applicant's submissions in reply

Crown process in dealing with Araukuku claim

65. In reply, counsel for the applicants states that the Crown has accepted that the status of Araukuku within Ngāruahine is a matter of longstanding debate (Wai 552, #2.29).
66. The Crown, in its submissions, relies on a robust mandating process and steps it took to ensure that Araukuku concerns were addressed. Counsel considers, however, that the accounts of Ngāruahine leaders and the Crown, as presented principally in the affidavits of Mr Webber, Deputy Director Negotiations at the Office of Treaty Settlements and Ms Noble, Lead Negotiator for Ngā Hapū (Wai 552, #A4 & A5), differ on what actually occurred.
67. Mr Webber for the Crown refers to a meeting on 11 July 2010 with Araukuku leaders concerned about the Ngāruahine mandate, which made no mention of Araukuku as a constituent hapū of Ngāruahine. The meeting appears to have coincided with the formal Araukuku submissions in opposition to the mandate (Wai 552, #a4 at [12]). However no detail is provided, and it is unclear whether the meeting preceded or followed the receipt of the submission (Wai 552, #2.29 at [7]).
68. Mr Webber also noted that neither the Deed of Mandate nor the Terms of Negotiation listed Araukuku as a hapū of Ngāruahine (Wai 552, #A4 at [12] and [16]). He noted that Wai 557, which should have been Wai 552, was in fact listed in the Deed of Mandate as a claim being settled, but accepts that it was not listed in the Agreement in Principle (Wai 552, #A4 at [13] and [15]). Further, visual presentations on the mandate which were made by Ngāruahine leaders in February 2010 did not have any reference to Araukuku or to Wai 552 being a claim which would be settled under the mandate (Wai 552, #A5 at [3.9]).
69. The applicants submit that the Crown seeks to draw an inference from the lack of reference to Araukuku that this meant their acceptance of the deed of mandate. They further submit that, given the fluctuating position, one could just as easily conclude that Ngāruahine people were uncertain as to whether Araukuku were being included in the mandate or not (Wai 552, #2.29 at [12]).
70. Mr Webber accepted that it took nearly a year to reply to the Araukuku submissions of July 2010. By that time the Crown was referring to Araukuku people as 'individual members' being able to participate in the Ngāruahine settlement (Wai 552, #A4 at [21]). But, the applicants say, he does not explain how the Crown had reached that conclusion and what advice, if any, it had from Ngāruahine on the matter.
71. Mr Webber also makes the general statement that throughout the Agreement in Principle and the Deed of Settlement process there were continued discussions about the appropriate treatment of Araukuku. He also specifically states that 'The Crown was made aware that Ngāruahine were going to resolve concerns internally' (Wai 552, #A4 at [24]).

72. However, Ms Noble has a different recollection. She says (Wai 552, #A5 at [3.9]):
It was never considered by myself and anyone else who worked on setting up Ngā Hapū that Araukuku as a hapū could benefit from two settlements or seek specific redress (such as cultural redress) through two settlements. Hence we did not include Araukuku in Ngā Hapū as they had made their decision.
73. This indicates, the applicants say, a pre-determined position that Araukuku could not be involved as a hapū in the Ngāruahine settlement because of their involvement in the Ngāti Ruanui settlement (Wai 552, #2.29 at [16]).
74. Ms Noble also says Wai 552, #A5 at [3.9]:
I do not recall ever having any discussions with the Office of Treaty Settlements (OTS) about the inclusion of Araukuku as part of the hapū that were to be settled by our negotiations.
75. Ms Noble also noted (Wai 552, #A5 at [17.2] – [17.3]):
Quite late in the drafting of the Deed of Settlement (22 July 2014) we were advised by OTS that the list of claims in the Deed should also include 3 other claims and this included Wai 552. It was our view that as this was a claim brought by Araukuku that it was not a claim to be settled by Ngā Hapū. We were aware it was listed on the Ngāti Ruanui settlement and Araukuku was listed as one of the Ruanui hapū. My recollection was that we were advised by the Crown that because the claim was brought by a group of hapū (in addition to Araukuku) and part related to the lands which were within the Ngāruahine Area of Interest we had to include it in the list of partially settled claims so as to capture any part of it that may have related to the claims of Ngāruahine. We understood it was because OTS thought the claim may go beyond Araukuku and may include Ngāruahine hapū claims. OTS wished to make sure there were no Ngāruahine loose ends unsettled.
76. Ms Noble's comments, the applicants say (Wai 552, #2.17 at [30.6]), are at odds with the Crown's submission that:
The Crown acknowledges that during the settlement process some communications between the Crown and Araukuku individuals reflected the Ngāruahine view that Araukuku had largely aligned itself with Ngāti Ruanui for settlement purposes.
77. The Crown does not specify what these communications were (Wai 552, #2.29 at [20]).
78. The applicants point to 22 July 2014 as an important date since it falls after the vote to ratify the Ngāruahine Deed of Settlement, which occurred between 20 June 2014 and 8 July 2014. They submit that the evidence shows that Ngāruahine voted on a settlement that did not include any reference to Araukuku and the Wai 552 claim, and that reference to that claim was added after the vote, and at the insistence of the Crown (Wai 552, #2.29 at [21]). As such, statements by the Crown that Araukuku and Ngāruahine have ratified a settlement with the understanding that Araukuku claims were being settled cannot be sustained.
79. Matters are further confused, they say, by the fact that the Ngāruahine area of interest appears to have moved westward in the signed Deed from the area shown in the

initialled Deed to exclude some of Araukuku's rohe (Wai 552, #A5 at [16], and #A5(a), p 214).

Support amongst the claimants

80. In response to submissions from the Crown and interested parties that there is little evidence that the Araukuku concerns are broadly supported, the applicants submit that Araukuku has undertaken a new petition. This petition is signed by over 130 Araukuku members (as at 10 April 2015), along with two trusts that represent a further 645 Araukuku members. They also rely on a statement by Hori Manuirirangi that almost all of the original 700 signatories are Araukuku (Wai 552, #2.29(a), p 47).
81. In terms of support amongst Ngāruahine for the Deed of Settlement, the Crown cites a 94% vote in favour of the Deed. The applicants note that this amounted to 706 actual votes in support (Wai 552, #A5(a), p 212).
82. The applicants submit that if doubt can be cast on the petition, then equally doubt affects both the intention behind the vote to ratify the settlement and the latter's impact on Araukuku.

Prejudice and SOE land

83. The Crown has not responded to the submission that Araukuku's ability to seek the return of SOE lands under section 8A of the Treaty of Waitangi Act 1975 would be removed by the Ngāruahine settlement (Wai 552, #2.29 at [34]).
84. The applicants further submit that the lack of response by the Crown is an acknowledgement that the intention is to remove the ability of Araukuku to seek redress under section 8A, since the Ngāruahine settlement legislation would extinguish all historical claims of Araukuku (Wai 552, #2.29 at [39]).

Prejudice and a well-founded claim

85. The applicants accept that *The Taranaki Report – Kaupapa Tuatahi* does not use the words 'well-founded'. However, the applicants submit that the use of these words is not a requirement (Wai 552, #2.29 at [41]). They refer to the findings of the Tribunal in the Turanga Report in relation to the Mangatū Forest as an example.
86. The Crown, in its submission, notes that it made 'a general concession in the Taranaki Inquiry that the land wars and subsequent confiscation of lands in Taranaki were in breach of the principles of the Treaty of Waitangi', but goes on to argue that no specific findings on the Araukuku claim were made (Wai 552, #2.29 at [44]).
87. On 29 November 1995 the Crown provided the Taranaki Tribunal with an 'interim response' inviting the Tribunal to 'issue an interim report, iwi by iwi' to assist it with negotiations. The Crown indicated the matters which it did not wish to give evidence on, in other words, those matters where it accepted that breaches had occurred on the

evidence received to date. These included the confiscation of land as it occurred in Taranaki (Wai 552, #2.29 at [44]).

88. The applicants therefore submit that the Crown cannot argue that in relation to the confiscation of the Waipuku-Patea block the claim is not well-founded (Wai 552, #2.29 at [49]).
89. The applicants refer to section 7(3) of the Ngāti Ruanui Claims Settlement Act 2003, as well as section 6 of the Ngāti Tama Claims Settlement Act 2003, as further evidence of the Crown acknowledging that confiscations in Taranaki constituted a breach of the principles of the Treaty. They also refer to an 1880 Royal Commission of Inquiry into the Taranaki confiscations as evidence that the Taranaki confiscations were a breach of the principles of the Treaty (Wai 552, #2.29 at [50] – [56]; #2.29(a), p 126).
90. The applicants submit that, in light of the evidence mentioned above, the Tribunal is legally obliged to consider the claim well-founded (Wai 552, #2.29 at [58]).

Suitable body to accept return of land

91. The applicants submit that determining whether or not Araukuku is of a dimension or composition that makes them suitable to receive the remedy of return of state-owned enterprise land is a matter for evidence at an urgent hearing.
92. The applicant also notes that the Waitangi Tribunal's comment on those issues in its *Turanga Remedies Report* is currently the subject of litigation before the High Court, where a judgment is awaited. They further submit that the Tribunal ought not to reject an urgent inquiry on that ground (Wai 552, #2.29 at [60]).

Prejudice and accommodation within existing settlements

93. Both the Crown and Ms Noble place reliance on the fact that Araukuku interests can be dealt with via other hapū. The applicants submit that that is a generalisation applicable to any situation.
94. The Crown accepts that in 1990 it was dealing with Araukuku as one of the constituent hapū of Ngāruahine. The issue, the applicants say, is how, in a manner consistent with the duty of active protection, the Crown has been able to move with confidence to the position today where the hapū is not mentioned at all in the Ngāruahine settlement, and all of its claims are deemed settled (Wai 552, #2.29 at [61] – [62]).

Ngāti Ruanui

95. Ms Ngarewa-Packer refers to Araukuku's involvement in the Ruanui settlement, suggesting some inconsistency between Araukuku involvement in the Ngāti Ruanui settlement while also seeking a role in the Ngāruahine settlement. The applicant submits that there is no inconsistency (Wai 552, #2.29 at [64]).

Delay

96. In terms of delay in bringing this application, the applicants submit that they made their concerns known before and at the signing of the settlement, and gathered signatures in the weeks thereafter. They further submit that it has taken time to understand where and how the settlement process had gone wrong for Araukuku (Wai 552, #2.29 at [65]).

Tribunal jurisdiction

97. At the judicial conference I asked parties to address the point of jurisdiction in respect of the applicant's remedies application.
98. Mr Bennion noted that their submission regarding the Tribunal's jurisdiction to hear the applicant's remedies application was closely tied with their submissions regarding a well-founded claim.
99. Mr Bennion submitted that confiscations in the Taranaki area were acknowledged by the Crown to be inconsistent with the principles of the Treaty of Waitangi.
100. Further, Mr Bennion submitted that any claim that concerns the confiscation of lands in Taranaki must be considered to be a well-founded claim. He further noted that the Ngāti Ruanui Claims Settlement Act 2003 also acknowledges that the Taranaki confiscations by the Crown were in breach of the principles of the Treaty of Waitangi.
101. Finally, Mr Bennion submitted that it would be unconscionable for the Crown to rely on the lack of reference to a 'well-founded claim' in the Taranaki Report, as the Crown had acknowledged that the Taranaki confiscations constituted a breach of the principles of the Treaty.
102. Ms Edmunds made submissions on behalf of both Ngā Hapū and Te Rūnanga. She noted that Ngā Hapū did not have any position on this issue, as the land over which resumption is sought lies outside of Ngā Hapū's area of interest. She noted, however, that the Tribunal's jurisdiction to inquire into applications for resumption was barred by section 15(3) of the Ngāti Ruanui Claims Settlement Act 2003. This section states that no judicial body has jurisdiction to inquire into the Ngāti Ruanui historical claims. The issue then is whether or not Wai 552 is considered to be a Ngāti Ruanui historical claim.
103. Ms Edmunds submitted that under sections 13 and 14 of the Ngāti Ruanui Claims Settlement Act 2003 Araukuku claims are included within the definition of Ngāti Ruanui historical claims. As such, Ms Edmunds submitted that this would include Wai 552, and the Tribunal does not have jurisdiction to hear the Wai 552 remedies application.
104. Mr Melvin, for the Crown, noted that the Ngāti Ruanui Claims Settlement Act 2003 does not remove the Tribunal's jurisdiction to hear Araukuku claims. Rather, the Crown's position is that Araukuku members who whakapapa to Ngāruahine are still able to have their claims heard until the Ngāruahine claims are settled.

105. In terms of whether or not Wai 552 is a well-founded claim, the Crown submitted that Wai 552 is not a well-founded claim. Mr Melvin noted that the applicants are unable to refer to a report of the Tribunal in which their claim has been determined to be well-founded. He further submitted that the Taranaki Report was preliminary and introductory in nature, and gave initial opinions only.
106. However, Mr Melvin did acknowledge that the Crown had conceded that the Taranaki confiscations were a breach of the principles of the Treaty.
107. At the conclusion of the teleconference Mr Bennion, Ms Edmunds and Mr Melvin indicated that they would prepare a statement for the Tribunal outlining points which are agreed upon by the respective parties, as well as points which are not agreed upon.

Statement of matters agreed upon

108. On 21 April 2015 Mr Bennion filed with the Tribunal an agreed statement from the parties (Wai 552, #2.32).
109. Ngā Hapū and Te Rūnanga have stated their position as follows:
- a) Ngāti Ruanui historical claims are fully and finally settled by the Ngāti Ruanui Claims Settlement Act 2003;
 - b) This includes claims which derive by way of descent from any recognised ancestor of Araukuku (s 13(1)(c));
 - c) The jurisdiction of the Tribunal is subject to that Act;
 - d) The Wai 552 claim is settled by the Act in as far as it relates to Araukuku;
 - e) Wai 552 remains unsettled to the extent that it contains any claims or elements not settled by the 2003 Act; and
 - f) The Tribunal cannot inquire into or investigate the historical claims of Araukuku or any remedies for those claims.
110. The applicants and the Crown have stated their position as follows:
- a) The Wai 552 claim is not fully settled by the Ngāti Ruanui Claims Settlement Act 2003;
 - b) Wai 552 is not a claim which relates exclusively to Ngāti Ruanui, and is settled only in as far as it relates to Ngāti Ruanui (s 14(1)(c));
 - c) The Ngāti Ruanui Claims Settlement Act 2003 does not settle all claims of Araukuku;
 - d) The idea of a residual Wai 552 claim relating to Ngāti Turi is a possibility but is not relevant; and

- e) The combined effect of the Ngāti Ruanui Claims Settlement Act 2003 and the proposed Ngāruahine settlement would be to settle all of the historical claims of Araukuku.
111. In terms of a well-founded claim, the applicant's submit that their claim is well-founded, but the Crown submits that it is not.
112. In terms of the Ngāruahine area of interest, all parties agree that the relevant area of interest is that which is identified in Schedule 4 of the Ngāruahine DOS.
113. Finally, in terms of the land over which resumption is sought, all parties agree that the land:
- a) Remains subject to section 27B memorials;
 - b) Does not fall within the area referred to in the Ngāti Ruanui Claims Settlement Act 2003, where the resumptive provisions of the Treaty of Waitangi Act 1975 no longer apply;
 - c) Falls within the area of interest of the claims settled by Ngāti Ruanui; and
 - d) Falls outside the area of interest in the DOS for Ngāruahine claims.

Relevant legislation and practice notes

114. The Tribunal's general power to make recommendations is set out in s 6(3) of the Act:

If the Tribunal finds that any claim submitted to it under this section is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

115. The Tribunal's jurisdiction to make binding recommendations in respect of Crown forest land is set out in s 8HB of the Act:

8A Recommendations in respect of land transferred to or vested in State enterprise

- (1) This section applies in relation to—
 - a) any land or interest in land transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by a notice in the *Gazette* under section 24 of that Act or by an Order in Council made under section 28 of that Act, whether or not the land or interest in land is still vested in a State enterprise;
 - b) any land or interest in land transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act or vested in such an institution by an Order in Council made under section 215 of that Act, whether or not the land or interest in land is still vested in that institution.

- (2) Subject to section 8B, where a claim submitted to the Tribunal under section 6 relates in whole or in part to land or an interest in land to which this section applies, the Tribunal may—
- a) if it finds—
 - (i) that the claim is well-founded; and
 - (ii) that the action to be taken under section 6(3) to compensate for or remove the prejudice caused by the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission that was inconsistent with the principles of the Treaty, should include the return to Maori ownership of the whole or part of that land or of that interest in land,—

include in its recommendation under section 6(3), a recommendation that that land or that part of that land or that interest in land be returned to Maori ownership (which recommendation shall be on such terms and conditions as the Tribunal considers appropriate and shall identify the Maori or group of Maori to whom that land or that part of that land or that interest in land is to be returned); or
 - b) if it finds—
 - (i) that the claim is well-founded; but
 - (ii) that a recommendation for return to Maori ownership is not required, in respect of that land or any part of that land or that interest in land, by paragraph (a)(ii),—

recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land or that interest in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989; or
 - c) if it finds that the claim is not well-founded, recommend to the Minister within the meaning of section 4 of the Cadastral Survey Act 2002 that that land or that part of that land or that interest in land be no longer subject to resumption under section 27B of the State-Owned Enterprises Act 1986 or section 212 of the Education Act 1989.
- (3) In deciding whether to recommend the return to Maori ownership of any land or interest in land to which this section applies, the Tribunal shall not have regard to any changes that, since immediately before the date of the transfer of the land or interest in land from the Crown to a State enterprise, or an institution within the meaning of section 159 of the Education Act 1989, have taken place in—
- a) the condition of the land or of the land in which the interest exists and any improvements to it; or
 - b) its ownership or possession or any other interests in it.
- (4) Nothing in subsection (2) prevents the Tribunal making in respect of any claim that relates in whole or in part to any land or interest in land to which this section applies any other recommendation under subsection (3) or subsection (4) of section 6.

- (5) Notwithstanding section 24(4) of the State-Owned Enterprises Act 1986, on the making of a recommendation for the return of any land or interest in land to Maori ownership under subsection (2), sections 40 and 41 of the Public Works Act 1981 shall cease to apply in relation to that land or that interest in land.
- (6) Where any interest in land exists in respect of any land to which this section applies being—
- a) an interest in land which was in existence immediately before the land was transferred to the State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in the State enterprise by a notice in the *Gazette* under section 24 of that Act or by an Order in Council made under section 28 of that Act but which was not so transferred to or vested in the State enterprise; or
 - b) an interest in land which was in existence immediately before the land was transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act or vested in such an institution by an Order in Council made under section 215 of that Act but which was not so transferred to or vested in the institution,—

as the case may be, no recommendation under this section shall relate to that interest in land.

116. The Tribunal's *Guide to Practice and Procedure* sets out criteria that the Tribunal will apply in determining any application for a hearing on remedies to be accorded urgency and prioritised for hearing:

The Tribunal will consider an application for an urgent remedies hearing only if the applicants have a report of the Tribunal in which their claim or claims have been determined to be well-founded.

In considering whether to grant urgency to an application for a remedies hearing, the Tribunal has regard to a number of factors. Of particular importance is whether:

- the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice if a remedies hearing is not urgently convened;
- there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- the claimants can demonstrate that they are ready to proceed urgently to a hearing.

In assessing whether the claimants are suffering or are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened, the Tribunal may have regard to the factors set out in *Haronga v Waitangi Tribunal*, namely:

- the size of the group represented by the claimants, and whether the claimants can show clear support for their application from this group;
- the connection between the remedy or remedies sought to be awarded and the original Treaty breach or breaches, including, where the return of land is sought as a remedy, whether this land was the subject of the well-founded claim or claims from which the application arises; and
- where there are current negotiations between the Crown and a mandated settlement body to reach an agreed settlement of the well-founded claim or claims, whether the remedy or remedies sought are addressed by the negotiations, and

whether the Tribunal's jurisdiction to hear the claimants on remedies is likely to be imminently removed by legislation as a result of these negotiations.

Where any claimants apply for the Tribunal to exercise its binding powers under sections 8A to 8HJ of the Treaty of Waitangi Act 1975 as a remedy for their well-founded claim or claims, the Tribunal shall have particular regard to whether, if urgency is not granted for a remedies hearing, the Tribunal's jurisdiction to hear the claimants on remedies is likely to be removed by imminent legislation.

Prior to making its determination, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

The issues to be determined

117. There are two issues which need to be determined:

1. Whether or not the applicant has met the criteria for an urgent remedies hearing; and
2. Whether or not the applicant has met the criteria for an urgent hearing.

118. In determining these two applications I will first address the application for an urgent remedies hearing, after which I will address the application for an urgent hearing.

Urgent remedies application

119. Counsel for the applicants acknowledged that the Tribunal's jurisdiction to hear the application for remedies claim was closely tied with their submissions regarding a well-founded claim. When making an application for an urgent remedies hearing the applicants must show that they have a report of the Tribunal in which their claim has been determined to be well-founded.

120. Once the applicants have established that their claim is well-founded, their application is assessed against the usual urgency criteria, namely:

- a) The applicants can demonstrate that they are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened;
- b) There is no alternative remedy that it would be reasonable for the applicants to exercise; and
- c) The applicants can demonstrate that they are ready to proceed urgently to a hearing.

Well-founded claim

What constitutes a well-founded claim?

121. Judge Clark, in determining an application by Mita Ririnui for an urgent remedies hearing on behalf of Ngāti Whakahemo, addressed the question of determining what constitutes a well-founded claim. After reviewing a range of court judgements, Tribunal

reports and the scheme of section 6 of the Treaty of Waitangi Act 1975, he made the following comments (Wai 1471, #2.5.7, para 82):

I consider that in order for a claim to be well-founded the following elements need to be present:

- a) There has to be a registered claim before the Tribunal;
- b) The claim has to have been inquired into by the Tribunal;
- c) The Tribunal has to have made findings that a claimant is or is likely to be prejudicially affected; by
- d) Acts or omissions by the Crown in the ways contemplated in section 6(1)(a)-(d) of the TOW Act 1975; and
- e) That those acts or omissions were inconsistent with the principles of the Treaty.

122. This is a clear description of the process required in determining whether a claim is well-founded. Accordingly, I apply this test below.

Is Wai 552 a registered claim before the Tribunal?

123. The Wai 552 claim was received on 4 October 1995. It was registered by way of memorandum-directions of the Chairperson on 25 November 1995 (Wai 143, #2.109). An amendment to the claim was received on 24 November 1995 and registered as such on 8 January 1996 (Wai 143, #2.117), after it had earlier been recorded as a separate claim (Wai 143, #2.111).

Has the claim been inquired into by the Tribunal?

124. The Wai 552 claim and its amendment concerns a number of Crown actions relating primarily to Araukuku lands, foremost amongst which was the wrongful confiscation of Araukuku lands under the New Zealand Settlements Act 1863. The claim amendment details Crown actions in respect of the Crown's purchase of the Waipuku-Patea block in 1874, and the transfer of land of part of the block to the Electricity Corporation of New Zealand under the State-Owned Enterprise Act 1986 (Wai 552, 1.1(a), pp 1-2).

125. By the time the claim was registered, the Taranaki Tribunal had concluded its hearings into the Taranaki claims, which took place between September 1990 and June 1995 (*Taranaki Report*, Appendix 1). In the memorandum-directions registering the claim, the Chairperson directed that the claim would need to be integrated with the other claims consolidated under Wai 143, but that the claimants would need to file further written submissions as the consolidated Taranaki claims were 'nearing completion'. Apart from the amendment, no other documentation was received by the Tribunal at the time. However, the Wai 552 claim was among the claims listed in the Record of Inquiry in Appendix 1 of the *Taranaki Report*.

126. Although the claim was incorporated into the Taranaki Inquiry at a late stage, it is clear – both from the memorandum-directions of the Chairperson and the Record of Inquiry – that the Tribunal considered that its report included, and applied to, the Wai 552 claim, though further inquiry into the particulars of the claim might yet follow.

Has the Tribunal made findings that the claimant is or is likely to have been prejudiced by an act or omission inconsistent with the principles of the Treaty?

127. The Taranaki Report is, as the Crown has observed, 'preliminary and introductory in nature' (Wai 552, #2.17, para 15). In its preface, the Tribunal explained that this was to 'expedite intended negotiations for a settlement' (*Taranaki Report*, p xi). To that end, the Tribunal set out to present its views on key aspects of the war and confiscation in the 1860s, and the aftermath, which included the purchase of land in the 1870s.
128. These views are expressed throughout the report in terms of Treaty breach. The confiscation of Taranaki land is described as being 'inconsistent with the principles of the Treaty of Waitangi and with the guarantee that land would not be taken without consent' (*Taranaki Report*, p 134). As a blanket act that covered a wide expanse of Taranaki land, the Tribunal's views on confiscation include land in which Araukuku have asserted that they have interests, and to the extent that these interests are acknowledged, they can be said to apply to that aspect of the Wai 552 claim.
129. The Tribunal made similar assessments in addressing the Crown's purchase of land in the 1870s. 'None of these purchases came near to satisfying the necessary standards of honesty and good faith that the Treaty of Waitangi required, and all of them must be discounted as valid acquisitions in Treaty terms.' (*Taranaki Report*, p 173) The Waipuku-Patea block was listed as among the Crown's purchases at this time (*Taranaki Report*, p 174). As such, the Tribunal's general assessments in regards purchasing in the 1870s can be said to apply to that aspect of the Wai 552 claim.
130. The Tribunal also went to some lengths to indicate the general nature of the prejudice suffered through confiscation, though not at the level of 'hapu losses' (*Taranaki Report*, p 134). Nevertheless, to the extent to which these assessments applied to all claims included in the inquiry, the Araukuku claim was covered as well.
131. In the report's conclusion, the Tribunal returned to its original purpose (*Taranaki Report*, p 311):

This report has introduced the historical claims of the Taranaki hapu. It has shown the need for a settlement and will shortly conclude with some opinion on how settlements might be effected. A second report, unless matters are earlier resolved, will précis the history relevant to particular groups and associated ancillary claims that may need to be distinguished in any comprehensive settlement.

A separate accounting for particular groups was seen to be necessary because they are not the same, were affected differently, and have different aspirations for the future. In the meantime, further hearings will be considered if the claimants or the Crown can demonstrate that these are necessary to achieve a settlement.

132. The Tribunal then returned to the comment it made in the report's preface: 'further sittings would be needed, especially to hear the Crown, before findings and recommendations could be made' (*Taranaki Report*, p 312).

133. These statements bring into view the particular manner in which the Taranaki Tribunal reported. In its preface the Tribunal made it clear:

- a) that the Tribunal had itself conducted further research for the report on which the parties might wish to be heard;
- b) that the Crown 'had yet to be heard on many matters raised';
- c) that the other parties must have opportunity to respond before 'final conclusions can be drawn';
- d) that in the absence of such conclusions no recommendations were or could be made; and
- e) that its report conveyed 'its preliminary views on the Taranaki claims' (Taranaki Report, p xi).

Further, in its conclusion the Tribunal envisaged further reporting on 'particular groups' because 'they are not the same [and] were differently affected'.

134. In short, while the Tribunal had taken the inquiry to a point at which it considered a preliminary report would assist the parties, the inquiry itself was not yet concluded. To that end, it gave leave to the parties 'to seek further hearing on the whole or any aspect of the claims or this report, if the proposed negotiations are unsuccessful or would benefit from further consideration of any items' (*Taranaki Report*, p xi).

135. This context and purpose differentiates the Taranaki Report from the Turanga Report, to which counsel for the applicants has asserted it is analogous (Wai 552, #2.29, para 41). While the Turanga Report did not explicitly employ the term 'well-founded' to describe its conclusions on claims, it did express its findings of Treaty breach as 'findings'. In that inquiry there were no limitations as to evidence to warrant the same restrictions applied by the Taranaki Tribunal. Although counsel is correct in saying that the term 'well-founded' does not need to appear in order for the Tribunal to have determined a claim to be well-founded, the minimum threshold requires a Tribunal to have made findings of Treaty breach and prejudice in respect of claims.

136. While the Taranaki Tribunal did record its 'initial opinions' on selected key issues raised by the claimants, these were preliminary and it states explicitly that it did not make findings of Treaty breach and prejudice in respect of either groups of claims or specific claims. It also signalled that it would need to hear further evidence and submissions for it to be able to do so. It did not, therefore, reach the minimum threshold of adjudging the Wai 552 claim well-founded.

137. In these circumstances, and in particular because the claim itself was not heard, the Tribunal would need to complete its inquiry into the Wai 552 claim in order to determine whether the claim is well-founded. What further evidence might be required remains to be determined: on the issue of raupatu, for instance, which Wai 552 raises, the Crown conceded Treaty breach in its interim response and indicated that it would not be presenting evidence unless the claims were not settled, while the Taranaki Tribunal reached preliminary general conclusions as to Treaty breach and prejudice. This is, however, a matter for the Taranaki Tribunal. All that can be said here is that

the Tribunal could only proceed to remedies following further inquiry and a finding that the claim is well-founded.

Other grounds for urgent remedies

138. In light of the conclusion reached above that the Tribunal has yet to determine finally whether the Wai 552 claim is well-founded, there is no need to consider the grounds for urgency that depend upon that determination.

Decision

139. For the reasons given above, and although the Taranaki Tribunal reached a number of preliminary general conclusions that are likely to be applicable to the claim, the applicants do not have a claim that the Tribunal has adjudged well-founded. This being the case, the other grounds advanced in support of the application fall away. The application for an urgent remedies hearing is accordingly declined.

Application for an urgent hearing

140. The criteria the Tribunal considers in determining whether to grant an application for an urgent hearing are set out in the Tribunal's Practice Note: *Applications Seeking Urgent Tribunal Consideration*. Briefly, these factors include whether:
- a) The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of any current or pending Crown legislation, policy, action or omission;
 - b) There is no alternative remedy that, in circumstances, it would be reasonable for the claimants to exercise; and
 - c) The claimants are ready to proceed urgently to a hearing.
141. The Tribunal may consider other factors, including whether the claim challenges an important current or pending Crown action or policy, and any other grounds justifying urgency. This also includes taking into account mitigating and balancing considerations in determining a practical course of action in the circumstances.

Significant and irreversible prejudice attributable to the Crown

Is significant and irreversible prejudice likely to arise?

142. The applicants assert that significant and irreversible prejudice will arise from the impending legislation to implement the Ngāruahine settlement. They identify two principal adverse effects. One is a loss of mana and rangatiratanga for Araukuku as a result of its non-recognition as a constituent hapū in the Ngāruahine settlement. The other is the extinguishing of the remaining aspects of their claim, which means they will be unable to pursue alternative remedy options, including through the Tribunal, to compensate for their exclusion from the settlement (Wai 552, #2.13, para 17(a) & (b)).
143. The Wai 552 claim is made on behalf of the Araukuku hapū. The terms of the Ngāruahine DOS make no provision for Araukuku as an affiliated Ngāruahine hapū.

The implementing legislation is therefore likely to confirm that they will not be identified as a Ngāruahine hapū or hold a seat at the table of the PSGE alongside other hapū affiliated with Ngāruahine and will thus be excluded from having a say in the management of Ngāruahine settlement assets and the policies set by the PSGE for their use.

144. The Crown's response, that members of Araukuku will be able to benefit from the settlement by affiliation through other hapū of Ngāruahine, provides at best limited recompense. The entitlements of members of those hapū are distinct and do not encompass redress for prejudice suffered by Araukuku. Such entitlements could anyway not be invoked by members of Araukuku who do not also affiliate to other Ngāruahine hapū, whose number is unknown. In any case, Araukuku has no place in the settlement as a constituent hapū. In effect, their claim is being settled without specific redress.
145. The applicants are seeking a specific remedy from the Tribunal that falls within its jurisdiction, the right to have resumption orders made by the Tribunal to the TCC Power Station land. This land is memorialised, but included in neither the Ngāti Ruanui nor Ngāruahine settlements. It therefore remains potentially available for resumption. The applicants say, however, that the Ngāruahine settlement would remove the Tribunal's power to order resumption by settling the Wai 552 claim in respect of Araukuku members' affiliation with Ngāruahine. This matter is further considered below, but it is plain that the memorialised land does not form part of the assets to be returned under the Ngāruahine settlement and that even if it were, Araukuku members not affiliating through other Ngāruahine hapū would not benefit.
146. There is thus a risk of significant prejudice arising from the terms of the Ngāruahine settlement and if it eventuated, it would be irreversible unless Ngā Hapū were willing to revise their PSGE trust deed so as to include Araukuku as a Ngāruahine hapū. To what extent that prejudice would be the result of Crown actions and omissions is considered in the following section.

Is any significant and irreversible prejudice attributable to Crown actions and omissions?

147. The applicants consider that this prejudice arises from three overarching Crown actions and omissions:
 - a) The Crown gave the applicants an assurance that the participation of Araukuku in the Ngāti Ruanui settlement would not preclude full participation in the Ngāruahine settlement – an assurance which the Crown later did not fulfil.
 - b) The Crown failed to address the concerns raised by the applicants during the mandating process and failed to respond to their communications in a timely manner.
 - c) After it had accepted the mandate of Ngā Hapū, the Crown then failed to adequately inform the applicants that the Wai 552 claim would be included in the Ngāruahine settlement.

148. In short, the evidence and submissions of the applicants give considerable weight to these positions.
149. As all parties acknowledge, how Araukuku would align in settling their Treaty claim has been a live issue since the late 1990s, given their close affiliations to both Ngāti Ruanui and Ngāruahine. In the event, the applicants decided that their preference was to participate in the Ngāruahine settlement and clearly signalled to the Crown their reluctance to participate in the Ngāti Ruanui settlement accordingly. This reluctance, say the applicants, went so far as members of Araukuku raising objections to the implementing legislation during its select committee stage in 2003 (Wai552, #A3(a), pp 58, 121).
150. Responding to their concerns, in January 2001 the Crown reassured the applicants that participating in the Ngati Ruanui settlement would not 'preclude the hapu from progressing its Nga Ruahine claims' (Wai 552, #A3(a), p 38). While this was not a cast-iron guarantee of full participation in a future Ngāruahine settlement, there was no accompanying explanation that the progression of their claims depended on the outcomes of a successful mandating process, including Crown recognition, nor that it might give rise to a perception among the other constituent hapū of Ngāruahine that Araukuku had decided to align with Ngāti Ruanui alone.
151. Nevertheless, the communication constituted a clear Crown recognition that Wai 552 was a hapū claim, and that the claimants had concerns about the effect that their participation in the Ngāti Ruanui settlement might have on their future participation in a Ngāruahine settlement. This would suggest that when the Crown accepted the mandate of Ngā Hapū – which excluded Araukuku – it had an obligation to raise these concerns with the group seeking the mandate on behalf of the applicants, and to involve them as far as possible in seeking a resolution.
152. As it turned out, when the applicants raised the matter of their exclusion, the Crown did not act consistently with its earlier acknowledgement. Rather, the applicants were told that 'for the purposes of Treaty of Waitangi settlements Araukuku hapū is aligned with Ngāti Ruanui and the hapū is represented on the Ngāti Ruanui post settlement governance entity' (Wai 552, #A3(a), p 118). The Crown also appears to have passed this new understanding on to Ngā Hapū (Wai 552, #A3(a), p 60). At best, this was inconsistent; at worst, it was a breach of the Crown's obligations.
153. In addition, when Araukuku did raise objections – by submitting on the proposed mandate – it took the Crown a full year to reply. By that point, the Crown had accepted the mandate of Ngā Hapū and had commenced negotiations. The offer of a facilitator was too late (Wai 552, #A3(a), p 118).
154. Finally, there is evidence to suggest that the Crown did not communicate to the applicants effectively that the Wai 552 claim would be included in the Ngāruahine settlement, even though the settlement would not recognise Araukuku as a Ngāruahine hapū. While it might have been a reasonable inference on the part of the applicants that the claim would be included, the errors and inconsistencies in the deed of mandate (an inaccurate Wai number, though a correctly named and described

claim) and in the agreement in principle and initialled deed of settlement (omission of the claim) did not help the situation.

155. The last-minute inclusion of the claim in the deed of settlement – while the deed was being ratified – gives the added appearance of sloppiness and meant that neither the Ngāruahine ratifiers nor Araukuku were properly informed about the effect of the settlement on the claim. As counsel for the applicant submitted, these facts ‘raise serious questions about the integrity of the Crown process’ (Wai 552, #2.29, para 22).
156. These points are enough to give a strong indication that Crown actions and omissions have at least contributed to, if not in some cases resulted in, the significant and irreversible prejudice the applicants are likely to suffer.

No alternative remedy

157. The applicants submit that there are no alternative remedies available to them as the Ngāruahine settlement will extinguish their claim and previous engagements with the Crown have been unsuccessful. They have also taken related applications to the Māori Land Court and the High Court, again without success.
158. However, the applicants have already gained access to redress for the grievances raised in the Wai 552 claim by virtue of their inclusion in the Ngāti Ruanui settlement and the commercial and cultural redress that it provides. Although their participation in that settlement may have been reluctant and conditional, it does include Araukuku as a constituent hapū. The Trust Deed which establishes the Ngāti Ruanui PSGE provides for voting rights for Araukuku members and representation on its governing body. It appears that Araukuku have been accommodated within the Ngāti Ruanui PSGE, which has been supported by the hapū and actively involved in making decisions on behalf of Araukuku. Although in the applicants’ view only partial, this still amounts to substantial redress and goes some way towards mitigating both the principal sources of prejudice identified by the applicants.
159. In addition, those members of Araukuku who can whakapapa through Ngāruahine hapū will be able to benefit from the Ngāruahine settlement both materially and through representation in the PSGE it will create.
160. One further matter concerning alternative remedies needs to be traversed here. It concerns the extent to which the Tribunal’s jurisdiction to inquire into Araukuku’s historical grievances as expressed in the Wai 552 claim will be extinguished by the legislation implementing the Ngāruahine settlement. The claim has been partly settled in respect of Ngāti Ruanui and is listed as partly settled as regards Ngāruahine. Araukuku, however, are not currently listed in the Ngāruahine deed of settlement as a hapū under its definition of ‘Ngāruahine’. The partial settlement of the Wai 552 claim is thus limited to individual members of Araukuku who whakapapa to the ancestors named in the deed (Wai 552, #A3(a), p 192, para 8.6.1).
161. The claim may therefore remain within the Tribunal’s jurisdiction to the extent that the whakapapa of the Araukuku hapū identifies other ancestral lines. I would note in

passing that as well as two named ancestors, the deed includes unnamed 'recognised tupuna' of the listed hapū (Wai 552, #A3(a), p 193, para 8.7.2(c)), and that shortly after it was signed the Minister for Treaty of Waitangi Negotiations explained the Crown's intent as being to ensure 'that all who have appropriate whakapapa to Ngāruahine ancestors are captured by the claimant definition and therefore can benefit from the Ngāruahine settlement in order to ensure those whose claims are being settled are the beneficiaries of the settlement' (Wai 552, #A3(a), p 135). The effect of this ostensibly inclusive approach cannot be further explored here.

162. The question of surviving jurisdiction is relevant to the specific remedy that the applicants seek from the Tribunal in the form of resumption orders for the return of the TCC Power Station land. If partial jurisdiction were to remain and the Tribunal were to adjudge the non-excluded aspects of the Wai 552 claim well-founded, the applicants would be entitled to apply to the Tribunal for remedies in respect of the surviving parts of their claim. This hypothetical scenario cannot be further considered here.

Readiness to proceed

163. The applicants have stated that they are ready to proceed immediately to an urgent hearing and have demonstrated their ability to engage actively with the Tribunal's interlocutory process to date.

Other relevant factors

164. The timing of this application – only shortly before the settlement legislation is due to be introduced into the House – is troubling. The question of which iwi mandated group Araukuku should be affiliated with for the purpose of negotiating a settlement of the Wai 552 claim has been live since as far back as the late 1990s. Araukuku's reluctant inclusion in the Ngāti Ruanui settlement and intention to participate in a subsequent Ngāruahine settlement was prominent and explicit at least as far back as 2003.
165. Over the five-year lifespan of the Ngāruahine negotiation Araukuku have had a number of opportunities to seek inquiry from this Tribunal into the Crown's settlement process. It is clear that they were aware of the exclusion of Araukuku as a hapū as early as 2010, when the Ngāruahine negotiating mandate and terms of negotiation were agreed with the Crown. It is acknowledged that Araukuku opposed the mandating of Ngā Hapū in 2010. In the same year Araukuku, or individuals associated with Araukuku, took the matter to both the Māori Land Court and the High Court, both proceedings being dismissed. A claim to the Tribunal could have been made at that stage, given that the main burden of complaint, the exclusion of Araukuku as a Ngāruahine hapū, was already in plain view.
166. The same pattern of inaction characterises the key points in the progress of the Ngāruahine negotiation. They include:
- a) The letter from OTS confirming the Crown's view that the Araukuku hapū was not part of the mandated negotiating group and that individual members of Araukuku could benefit through affiliation with other Ngāruahine hapū (May 2011);

- b) The signing of the Agreement in Principle (December 2012);
 - c) Ratification of the PSGE (May-June 2013);
 - d) Initialling of the Deed of Settlement (June 2014); and
 - e) Signing of the Deed of Settlement (August 2014).
167. Yet it was not until February 2015, six months after the ratified deed was signed and with the introduction of settlement legislation imminent, that Araukuku submitted their application for urgency and urgent remedies.
168. As discussed above, inconsistencies and inadequacies in the Crown's engagement with Araukuku during the period of the Ngāruahine negotiation may have resulted in some confusion on the part of Araukuku as to the extent of their inclusion or exclusion from the settlement. In particular, the formal inclusion of the Wai 552 claim in the settlement instruments was not finally clarified until the last moment, after ratification of the Deed of Settlement. However, from the outset there can have been little room for uncertainty as to Ngā Hāpū's exclusion of Araukuku as a hapū and as to Araukuku's intent to seek inclusion for that part of their claim not covered by the Ngāti Ruanui settlement.
169. If the application were granted, there would inevitably be serious negative effects, either on the Tribunal's ability to conduct an extremely rapid inquiry ahead of the introduction of settlement legislation or, alternatively, on Ngāruahine should the completion of their settlement be delayed for an unpredictable period.

Balancing considerations

170. The applicants argue that the Araukuku hapū will suffer prejudice as a result of the Ngāruahine settlement legislation. The Deed of Settlement does not include Araukuku as a constituent hapū and the PSGE has no place for Araukuku as a hapū of Ngāruahine. This is significant, they say, because they had initially approached the Ngāti Ruanui settlement on the understanding that they would also benefit from the Ngāruahine settlement as well. As concluded above, the risk of prejudice appears to be attributable, at least in part, to Crown acts and omissions.
171. The significant and irreversible prejudice the applicants claim they will suffer needs to be balanced against the potential prejudice to Ngāruahine that might result from a decision to grant urgency.

Potential prejudice to the applicants

172. The applicants consider that the main prejudice they will suffer is a loss of mana and rangatiratanga from being able to participate fully in the Ngāruahine settlement as a constituent hapū of Ngāruahine (Wai 552, #2.13, para 17(b)). This would undoubtedly have tangible consequences. From a position where some two and a half decades ago they were recognised as having the status of being one of the functioning hapū of Ngāruahine (through the Ngāruahine Iwi Authority), the settlement will confirm what is tantamount to a permanent exclusion. Instead, in the post-settlement landscape they

will be permanently aligned with Ngāti Ruanui. The applicants told us that this was the very opposite of what they intended to achieve from the settlement of their Treaty claim, and was contrary to their understanding in agreeing to participate in the Ngāti Ruanui settlement.

173. As a consequence of the loss of mana and rangatiratanga, the applicants would be denied participation in the PSGE and the ability to bring an Araukuku voice to future decisions, such as the management and distribution of settlement assets, as well as the oversight of cultural redress. Although they are now able to benefit from being a fully participating hapū in the Ngāti Ruanui settlement, and at least some individual members of Araukuku will benefit from the Ngāruahine settlement, this outcome is not what they had originally sought and had understood from the Crown could be negotiated.
174. An added consequence of the settlement, they say, is that they will no longer be able to seek an alternative remedy in the form of a resumptive order for remaining memorialised land (Wai 552, #2.13, para 17(a)). While it is unclear whether the Ngāruahine settlement will in fact settle all of the Wai 552 claim, this is the Crown's acknowledged intention. Thus, the settlement will possibly have the double effect of causing damage to their standing within Ngāruahine and their ability to participate fully in the benefits of the settlement, as well as remove their ability to seek alternative remedies to compensate for that loss.

Potential prejudice to Ngāruahine

175. While this is an unenviable situation for the applicants, the action contemplated by them appears differently to those among Ngāruahine who have worked towards the settlement they are now on the cusp of achieving. These people – through Ngā Hapū – have worked for some years towards achieving the settlement of their historical Treaty claims.
176. A grant of urgency now would have the potential effect of delaying this settlement legislation by a considerable period. The outcome the applicants seek – inclusion as a fully participating hapū in the Ngāruahine settlement – would require either a fresh mandating process or a variation to the PSGE trust deed, an option that the Minister for Treaty of Waitangi Negotiations indicated was open to the iwi (Wai 556, #A3(a) p 135).
177. But there are also potential consequences for other aspects of the settlement. Ms Noble said that the settlement is based on the number of hapū who have participated to date:

We negotiated with the Crown in good faith for six hapu of Ngaruahine, for their claims and in respect to the loss of their lands. We argued for a quantum on the basis of that position and went back to hapu with that settlement package for approval (Wai 552, #A5, para 18.3).

178. As a result, the action sought by the applicants might not simply require a fresh mandate or trust deed variation. Reconstituting the nature of participating hapū may require the parties to revisit the underpinnings of the settlement, resulting in fresh negotiations, ratification and so forth – a process that has to date taken some years to achieve. Ngāruahine will not wish to wait that long, let alone revisit what has undoubtedly been an arduous process for them.

Weighing the balance of prejudice

179. In weighing the balance of prejudice to be suffered in this case, a key factor that has been taken into account is the actions taken by the respective parties during the mandating process. It is clear that the applicants had concerns and raised those with the Crown. While the Crown could have responded in a more consistent and timely manner to their concerns, the applicants could also have made a more concerted effort to engage directly with Ngā Hapū.
180. Ms Noble said that the applicants did nothing during this process to correct their view of the situation. From their perspective, Araukuku had aligned with Ngāti Ruanui for the purposes of settlement and were participating fully in their PSGE:

We were aware that there were a few individuals associated with Wai 552 who had opposed Nga Hapu, but we were also aware that Araukuku hapu were formally part of the Ngati Ruanui settlement body and as a hapu they had never raised any issues with us. Unfortunately it was just a few people associated with Wai 552 who, not being elected into the Ngati Ruanui settlement entity wanted to settle Araukuku issues again through our settlement and find place at the Ngaruahine table (Wai 552, #A5, para 3.9).

181. The applicants supplied no evidence to suggest they actively engaged with Ngā Hapū during the mandating process to correct their view of the situation. Objections appear to have been raised solely with the Crown. Although the response from OTS was unreasonably slow, its suggestion to engage with Ngā Hapū was one that the applicants should have been undertaking in any case. While they appear to have raised the matter in taking action to oppose the mandate in the Māori Land Court, there has been nothing to suggest that the applicants had previously attempted to engage with Ngā Hapū to explain the grounds on which they had entered the Ngāti Ruanui settlement, their preference for remaining with Ngāruahine and the extent of support for this position amongst the Araukuku hapū. The applicants also had another avenue to pursue – through the Waitangi Tribunal – that would have enabled them to demonstrate whether they had attempted to engage with Ngā Hapū, but they chose not to pursue that course until now.

Outcome

182. For the Crown's large natural groupings policy to work, Treaty settlements must allow hapū to be appropriately acknowledged and represented alongside the iwi with which they are affiliated. In some cases, this may mean that hapū that have affiliations with more than one iwi will be represented in more than one settlement. In order to achieve this, hapū representatives must work with groups seeking mandates, just as those seeking mandates must secure the consent of constituent hapū and the wider iwi. It is

a difficult process – one which requires a careful balancing of interests and, in many cases, compromise. Above all it is a process that requires careful and open communication.

183. In this case, the result for the applicants is deeply unfortunate. Part of the responsibility appears to lie with the Crown, from whom earlier, more timely and even-handed engagement and a more consistent approach might have avoided much of the prejudice that now appears imminent. However, the applicants could have done more to engage constructively with Ngā Hapū during the mandating process. Should this and other avenues have failed, a much earlier recourse to the Tribunal would have enabled the Tribunal to consider the merits of the case before reaching the brink of imminent prejudice.

184. Ms Noble said:

I find it very frustrating that nearly 7 years on since the establishment of Nga Hapu and after many many years of negotiations, with all the hard work and effort that has gone into this process, after all the hui, consultation, ratification hui and information packages to all possible beneficiaries, that this matter should arise now as an *urgent* matter (Wai 556, #A5, para 18).

185. On balance, it would be unfair now to ask Ngāruahine to revisit the work they have achieved in the months and years when the applicants chose not to take up the reasonable and significant opportunities for engagement that were available to them.

Decision

186. The Tribunal will only grant an urgent hearing in exceptional cases and only once it is satisfied that adequate grounds have been made out for according an urgent application priority over claims currently in or preparing for inquiry. The Tribunal's urgency criteria has been set to ensure the proper deployment of its resources to research, hear and report on all claims before it.

187. In my opinion the prejudice that may be suffered by members of the Araukuku hapū that support this application does not outweigh the prejudice that may be suffered by Ngāruahine if their settlement, which has been many years in the making, is delayed. It does not warrant the diversion of Tribunal resources from the current inquiry programme.

188. Accordingly, the application for an urgent hearing is declined.

The Registrar is to send copies of this direction to counsel for the applicant, Crown counsel and all those on the distribution list for Wai 552, the Ahitahi / Araukuku Hapū Claim.

DATED at London this 7th day of May 2015

A handwritten signature in black ink, appearing to read 'Douglas Kidd', with a stylized flourish at the end.

Hon Sir Douglas Kidd
Tribunal Member

WAITANGI TRIBUNAL