

**IN THE WAITANGI TRIBUNAL**

Wai 2200

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Porirua ki Manawatū District  
Inquiry

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**MEMORANDUM-DIRECTIONS (NO. 425) OF CHIEF JUDGE DR C L FOX  
INVITING SUBMISSIONS ON A REQUEST FOR A SEPARATE REPORT AND  
MEDIATION REGARDING THE FORMER ŌTAKI HOSPITAL, SANATORIUM  
AND CHURCH GIFT LANDS**

18 December 2024

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Tēnā koutou katoa

1. This memorandum-directions invites submissions from parties on a proposal for mediation regarding lands at Ōtaki, and seeks further submissions to clarify the area of the lands at Ōtaki to be covered by the separate report.

### **Procedural context – request for a separate report**

#### ***Wai 113A, Ngāti Koroki request for separate priority Tribunal report on hospital and sanatorium lands at Ōtaki***

2. On 26 June 2024, I directed counsel for the Ngāti Koroki (Rikihana) (Wai 113A) claimants, Donna Hall, to submit further details by 16 July 2024 on their request for a separate Tribunal report into the hospital and sanatorium lands at Ōtaki, made in the Wai 113A Ngāti Koroki closing statement at hearing 16 (Wai 2200, #T17 & #T17(b) at [49]). I agreed with a suggestion at hearing 16 from counsel for the Crown that claimants be directed to submit on the proposed terms and scope of this separate report, and that the Crown may respond thereafter (Wai 2200, #2.6.271 at [42]).
3. On 2 August 2024, noting that a detailed proposal was yet to be submitted by Wai 113A counsel, and following the matter being raised again at hearing 17, I directed Wai 113A counsel, counsel representing other Ōtaki hapū claimants, and the Crown to submit (by 3 September 2024) on this proposal for a separate Tribunal report into the hospital and sanatorium lands (Wai 2200, #2.6.275 at [45]–[47]).
4. On 2 September 2024, counsel for Wai 113A Ngāti Koroki and Wai 113A the Ōtaki Māori Committee (Manning) claimants acknowledged the 3 September filing date but said they needed an extension until 10 September 2024, due to delays caused by attendance at the tangi of Kīngi Tūheitia Pōtatau Te Wherowhero VII (Wai 2200, #3.2.1657).
5. Counsel for Wai 113A Ngāti Koroki subsequently submitted a proposal on 6 September 2024 for a priority report that also included a request for Waitangi Tribunal mediation by Queenie Rikihana and Mishy Vieira on behalf of Ngāti Koroki (Wai 113A) (Wai 2200, #3.2.1664).
6. In terms of scope, counsel advised they were providing further particulars on a proposal for a separate Tribunal report ‘on the matters raised in the closing statement affecting the Makuratawhiti-Haruātai lands given to the Church for a school and the taking of part for a hospital and sanatorium’ (Wai 2200, #3.2.1664 at [1]). Counsel said the Wai 113A Ngāti Koroki claimants seek a separate Tribunal report on the evidence in this inquiry relating to the following lands at Ōtaki (Wai 2200, #3.2.1664 at [6]):
  - (a) The 68 acres 2 roods 35 perches, part of Makuratawhiti and Haruātai blocks, lying to the north of the Makuratawhiti-Haruātai Stream, that was given to the Church Missionary Society (CMS) to support a school. Issues include:
    - (i) whether the part of the 68a 2r 35p area that lies west of Anzac Ave, comprising 29a 2r 21p, which today is held by the Ōtaki and Porirua Trusts Board, should have returned to Māori; and whether the Crown should now seek to buy that land for the hapū entitled, or whether they should support a mediation for its voluntary return.
    - (ii) whether the remaining part that lies east of Anzac Ave, comprising 39a 0r 14p, taken for a hospital and buffer zone for the sanatorium and which is still held by the Crown, should return to the hapū entitled; and whether ‘in principle’

compensation should be paid for other parts of the land given for purposes such as the Haruātai Park.

- (b) The taking of the Māori lands comprising 57 acres 1 rood 8 perches on the northern border of Makuratawhiti-Haruātai for a sanatorium and buffer zone, and which are currently held by the Crown. Issues include:
    - (i) whether these lands should be vested in an entity or entities for the hapū customarily entitled;
    - (ii) whether 'in principle' compensation should be paid for loss of use and degradation of the land; and
    - (iii) whether the Crown should restore the land to pasture lands; and whether the Crown should remove the last of the concrete walls and foundations that are still on the block.
  - (c) Other issues include whether the Crown should withdraw from the land bank, the land described as 'Former Ōtaki Maternity Hospital and Vacant Rural Land Mill Road Ōtaki PF 1314' for the purposes of vesting that land in the hapū entitled; and whether the claims made should be treated as contemporary claims (Wai 2200, #3.2.1664 at [6(a)–(e)]).
7. Counsel advises that the Wai 113A Ngāti Koroki claimants propose that the Tribunal inquire as necessary, including seeking further information as needed to be able to report fully on these matters, provided any evidential information to be relied on is disclosed to the Crown, claimants and any other interested parties for comment (Wai 2200, #3.2.1664 at [7]).
  8. Counsel also advised that the Wai 113A Ngāti Koroki claimants consider it might avoid duplication and be more efficient for the Tribunal to direct a mediation with the Crown, claimants and others interested in the lands concerned. This includes inviting the Diocesan Bishop of the Anglican Church (or their appointee) to participate in mediation, in regard to the land originally gifted to the CMS (68a 2r 35p) to support a school, and part of which (29a 2r 21p) is now held by the Ōtaki and Porirua Trusts Board for the benefit of the Anglican Church. This mediation request is outlined below.

#### **Other claimant party responses to priority report request**

*Response of Tū Te Manawaroa claimants: Ngā Hapū o Kererū (Wai 1944) and the Te Iwi o Ngāti Tukorehe Trust (Wai 1913) claims to the proposal for a separate report and Wai 113A Ngāti Koroki reply*

9. As directed, on 3 September 2024, counsel Jerome Burgess, Jennae Matenga, and Hemi Te Nahu on behalf of Ngā Hapū o Kererū (Wai 1944) and the Te Iwi o Ngāti Tukorehe Trust (Wai 1913) claimants, 'Tū Te Manawaroa claimants', advised that the claimants are part of the other Ōtaki hapū who have interests in the Ōtaki area (Wai 2200, #3.2.1660).
10. Counsel further advised that the Tū Te Manawaroa claimants support the request for a separate report on the Ōtaki Hospital and Sanatorium and sought to highlight that not all of the land in question belongs exclusively to the Ōtaki and Porirua Trusts Board. The Tū Te Manawaroa claimants sought to clarify that the whenua upon which the Ōtaki Hospital and Sanatorium is situated includes 'the collective interests of the entire Iwi, rather than belonging to any individual hapū' and submitted that this matter 'should not be misconstrued as a basis for any individual hapū to assume ownership over the Iwi's whenua'. In addition, the Tū Te Manawaroa claimants consider it is important to involve

the surrounding landowners of the Waitoki and Titokitoki blocks in any future discussions relating to this matter (Wai 2200, #3.2.1660 at [4]–[6]).

11. On 6 September 2024, counsel for the Wai 113A Ngāti Koroki claimants sought more detail on the submission by the Tū Te Manawaroa claimants regarding the nature and extent of iwi and hapū interests in the lands for which a separate report was being sought (Wai 2200, #3.2.1665).

*Response of the Ngāti Kapumanawawhiti (Wai 1630), Ngāti Raukawa (Wai 113B), Taumanuka 3A Cemetery-Ōtaki (Wai 256), and Palmerston North Hospital Land (Wai 267) claimants to proposal for a separate report*

12. Also as directed, on 3 September 2024, counsel Dr Season-Mary Downs, Chelsea Terei-Tipene, and Heather Jamieson on behalf of the Ngāti Kapumanawawhiti (Wai 1630), the Ngāti Raukawa (Wai 113B), the Taumanuka 3A Cemetery-Ōtaki (Wai 256), and the Palmerston North Hospital Land (Wai 267) claims, submitted that the claimants were not opposed to the proposal for a separate report so long as it does not considerably delay reporting on the Ngāti Raukawa claims. Counsel also noted the extension request by Wai 113A Ngāti Koroki claimants to file their detailed separate report proposal by 10 September 2024, and sought leave to file any further submissions by 12 September 2024 (Wai 2200, #3.2.1661 at [4]). To date, no further submissions have been received.

*Response of the Descendants of Hoani Te Puna I Rangiriri Taipua (Wai 1626) claimants to proposal for a separate report*

13. On 16 October 2024, counsel Leo Watson and Cameron Hockly on behalf of the Descendants of Hoani Te Puna I Rangiriri Taipua (Wai 1626) claim submitted there was some claimant support for a separate report but that it would have been advantageous for the proposal to have been raised and developed by the hapū before being placed before the Tribunal. Counsel noted the claimants are also of the view that the proposal would be an appropriate take for the ahi kā hapū to bring to a wānanga for all the hapū of Ngāti Raukawa ki te Tonga at a suitable time (Wai 2200, #3.2.1677 at [6]–[9]).

### **Preliminary Tribunal view on the scope of the requested report**

#### ***Geographical scope of the Ōtaki lands for which a separate report or mediation is requested***

14. Parties will recall that at hearing 17, on 25 July 2024, Dr Grant Phillipson advised the Tribunal's preliminary view that an early report, similar to what was produced on the Lake Kōpūtara issue, would need to look at the *whole* issue of the gift of land at Ōtaki to the CMS in the 1850s, and the various lands that that involves (Wai 2200, #4.1.51, at 6–7 & 126–129). This was because the hospital and sanatorium lands comprise only a part of the gifted land (as well as land taken under public works legislation).
15. Dr Phillipson said that it would be very difficult to report on the historical claims, and any Crown acts and omissions, in respect of just the hospital land without looking at the wider history of the gift and the wider question of any Crown acts and omissions. Dr Phillipson said the Tribunal was inviting the Crown and the Ōtaki hapū to indicate whether they would wish a report of that kind.
16. In terms of acreage, based on the technical evidence received to date, Governor George Grey issued Crown grants concerning approximately 585½ acres between 5 February 1852 and 16 July 1853 for the lands gifted by Ōtaki hapū to Octavius Hadfield, William Williams and Richard Taylor, who acted as trustees for the CMS (Wai 2200, #A213, p715 & #A240, p1). Historian Dr Paul Husbands has advised that most of the 585½ acres

remain intact, with 39 acres taken by the Crown under public works legislation in December 1906 'representing the only geographically significant area to be alienated' (Wai 2200, #A213(u), p9). This area was taken along with just over 54¼ acres of adjacent Māori freehold land for the Ōtaki Hospital and Sanatorium, some of which now forms part of Haruātai Park (Wai 2200, #A240(c), p5). Dr Husbands advises that the Ōtaki and Porirua Trusts Board retains control of all but approximately seven per cent of the 585½ acres gifted in 1852 and 1853 (Wai 2200, #A213(u), p13).

17. To assist parties, listed below are references to indicative sketch plans and maps overlaid with the areas of the original Church Mission Grant Lands on the record that show the areas referred to in Dr Husbands' evidence:
- (a) See sketch plans at pages 712, 713, 766 and 768 in Dr Paul Husbands, 'Māori Aspirations, Crown Response and Reserves, 1840 to 2000' (Wai 2200, #A213).
  - (b) See sketch plans at pages 8 and 9 in 'Response of Dr Paul Husbands to post hearing 16 questions in writing from the Crown, 30 Aug 24', (Wai 2200, #A213(ae)).
  - (c) See plates 123 to 125 in 'Overview map book to support Waitangi Tribunal proceedings Part 1' (Wai 2200, #A220).
  - (d) See pages 17 and 18 in 'Map book for hearing 16' (Wai 2200, #T1).
  - (e) See all maps and sketch plans in 'Index and appendices in support of the joint statement of Jack Rikihana, Dr Anthony Cole and Sir Taihākurei Durie on the Ōtaki Hospital and Sanatorium' (Wai 2200, #T15(a)).
18. The Tribunal would like to hear further from parties as to whether they are seeking an early priority report on the whole of the gifted lands (in addition to the land taken under the public works legislation), because this matter needs to be clarified as a prerequisite to the Tribunal considering whether an early report or possibly mediation is feasible at this stage.

***Invite further submissions on the proposal for a separate report***

19. The Tribunal invites any claimants who have an interest in the above lands or who wish to be heard on this matter to submit on the scope of and issues for a priority report (if they support such a report). All claimant submissions should be filed by **5 pm, Tuesday 14 January 2025**.
20. In addition, I note that counsel for Tū Te Manawaroa claimants advised above that it is important to involve the landowners of the 'Waitoki and Titokitoki blocks' that adjoin the CMS lands referred to by the Wai 113A Ngāti Koroki claimants. Counsel for the Tū Te Manawaroa claimants are directed to provide the following by **5 pm, Tuesday 14 January 2025**:
- (a) Clarify whether the reference to 'Waitoki' block should be 'Waitohi' instead, or if not, to provide a map of where 'Waitoki' block is situated within the land concerned. Counsel for and Wai 1913 and Wai 1944 are to advise on this matter also.
  - (b) More information on why the landowners of the blocks that adjoin the CMS lands referred to above should be involved in any future discussions relating to this matter.
21. I remind all parties to keep in mind any jurisdictional constraints that may apply to historical claims to these lands such as the Ngāti Toa Rangatira Claims Settlement Act 2014, or other relevant settlement legislation.

22. The Crown is directed to submit two weeks after all claimant submissions are received.

**Request for Tribunal mediation and submissions from other parties**

23. I now invite claimant and Crown parties to also submit on the Wai 113A Ngāti Koroki proposal for Tribunal mediation, which I understand to be an alternative to early reporting, as outlined below.

***Request by Ngāti Koroki claimants in Wai 113A***

24. Counsel for Wai 113A Ngāti Koroki claimants proposed that to avoid duplication, it may be more efficient for the Tribunal to direct a mediation with the Crown, claimants and other interested parties to report back to the Tribunal on the outcome. Counsel submitted that the mediation could be in three stages, though conducted by one single mediator who would settle the terms of reference for each stage after consulting with the parties concerned. Counsel said the mediator would be a 'barrister with mediation experience and experience with Māori claims as agreed by the parties', indicating that there was 'an obvious candidate' for this role for parties to consider (Wai 2200, #3.2.1664 at [8]–[11]).

25. Counsel described the three stages of mediation proposed as follows:

- (a) Mediation 1 to cover the gift of the 68a 2r 35p to support a school and the return of that part now held by the Ōtaki and Porirua Trusts Board. The parties would be the claimants, the Crown, and the Diocesan Bishop of the Anglican Church (or their appointee). Counsel highlighted that the Ōtaki and Porirua Trusts Act 1943 is a private Act for the benefit of the Anglican Church saying the Board has powers concerning asset management and fund distribution, but that a change to the 1943 Act would concern the Church.
- (b) Mediation 2 to cover the 39a 0r 14p taken from the gifted lands for hospital and sanatorium purposes. The parties would be the claimants and the Crown.
- (c) Mediation 3 to cover the 57a 1r 08p of Māori lands taken for sanatorium purposes. Counsel submitted that the parties would be the Crown and a representative for each of Ngāti Koroki, Ngāti Kapu, Ngāti Pare, Ngāti Maiotaki and others given leave to participate by the Waitangi Tribunal on the basis that they 'could reasonably have a claim' (Wai 2200, #3.2.1664 at [12]–[14]).

26. Counsel said that the mediator may refer back to the Tribunal on matters arising affecting third parties, or the Tribunal may give directions to the mediator of its own volition.

27. Counsel added that they had run out of time to discuss these proposals with Crown counsel but remain willing to do so.

***Next steps regarding request for Tribunal mediation***

28. Claimant parties are directed to submit on this proposal for Tribunal mediation by **5 pm, Tuesday 14 January 2025**. Submissions should include:

- (a) whether claimants support mediation as a means of resolving these claim issues;
- (b) the relevant area of, and interests in, land which would be subject to mediation;
- (c) the readiness of claimants to proceed to mediation; and
- (d) any other relevant matters regarding the proposal for mediation.

29. The Crown is directed to submit two weeks after all claimant submissions are received.

The Registrar is to distribute this direction to all parties on the notification list for Wai 2200, the combined record of inquiry for claims in the Porirua ki Manawatū District Inquiry.

**DATED** at Wellington on this 18<sup>th</sup> day of December 2024

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

Chief Judge Dr C L Fox  
Presiding Officer

**WAITANGI TRIBUNAL**