WAITANGI TRIBUNAL

Wai 3110

CONCERNING	the Treaty of Waitangi Act 1975
AND	a claim by Patrick Nicholas on behalf of himself, Ngāti Huna, Ngāti Hereawai of Ngāti Ranginui iwi and Takitimu waka, and all who support the claim

MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON

The Registrar will please enter this matter on the register of claims and give it the next available Wai number. The register should note that the claim was received on 7 December 2021.

The claimant should please take note of the 'Wai' number reference at the top of the page. Please use this claim number in any communication with the Tribunal.

This claim is lodged by Patrick Nicholas on behalf of himself, Ngāti Huna, Ngāti Hereawai of Ngāti Ranginui iwi and Takitimu waka, and all who support the claim. The claim concerns the taking of Māori freehold land for roading, specifically the Takitimu North Link. The claimant alleges that the Crown has breached the principles of the Treaty of Waitangi by:

- proposing to take Nicholas Whānau Trust Māori freehold land in Tauranga for roading;
- failing to take into account that property's historical significance to Tauranga Moana tangata whenua;
- failing to consult or communicate with the claimants about said proposal or any alternatives;
- ignoring promises made in the resource management consent stages; and
- breaking various rules in declining the claimant's tender for work on the Takitimu North Link, specifically promises from the resource management process, promises made to the claimants, conditions of the Takitimu North Link Procurement Framework and conditions on the invitation to tender.

The claimant seeks a variety of relief, including findings that the Crown:

- broke its promises to the claimants;
- prejudicially affected the claimants by not consulting them on the taking of their Māori freehold land; and
- prejudicially affected the claimants in the tender process by not following the correct and agreed procurement procedure.

The claimant notes that they are happy for the Tribunal to recommend mediation under cl 9A of Schedule 2 of the Treaty of Waitangi Act 1975.

To the extent, if at all, that the claimant seeks the return of land that is private land, the Tribunal notes that it may not recommend that this land be returned to Māori ownership. There are a few exceptions such as where the land is Crown forest land, or where land is owned by a state-owned enterprise. Tribunal recommendations about Crown forest and state-owned enterprise land are in a special category, because they may be binding on the Crown. Claimant

should obtain legal advice about whether any of the exceptions in sections 8A to 8HJ of the Treaty of Waitangi Act 1975 (the Act) apply to this claim.

The claimant may amend this claim at a later stage. In any case the Tribunal may require the claimant to prepare a fully particularised statement of claim before the claim can be heard.

The Tribunal currently runs district and kaupapa inquiry programmes in which claims are grouped either by district or by kaupapa (thematic) issue. Historical claims are those that raise grievances which arose before 21 September 1992. Contemporary claims have grievances that arose on or after that date. Some claims have both historical and contemporary grievances.

Although this claim relates to a specific geographical area, it concerns contemporary allegations of Treaty breaches and as such may be best suited for consideration in a kaupapa inquiry.

The claimant should also note that this claim is registered only insofar as it concerns contemporary allegations of Treaty breaches by the Crown.

When the time comes for the claim to be prepared for hearing, the Tribunal will decide whether there are any matters in the present claim that the Tribunal may not inquire into. The claimant needs to be aware that there are some matters that the Tribunal is not allowed to inquire into, such as any Bill that has been introduced into Parliament (unless the Bill has been referred to the Tribunal under section 8 of the Act). Also, when historical claims are settled, the settlement legislation usually forbids the Tribunal from inquiring further into the matters that have been settled.

The claimant also needs to be aware that the Tribunal does not make settlements. After the Tribunal has completed an inquiry into claims, it writes a report making recommendations to the Crown. It cannot tell the Crown what to do; it may only recommend that the Crown acts to address the negative consequences of its breaches of the principles of the Treaty.

Legal Aid Services provides help for Waitangi Tribunal claimants. For advice on getting a lawyer or receiving funding, please contact Legal Aid Services at their Wellington central office or one of the local offices; the claimant should check their telephone directory for contact details.

Any questions about the contents of this document should be directed to The Registrar, Waitangi Tribunal, DX SX 11237, Wellington; phone (04) 914 3000, fax (04) 914 3001; email wt.registrar@justice.govt.nz.

The Registrar is to send a copy of this direction to the claimant and to:

- Crown Law Office;
- Te Kahui Whakatau (Treaty Settlements), Office for Māori Crown Relations – Te Arawhiti;
- Crown Forestry Rental Trust;
- Legal Aid Services;
- Te Puni Kōkiri; and
- Waka Kotahi NZ Transport Agency.

DATED at Wellington this 16th day of February 2022

Judge Sarah Reeves
Deputy Chairperson
WAITANGI TRIBUNAL