

In the Waitangi Tribunal
Remaining Historical Claims: South Island Claims

Wai 2800
Wai 710

In the Matter of the Treaty of Waitangi Act 1975

And

In the Matter of the Inquiry into the Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800)

And

In the Matter of a claim by Makere Harawira for herself and Ngai Te Rakiamao Hapu of Waitaha (Wai 710)

**Memorandum of Counsel regarding eligibility to participate in the
Wai 2800 Inquiry**

Dated 24 December 2018

RECEIVED

Waitangi Tribunal

25 Dec 2018

Ministry of Justice WELLINGTON

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May it please the Tribunal

1. This Memorandum of Counsel is filed on behalf of Wai 710 a claim by Makere Harawira for herself and Ngai Te Rakimoa Hapu of Waitaha (the 'Claimants').
2. This memorandum is filed in response to the Memorandum-Directions¹ of Chief Judge W W Isaac dated 1 October 2018 regarding assessment of the historical aspects of claims for this inquiry.
3. Wai 710 was assessed as fully settled by the Ngāi Tahu Claims Settlement Act 1998 and therefore included in the preliminary list of claims not eligible to participate in this inquiry.
4. At paragraph 5 of the Memorandum-Directions, parties were directed to file submissions explaining how their claim comes within the scope of the Wai 2800 inquiry if they believe the Tribunal's assessment of their claim is incorrect.
5. Counsel submit the following reasons as to why the Wai 710 claim should be reassessed as an eligible claim to participate in the Wai 2800 Inquiry:
 - a. The Wai 710 claim has not been specifically settled by the Ngāi Tahu Claims Settlement Act 1998, therefore Wai 710 has not been removed from the Tribunal's jurisdiction. The Wai 710 claim does not fall within section 10 of the Ngāi Tahu Claims Settlement Act 1998 – Meaning of Ngāi Tahu claims:
 - as the claimant is not Ngāi Tahu (s10(1)(a));
 - the claim is not made on behalf of Ngāi Tahu against the Crown but rather on behalf of Waitaha against the Crown (s10(1)(b));
 - Wai 710 is not an ancillary claim to Wai 27 (s10(1)(c));
 - Wai 710 is not specifically listed as a settled claim under s10(1)(d), as mentioned above in a. ; and,

¹ Wai 2800 #2.5.2, Memorandum-Directions of the Presiding Officer, Appendix A, 1 October 2018.

- S10(1)(e) and s10(1)(f) do not apply to Wai 710.
- b. Section 9 of the Ngāi Tahu Claims Settlement Act 1998 – Meaning of Ngāi Tahu and Ngāi Tahu Whānui states: (1) For the purposes of this Act and any other enactment, unless the context otherwise requires, Ngāi Tahu and Ngāi Tahu Whānui each means the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kurī, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki. The Wai 710 Claimant does not descend from those named hapū but rather descends from the hapū of Ngai Te Rakimoa.
 - c. Furthermore, Counsel submit that no hapū of Waitaha or the iwi of Waitaha have been legitimately included or settled in any real or meaningful way under the Ngāi Tahu Claims Settlement Act 1998, additionally the iwi of Waitaha and Waitaha hapū descend from the Polynesian captain Rākaihautū, whereas Ngāi Tahu descend from Tahu Pōtiki, the son of Paikea born in the Bay of Plenty, therefore Waitaha's very whakapapa means the iwi cannot be part of Ngāi Tahu whānui.
 - d. The Wai 710 claim is not included in current settlement negotiations.
 - e. The Wai 710 claim is not participating in current Tribunal inquiries.
 - f. The Wai 710 claim has not been reported on previously by the Waitangi Tribunal. Waitaha claimants did present submissions in the 1987 to 1991 Ngāi Tahu Claims Inquiry, however the Tribunal made no reference to Waitaha in its findings except as background historical context to findings regarding only Ngāi Tahu.
 - g. The Wai 710 claimants acknowledge that parts of their claim deal with recent allegations against the Crown. However, the Wai 710 claim also includes the following historical allegations (which relate to matters that occurred before 21 September 1992) and are therefore within the scope of this Inquiry to investigate:

- Since 1848, when Walter Mantell was appointed as Commissioner for Extinguishment of Native Titles in the South Island, the Crown has failed to protect Waitaha tino rangatiratanga over their lands and waters. The Crown disregarded Waitaha rights to equal status under Te Tiriti of Waitangi and has improperly recognised only Ngāi Tahu in respect of affairs within Te Waipounamu when Waitaha had and continues to hold ahi kaa over the lands, water and off shore islands. The Claimants submit rather than actively protecting Waitaha, the Crown in fact has ignored the very existence of Waitaha, therefore completely failing to act in good faith as a Tiriti partner.
- The Runanga Iwi Act 1990 was a significant piece of legislation that empowered iwi such as Waitaha by presenting a framework for devolution which ‘acknowledged the enduring traditional significance and importance of iwi’, with legally incorporated runanga to become the administrative wings of the tribes². Yet in 1991 the Runanga Iwi Act³ was repealed and since that year Waitaha have suffered with the promotion by the Crown of a Ngāi Tahu-centric approach to policy issues facing all Te Waipounamu Māori not just Ngāi Tahu. Significantly, Waitaha were quick to take the opportunity of empowering their iwi as can be seen from Rangiamoa Karaitiana and others for Waitaha making an application to incorporate a runanga in 1990, however under section 3 of the Runanga Iwi Repeal Act 1991 the application of Rangiamoa for Waitaha ceased to have effect. The Claimants submit the Crown failed to provide any alternative solution

² Section 6 of The Runanga Iwi Act 1990 – ‘The iwi is hereby acknowledged as an enduring, traditional, and significant form of social, political, and economic organisation for Māori’.

³ Section 3(1) of the Runanga Iwi Act Repeal Act 1991 – ‘Every application under the Runanga Iwi Act 1990 that is pending at the commencement of this Act and every decision or determination that, under the Runanga Iwi Act 1990, is in force immediately before the commencement of this Act shall, as from the commencement of this section, cease to have effect’.

once the Runanga Act had been repealed to empower Waitaha as an Iwi in respect of their social, political and economic organisation and because of this failure Waitaha continues to suffer injustices and a vast gulf separates the development of Waitaha as an iwi compared to the operations of other Iwi around Aotearoa today.

6. In conclusion the Wai 710 Claimants ask the Tribunal to reconsider the preliminary determination of eligibility for their claim to participate in the Wai 2800 Inquiry.

Dated at Wellington this 24 day of December 2018

The image shows two handwritten signatures in blue ink. The signature on the left is 'C M Maihi' and the signature on the right is 'G M Davidson'. Both signatures are written in a cursive, flowing style.

C M Maihi / G M Davidson
Counsel for the Wai 710 Claimants