

**THE WAITANGI TRIBUNAL
INQUIRY INTO CERTAIN REMAINING HISTORICAL CLAIMS**

**WAI 2800
WAI 784**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of an inquiry into remaining historical claims (Wai 2800)

AND

IN THE MATTER of a claim by Rodney Graham and others on behalf of themselves and the Kauwhata Treaty Claims Komiti and ngā uri tangata o Ngāti Kauwhata ki te Tonga (Wai 784)

**MEMORANDUM OF COUNSEL FOR THE WAI 784 NGĀTI KAUWHATA
CLAIM REGARDING REMAINING HISTORICAL GRIEVANCES**

Dated: this 21st day of December 2018

RECEIVED

Waitangi Tribunal

24 Dec 2018

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel is filed on behalf of the Wai 784 Ngāti Kauwhata claim, a claim by Rodney Graham and others on behalf of themselves and the Kauwhata Treaty Claims Komiti and ngā uri tangata o Ngāti Kauwhata ki te Tonga.
2. By Memorandum-directions of 6 September 2018, Chief Judge W W Isaac appointed a Waitangi Tribunal standing panel to inquire into certain remaining historical claims in six inquiry districts in which the Tribunal has already completed inquiries (“**directions**”). The directions set out the eligibility of claims to participate and the panel’s scope of work, which focusses on districts offering the best prospect for a fast-track process.¹ His Honour also indicated that claims relating to further districts or groups of districts may be referred for the standing panel’s consideration as its work progresses.²
3. This memorandum seeks referral of certain historical grievances of the Wai 784 Ngāti Kauwhata claim, which fall outside the current ambit of inquiry, to the standing panel for consideration.

Background

4. The customary interests of Ngāti Kauwhata fall within the following inquiry districts:
 - (a) South-East Waikato;³
 - (b) Waikato-Tainui;
 - (c) Te Rohe Pōtae;
 - (d) Taihape – Rangitīkei ki Rangipō; and
 - (e) Porirua ki Manawatū.

¹ Memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the South-western North Island, the South Island and Chatham Islands, dated 6 September 2018 (Wai 2800, #2.5.1).

² #2.5.1 at [22].

³ Counsel understand this is also known as the Waikato-Raukawa inquiry district.

5. As such, the Wai 784 Ngāti Kauwhata claimants participated in the Te Rohe Pōtae inquiry district, and are currently participating in the Taihape – Rangitīkei ki Rangipō and Porirua ki Manawatū inquiry districts.
6. However, to date, the Wai 784 Ngāti Kauwhata claim's historical grievances falling within the South-East Waikato and Waikato-Tainui inquiry districts ("**Waikato districts**") have not been dealt with, with the exception of its Raupatu claims in respect of Rangiaowhia, which were considered and reported on by the Tribunal in the Te Rohe Pōtae inquiry district following a boundary extension⁴ ("**remaining historical grievances**").

Reasons referral sought

7. Ngāti Kauwhata's customary interests have been split between five district inquiries. As a consequence, the Wai 784 Ngāti Kauwhata claim has been actively involved in the Tribunal process for a significant period of time.
8. Thus, while conscious of his Honour's rationale for turning first to those areas where Tribunal reporting has already been completed,⁵ the claimants are desirous of having the remaining historical grievances for the claim heard as soon as reasonably practicable.
9. In the circumstances, counsel submit that the remaining historical grievances for the Wai 784 Ngāti Kauwhata claim are suited for referral to the standing panel for consideration at this stage, notwithstanding that Tribunal inquiries have not been completed for the Waikato districts. The reasons for this are expanded upon in the paragraphs that follow.

Discrete nature of remaining historical grievances

10. The remaining historical grievances are relatively discrete, and include in particular land loss suffered within the Waikato districts through the Native Land Court system and the associated Ngāti Kauwhata Claims Commission 1881, and the impacts of this. These remaining historical grievances therefore

⁴ See Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* (Wai 898, 2018) Parts I & II at 4, 14, 26.

⁵ See for example #2.5.1 at [7], [9].

focus on acts or omissions of the Crown arising prior to 21 September 1992⁶ and lie outside the ambit of the kaupapa inquiry programme.

Information is available to assist an inquiry into remaining historical grievances

11. The Wai 784 Ngāti Kauwhata claim already has the benefit of several sources of information that are likely to be of assistance for inquiring into the remaining historical grievances, at both a claim-specific (both technical and tangata whenua) and more generic level.⁷ These include:
- (a) Peter McBurney's report *Ngāti Kauwhata and Ngāti Wehi Wehi interests in and about Te Rohe Pōtae District*, which was commissioned for the neighbouring Te Rohe Pōtae inquiry, and covers, among other things, Ngāti Kauwhata's customary interests and analyses claims against the Crown in the Waikato districts.⁸
 - (b) Tangata whenua evidence presented for the Wai 784 Ngāti Kauwhata claim in the Te Rohe Pōtae Inquiry, which also discussed Ngāti Kauwhata's interests and grievances in the Waikato as part of the context to claim issues in Te Rohe Pōtae.⁹
 - (c) Numerous Tribunal reports that consider and make findings in respect of the operation and effect of the Native Land Court system.¹⁰
 - (d) Parts of the Rangahaua Whānui series and reports commissioned for neighbouring inquiry districts in relation to the Native Land Court system.

Remaining historical grievances are yet to be dealt with

12. With respect to eligibility:
- (a) The claimants are not aware of any settlement affecting the Tribunal's jurisdiction such that the Wai 784 Ngāti Kauwhata claim would be unable participate, or of the inclusion of the claim in the mandate of any group

⁶ See Treaty of Waitangi Act 1975, s2.

⁷ This does not necessarily negate the need for any subsequent essential gap-filling research and additional tangata whenua evidence.

⁸ Wai 898, #A120. The report's coverage included Ngāti Kauwhata's origins, its "Waikato rohe", its relationships with neighbouring iwi and hapū, its mana whenua in the area, and analysis of claims against the Crown within the Waikato.

⁹ Brief of evidence of Rodney Graham (Wai 898, #K3).

¹⁰ For example, Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) Part III, Waitangi Tribunal *Te Kahui Maunga: The National Park Inquiry District Inquiry report* (Wai 1130, 2013) Vol I.

that has agreed terms of negotiation with the Crown for the settlement of their historical Treaty claims.

- (b) The remaining historical grievances have not been heard and reported on by the Tribunal in any other inquiry.¹¹ Evidence in relation Ngati Kauwhata's interests in the Waikato districts was provided in the Te Rohe Pōtae inquiry, but only as part of the context to grievances heard within that inquiry.¹²
- (c) The Wai 784 Ngāti Kauwhata claim is participating in Tribunal inquiries as set out at above at [5], but these cover distinct areas and do not relate to the remaining historical grievances.

Conclusion


- 13. In summary, the Wai 784 Ngāti Kauwhata claim has remaining historical grievances that are yet to be heard and reported on by the Tribunal. These cover a relatively discrete set of grievances that are already traversed in available technical and tangata whenua evidence and, in respect of the general operation and effect of the Native Land Court system, have been covered extensively in previous Tribunal reports and reports commissioned for other inquiries.
- 14. It is on this basis that counsel seek referral of the remaining historical grievances of the Wai 784 Ngāti Kauwhata claim relating to the Waikato districts to the standing panel for consideration.
- 15. In the alternative, should participation as part of the standing panel process currently envisaged not be possible, the claimants signal their interest in being heard in respect of the remaining historical grievances as soon as reasonably practicable thereafter.

¹¹ A number of other groups in the South-East Waikato and Waikato-Tainui inquiry districts opted to enter into settlement negotiations in respect of their interests without a Tribunal inquiry; see for example the Raukawa Claims Settlement Act 2014.

¹² Due to the inquiry boundary and scope of the Te Rohe Pōtae inquiry, counsel understand these will not be reported on, except to the extent that their history relates to lands within that inquiry district; Judge D J Ambler declined to extend the boundary of that inquiry district to include lands within the "Waikato-Raukawa District" sought by Ngāti Kauwhata, stating it would be "*more natural for those blocks* [that Ngāti Kauwhata had sought inclusion of] *to be heard as part of the Waikato-Raukawa Inquiry*" (see Memorandum-directions of Judge D J Ambler dated 4 September 2007 (Wai 898, #2.5.21) at [6.4]), although his Honour subsequently allowed the inclusion of "*Raupatu claims of Ngāti Kauwhata in relation to Rangiaohia*" (see Memorandum-directions of Judge D J Ambler dated 21 November 2007 (Wai 898, #2.5.24) at [5.2(e)(ii)]).

16. Counsel are available to be heard in respect of the matters raised in this memorandum.

Dated this 21st day of December 2018

A handwritten signature in black ink, appearing to read 'E Stretch / D Hunt', written over a horizontal line.

E Stretch / D Hunt
Counsel for the Claimants