

**IN THE WAITANGI TRIBUNAL**

Wai 45

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

applications to the Renewed  
Muriwhenua Land Tribunal for  
binding recommendations

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**MEMORANDUM-DIRECTIONS OF JUDGE C M WAINWRIGHT**  
**CONCERNING THE STAGE ONE RESEARCH PLAN AND MISSING INQUIRY**  
**DOCUMENTS**

8 June 2022

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## **Introduction**

1. This memorandum-directions:
  - (a) confirms the research plan for Stage One, the district inquiry stage, of the Renewed Muriwhenua Land inquiry; and
  - (b) addresses the documents listed on the Wai 45 Record of Inquiry that have gone missing.

## **Background to research plan and amended approach**

2. In a memorandum-directions dated 1 September 2021, I gave an indicative research timeline for Stage One of the Renewed Muriwhenua Land inquiry (Wai 45, #2.874). In it, I indicated that the Tribunal would circulate a research plan to parties in March 2022 which would then be the subject of discussion at a research wānanga proposed for April 2022.
3. We have changed our approach, for a number of reasons. These include the impact of the COVID-19 pandemic, but more pressingly the need to secure the services of commissionees (whose availability is currently very limited) as soon as possible. Also, on 25 February 2022, Siasoi Tofi (on behalf of the Te Paatu claimant cluster Wai 1842 & 1359; Wai 45, #2.877 & #T14) filed a Crown Forestry Rental Trust-funded scoping report by David Armstrong. This report was timely, enabling us to develop a research plan that is better informed than we anticipated would be possible at this juncture.
4. For these reasons, and especially in the interest of keeping up the momentum of the inquiry, we are releasing a complete research plan now. We do not think a research wānanga is now called for, but if there is a contrary view parties will of course let us know and explain why. We envisage that parties will engage with us on the plan set out in paragraph 13 below.

## **The scoping report**

5. David Armstrong's report is titled 'Wai 45 Renewed Muriwhenua Inquiry District: Te Paatu Scoping Report' (the scoping report) and is on the record of inquiry as document Wai 45, #T14.
6. Although its primary focus is the 11 Te Paatu and Ngāti Tara claims, Mr Armstrong explains that Te Paatu, as a large hapū of Ngāti Kahu, have a substantial interest in the entire Ngāti Kahu area of interest. Thus, the report gives analysis that is relevant to the whole of the indicative inquiry area (Wai 45, #T14 at p 1). Mr Armstrong, we understand, consulted a range of wider Ngāti Kahu sources and discussed his report with Te Rūnanga ā Iwi o Ngāti Kahu and their counsel.
7. Mr Armstrong recommends a research programme that focuses on these topics:
  - (a) refresh/update of what we know about pre-1865 Crown purchases;
  - (b) the Native Land Court and post-1865 Crown purchases;
  - (c) the fate of reserves and any other land set aside for Māori;
  - (d) political engagement and tribal organisation post-c1900;
  - (e) Māori-focused economic history, 1840-c1950;

- (f) wāhi tapu, portable taonga, te reo; and
  - (g) tribal landscape.
8. Tribunal research staff have looked into these subject areas in relation to all of the statements of claim that were outside the scope of Mr Armstrong's brief. Their advice is that we should prioritise four further research projects for Stage One.

### **Tribunal research plan for Stage One**

#### *Existing projects*

9. I informed parties previously about the Tribunal's intention to commission research into:
- (a) **Social issues** in respect of allegations that Crown conduct concerning health, housing, education and social services caused prejudice to claimants in the district (anticipated completion October 2022); and
  - (b) **Environmental issues**, focusing on specific allegations of local environmental degradation in the district caused by Crown. Following further analysis in light of the scoping report and claimants' pleadings, we have enlarged the scope of this commission and amended the brief (anticipated completion April 2023).
10. We originally proposed these research projects in memorandum-directions dated 12 February 2021 (Wai 45, #2.821 at [43] – [56]). In submissions leading up to the 28 May 2021 judicial conference, and at that judicial conference, parties gave feedback and generally supported the projects. I confirmed this position in memorandum-directions dated 2 July 2021 (Wai 45, #2.861 at [14]) and 1 September 2021 (Wai 45, #2.874 at [5] – [7]).
11. These commissions will be circulated once they are completed.

#### *New projects*

12. In addition to these two projects, and on the basis of advice from Tribunal research staff, we have prioritised the following four research projects:
- (a) **Tribal landscape report.** This report will place the iwi and hapū involved in the inquiry in context and examine their interconnectedness and relationship to the whenua. This is important not least of all because Crown records (such as Crown purchase deeds and Native Land Court minute books) tend to record only the individuals involved, rather than their affiliations. Linking those individuals with iwi/hapū/whānau will be important for understanding nexus between whenua, claimants, and alleged breaches. The work will give us insight into the complexities of the claimant community in the inquiry district. Estimated time to completion is 12 months.
  - (b) **Pre-1865 Crown purchasing.** This report will refresh existing research on pre-1865 Crown purchases. The intention is to extend and strengthen previous research and the Tribunal's 1997 findings. Of note is the relative ease of accessing primary sources now, compared with when the work was done for the Muriwhenua Land Report 1997 (Wai 45). Additional source material may now also be available. Estimated time to completion is four months.

(c) **The Native Land Court and post-1865 Crown purchases.** This project will focus on land blocks in the inquiry district rather than on ‘big picture’ development and overall impact of the Native Land Court. It aims to identify any particularly egregious examples of Native Land Court processes or Crown purchases. Estimated time to completion is four months.

(d) **The fate of reserves and any other land set aside for Māori.** What happened to reserves and any other land set aside from Crown purchases in the inquiry district has not yet been thoroughly researched. Estimated time to completion is 10 months.

13. Tribunal research staff have begun work on the draft project briefs. These will be circulated once they are completed. Claimants will be invited to provide additional information or nominate relevant case-studies in the course of a four-week consultation period. Consultation will be in writing unless another approach is called for.

*Provisional research timetable*

14. The table below sets out the timeline. It is provisional because of the inevitable effects of external factors like contractor availability and access to archival material. Every effort will be made to adhere to it, however.

Milestone	Date
Social issues commissioned report completed	October 2022
Pre-1865 Crown Purchasing commissioned report completed	March 2023
The Native Land Court and Post-1865 Crown Purchases commissioned report completed	
Environmental issues commissioned report completed	May 2023
The Fate of Reserves and Other Lands commissioned report completed	June 2023
Tribal Landscape commissioned report completed	June 2023

**Potential for further commissioned research**

15. In his scoping report Mr Armstrong recommended another three research projects:

- (a) political engagement and tribal organisation post-c1900;
- (b) Māori-focused economic history, 1840-c1950; and

(c) wāhi tapu, portable taonga, te reo.

16. We see merit in including research on these topics in this inquiry, but we have had to prioritise because of unprecedented pressure on Tribunal research resources. If claimants were able to secure resources to enable this research, we would regard that as highly desirable. Possibilities should be explored quickly to help ensure that we reach the goal of completing all research by June 2023 to avoid delaying the beginning of hearings.

### **Missing documents**

17. In the course of their work on research for Stage One, Tribunal staff have reviewed the Wai 45 Record of Inquiry.

18. It appears that, following the release of the Muriwhenua Land Report 1997 (Wai 45), various misadventures meant that some inquiry documents were misplaced or went missing from the Wai 45 Record of Inquiry.

19. The good news is that Tribunal staff have found most of them. Seven pieces of evidence have yet to be located (see **Appendix A**). The others are now on the electronic record of inquiry for Wai 45 Record of Inquiry.

20. The Tribunal seeks input on whether parties:

(a) have copies of the documents listed in Appendix A, and can provide them to us;<sup>1</sup>

(b) can recommend any other means of retrieval; and/or

(c) consider that there are implications should the evidence remain lost.

21. There is another piece of evidence that we have questions about. There's a document that we can't find, but we are not sure whether it's properly characterised as missing. We do not have a copy of the supporting video for the 15<sup>th</sup> week of hearing (Wai 45, #4.3.17(a)). However, Barry Rigby, who attended the 15<sup>th</sup> hearing week, does not recall any such video being recorded or presented. If parties have information on this can they please let us know.

22. Counsel are to please file any submissions relating to the above by **Friday 8 July 2022**.

### **Request for material from the Wai 45 Record of Inquiry**

23. The original Wai 45 Inquiry used a filing system different from that used today. For technical reasons, many of the documents on the Wai 45 Record of Inquiry cannot be uploaded to the Waitangi Tribunal website for parties to access.

24. Attached as **Appendix B** is the most up-to-date index to the Wai 45 Record of Inquiry. If parties require material that they cannot access via the website, they should contact [WT\\_Requests@justice.govt.nz](mailto:WT_Requests@justice.govt.nz) to request copies.

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<sup>1</sup> In a 2011 memorandum, the Crown indicated that it had copies of Wai 45, #A5 and Wai 45, #Q2(a) (Wai 45, #2.342).

The Registrar is to send this direction to all those on the notification list for Wai 45, the Renewed Muriwhenua Land Inquiry

**DATED** at Ōmarumutu this 8<sup>th</sup> day of June 2022

A handwritten signature in black ink, appearing to read 'C M Wainwright', written in a cursive style.

Judge C M Wainwright  
Presiding Officer

**WAITANGI TRIBUNAL**