**IN THE WAITANGI TRIBUNAL**

**WAI 3550**
**WAI 507**
**WAI 2139**

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| **IN THE MATTER** | of the Treaty of Waitangi Act 1975 |
| **AND** | |
| **IN THE MATTER** | of the Economic Development kaupapa inquiry (Wai 3550) |
| **AND** | |
| **IN THE MATTER** | of a claim by Owen Lloyd on behalf of Ngā Ariki Kaipūtahi (Wai 507) |
| **AND** | |
| **IN THE MATTER** | of a claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139) |

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**MEMORANDUM OF COUNSEL REGARDING PARTICIPATION IN INQUIRY**
Dated: 4 February 2025

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**MAY IT PLEASE THE TRIBUNAL**

1. This memorandum of counsel is filed on behalf of:

    a. Owen Lloyd on behalf of Ngā Ariki Kaipūtahi (Wai 507); and

    b. Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139)

    (together "the claimants")

2. And in response to memorandum-directions dated 12 Hiringa-ā-rangi 2024 which invites parties to make written submissions on the proposed steps for this inquiry.[1]

**CLAIMS SEEKING TO PARTICIPATE AND ELIGIBILITY**

3. Counsel can indicate that the following claims intend to file amended statements of claim raising allegations that fall within the preliminary scope of this inquiry.

*Ngā Ariki Kaipūtahi (Wai 507) claim*

4. The Wai 507 claim is brought on behalf of Ngā Ariki Kaipūtahi. Ngā Ariki Kaipūtahi are the original inhabitants, the kaitiaki of Mangatū.[2] These customary interests were reduced through the processes of the Native Land Court to interests largely in the Mangatū block.

5. In 2004, as part of its report on historic claims in Turanga, the Waitangi Tribunal found that the claims of Ngā Ariki Kaipūtahi and others to loss of land through warfare, Crown confiscations and Native Land Court processes in the Turanga / Bay of Plenty region were well-founded and recommended direct negotiations.[3]

6. Subsequent, Ngā Ariki Kaipūtahi has been actively involved in Tribunal hearings concerning the resumption of Mangatū Forest lands with associated cash compensation, in lieu of a Crown negotiated settlement.

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1 Wai 3550 #2.5.2.
2 PowerPoint presentation by Mr Owen Lloyd, Wai 814, #P20(c) slide 10.
3 Turanga Tangata Turanga Whenua: The Report on the Turanganu i a Kiwa Claims 2004, Wai 814, vol II, chapter 14 page 659 ff & pp758-751.

7. As part of its preparations for settlement, Ngā Ariki Kaipūtahi have developed a work programme to enable Ngā Ariki Kaipūtahi to successfully manage its forest resources, Treaty settlement assets and Taiao aspirations.[4] The seven-generation vision of Te Taiao o Ngā Ariki Kaipūtahi is to tend, guard and restore the mana mauri of the mountains, rivers, and forests of the Mangatū.

8. The Turanga inquiry examined efforts to develop land from the late nineteenth to mid-20th century, it examined the handover of the Mangatū forest to the Crown in 1960, it made limited observations and no findings in relation to rating claims.[5] Consequently, there was no examination or findings about contemporary issues.

9. We have instructions to file an amended statement of claim that covers contemporary and nationally significant issues that have yet to be, or will not be, heard in any inquiry. These include:

   a. Māori forestry, carbon taxation, emissions trading scheme and the impact on Māori forestry;

   b. Taxation, institutions, autonomy

   c. Rating issues; and

   d. Management and financial challenges of multiply owned Māori freehold land.

*The Muaūpoko Tribal Authority (Wai 2139) claim*

10. The Wai 2139 claim is brought on behalf of the Muaūpoko Tribal Authority (MTA) , a hapū mandated organisation that was established in 1997. Its primary purpose is to protect Muaūpoko identity and assets, and to build a stronger economic, social and culture base for Muaūpoko people.

11. The MTA has had to address considerable economic and social challenges for the hapū of Muaūpoko over the past two decades (including COVID lock-downs). Consequently, as a pre-settled iwi authority, it is perhaps in a unique

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4 Wai 3262, #A8(a), 'Ngā Ngahere o Ngā Ariki Kaipūtahi: An approach to an indigenous forest model and aspirational forest transition planning from the perspective of Ngā Ariki Kaipūtahi'.

5 Turanga Tangata Turanga Whenua The Report on the Turanganu i a Kiwa Claims 2004, Wai 814, see Chapter 9: The Price of Community Control: The Turanga Trust Lands, 1878–1955, Chapter 15: Mangatu Afforestation and page 653 re rates.

position to make claims on an iwi-wide basis and with current understanding of how the Crown processes are lacking for iwi organisations.

12. The Wai 2139 amended statement of claim was filed on 18 April 2024 (Wai 2139, #1.1.1(f)). The claim is currently consolidated into the Wai 2200 inquiry and a request that the claim be aggregated will be made to the Presiding Officer Chief Judge Dr Fox. However, issues of significance to Muaūpoko are raised which are sought for inclusion in this inquiry as follows:

    a. Contemporary problems raising funds for iwi development (arising from historic Crown purchasing and land legislation leaving Muaūpoko with an enormously reduced land base).[6]

    b. Māori economic development institutions.

*Other claimant groups*

13. Counsel are also in discussions with other possible claimant groups about participation in the inquiry in relation to contemporary economic issues.

**PRELIMINARY SCOPE OF THE INQUIRY**

14. In directions commencing the inquiry, the Tribunal indicated the following issues could be heard within this inquiry:[7]

    a. Māori forestry and emissions trading;

    b. Taxation, institutions, autonomy;

    c. Carbon taxation, emissions trading scheme, impact on Māori forestry;

    d. Taxation: rates, rating, land valuation, land tax, death duties, control of taxation and revenue; and

    e. Māori economic development institutions and law.

6 Wai 2139, #1.1.1(f) at [286] – [287].
7 Wai 3550, #2.5.2 at [5].

*Māori forestry and emissions trading; and*
*Carbon taxation, emissions trading scheme, impact on Māori forestry;*

15. Māori forestry is a dynamic industry. Therefore, issues relating to this industry are complex and multi-faceted given:

    a. the historical context of Māori land use and development, having either planted forestry on their lands or acquiring forests through Treaty of Waitangi settlements.

    b. challenges related to capital and resources, with the Crown actively encouraging and supporting forestry investment.

    c. the challenges around governance models and multiple owners.

    d. New Zealand's obligations under the emissions trading scheme, given the Crown's heavy reliance on Māori forestry to meet its commitments under international agreements.

16. In 2007, the Crown established a Climate Change Leadership Forum and Māori Reference Group which noted:[8]

> *"Māori have sizeable areas of land qualifying for post-1989 forestry that currently has limited potential for alternative use. An emissions trading scheme will present options for economic opportunities for Māori. The proposed scheme allows the Government to devolve carbon credits for growing trees which will provide a major new incentive to Māori and the wider forestry industry to consider planting or regenerating more forests.*
>
> *Māori own about 15 per cent of all plantation forest land, which could increase to over 40 per cent once Treaty claims on remaining land are settled and the land transferred.*
>
> *Many areas of Māori land are steep and in regions vulnerable to storm and erosion. With the onset of climate change, these lands will be even more exposed with the predicted arrival of more frequent and severe storms, and more droughts in the east of New Zealand," Mr Horomia said.*
>
> *In the forestry sector, deforestation, is defined as the conversion of forested lands to other land uses and is one of the leading causes of climate change. The climate change policy proposals are part of the Government's wider sustainability agenda, for example, higher forest planting rates and increased forest regeneration will reduce greenhouse gas emissions. They will also improve water quality and reduce soil erosion."*

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8 Leining & Kerr 2016 p15. And https://www.beehive.govt.nz/release/m%C3%A2ori-and-plan-fight-climate-change.

17. In a 2022 discussion document, Ministers Stuart Nash and James Shaw said, "around 30% of New Zealand's $1.7 million hectares of plantation forestry is estimated to be on Māori land, and this is expected to grow to 40% as Treaty settlements are completed.[9] Te Puni Kōkiri notes that Te Ture Whenua entities hold 1.4 million hectares of Māori freehold land.[10]

18. Given that nearly half of the production of forestry in New Zealand sits on Māori land, Māori land accounts for a huge percentage of New Zealand's carbon sinks. This places an unfair burden on Māori landowners to subsidise the Crown's carbon emissions to the detriment of areas like Tairāwhiti who continue to be impacted by extreme weather events.

19. Issues relating to Māori forestry and climate change are inextricably linked. The ETS appears to provide a lucrative economic incentive for Māori forestry owners to buy into the scheme, but in reality, the Crown is using Māori forestry as a way to offset its international climate obligations.

20. Issues relating to Māori forestry such as afforestation, carbon taxation, and the emissions trading scheme (ETS) are being progressed via the Climate Change Priority Inquiry (Wai 3325). Included in the Wai 3325 Tribunal Statement of Issues are the following questions:[11]

> 1.4. What are the economic impacts of climate change on Māori?
>
> > 1.4.1. What are the specific impacts of climate change on the Māori economy and Māori businesses, including but not limited to agricultural, forestry, horticultural, and fisheries industries?
> >
> > 1.4.2. How have Māori forestry owners been impacted, including but not limited to those Māori who own small landholdings?
>
> 1.5. What are the impacts of climate change on Māori in light of Treaty settlement arrangements, including but not limited to settlement arrangements concerning forestry, fisheries, and kaitiaki provisions?
>
> 3.4. What are the impacts of climate change legislation and policy on Māori in light of Treaty settlement arrangements, including but not limited to settlement arrangements concerning forestry, fisheries, and kaitiaki provisions?

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9 Ministry for Primary Industries, *Managing Exotic Afforestation Incentives,* p 11. https://www.mpi.govt.nz/dmsdocument/50206-Managing-exotic-afforestation-incentives-Proposals-to-change-forestry-settings-in-the-NZ-Emissions-Trading-Scheme

10 Te Puni Kōkiri, *Changes to Rating of Māori Land,* Te Puni Kōkiri, April 2021. https://www.tpk.govt.nz/en/nga-putea-me-nga-ratonga/whenua-maori/proposed-changes-to-the-rating-of-maori-land#:~:text=In%20April%202021%2C%20the%20Government,on%201st%20July%202021.

11 Tribunal Statement of Issues, Climate Change Priority Inquiry (Wai 3325, #1.4.3).

Emissions Trading Scheme

3.9. To what extent does the Emissions Trading Scheme need to be Tiriti/Treaty compliant and, in particular, take into account Māori interests, including but not limited to, in forestry assets?

3.10. Has the Emissions Trading Scheme been designed and operated in a way that properly respects Māori interests in and kaitiakitanga relations with the environment, including but not limited to rangatiratanga over forestry assets?

3.11. Does the Emissions Trading Scheme properly respect and acknowledge the relationship between Treaty settlements, in particular settlement arrangements concerning forestry, and the Crown's obligations to Māori as part of the Treaty settlement process?

3.12. With regard to the Emissions Trading Scheme and forest planting for offsets, what are the short-term and intergenerational impacts of the offsets that need to be considered, including but not limited to financial impacts? Have these impacts been sufficiently understood and provided for?

21. The Tribunal inquiry on climate issues has also attracted judicial attention. In December 2024, the Court of Appeal determined that an independent cause of action regarding duties under the Treaty of Waitangi in relation to climate change was untenable in part because a priority Tribunal inquiry into climate change was underway.[12]

22. Given the importance of these issues to both inquiries, we submit that the issues around Māori forestry would benefit greatly from a joint sitting between the Climate Change (Wai 3325) and the Economic Development (Wai 3550) Tribunals. A joint sitting would allow both Tribunals to inquiry into issues relating to forestry in full, rather than issues being siloed or divided across different inquiries.

23. Additionally, there is utility in having a single report that makes strong findings and recommendations regarding forestry.

12 *Smith v Attorney-General* [2024] NZCA 692. at [154].

*Taxation, institutions, autonomy; and*
*Taxation: rates, rating, land valuation, land tax, death duties, control of taxation and revenue*

24. We suggest that an important piece of background research is how and when Māori communities and individuals became subject to taxation, and the origins of any exemptions today, in relation to land and communities and individuals. While the history of land taxation through rating has been well researched, the story of taxation of Māori entities and individual is less known. What was the early thinking in this regard? Were there special rules, exceptions etc and what was their rationale? Why were they abandoned, were any kept and why?[13]

*Māori economic development institutions and law*

25. This topic would also benefit from background research on historic models for funding iwi and hapū development, including the Kīngitanga, land league and repudiation movements, efforts such as the Wi Pere and Te Keepa trusts, community-based fundraising and development efforts during and after World War II.

26. As part of this theme, we also note that historic reports have examined in detail the ways in which, contrary to Te Tiriti guarantees, Māori heritage and identity has been eroded by introduced economic systems such as individual tenure and the Native Land Acts.

27. Treaty settlements have provided the opportunity to rebuild and maintain heritage on an intergenerational basis. Historically, trust boards were used for settlement, today we use Post Settlement Governance Entities (PSGEs). How far do current financial processes and institutions (such as trusts, with the rule against perpetuities removed) enable that, what are impediments? How well does the economic system provide for intergenerational iwi and hapū heritage to be protected and enhanced to fulfil Te Tiriti guarantees? Are specialist economic policies and instruments required?

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13 For example P Goldsmith, *We Won, You Lost. Eat That! A political history of tax in New Zealand since 1840*, David Ling Publishing, Auckland, 2008; and A Sharp *Historical development of the tax regimes of Maori Authorities in Aotearoa New Zealand and First Nations in Canada* Te Tai Haruru Journal 4 (2013) 29.

28. Also, as part of this theme, we suggest the issue of whether there is a potential Treaty breach in relation to the growing disparity between settled and unsettled iwi could be explored.

**PROPOSED INITIAL INTERLOCUTORY STEPS**

29. The Tribunal proposes the following initial interlocutory steps:[14]

    a. assess and confirm the eligibility of the preliminary claims to participate;

    b. confirm, after consultation, which of these eligible claims wish to participate in this inquiry;

    c. work with these claimants and the Crown to refine the scope of the inquiry;

    d. ask the Crown to provide an update of any proposed policy reforms (and associated timeframes) relevant to the refined scope of the inquiry;

    e. after confirming the refined scope of this inquiry, invite any new participants to seek participation in this inquiry in light of the refined scope;

    f. provide an opportunity for existing and new inquiry participants to file new or amended statements of claim in light of the refined scope; and

    g. conduct a further eligibility assessment of any new or amended statements of claim and confirm an updated list of participants (there may need to be some flexibility around deadlines for pleadings depending on the timeframes for any relevant proposed policy reforms advised by the Crown).

30. The Tribunal also notes that additional steps may include a consideration of identifying any priority issues and considering whether further scoping by way of a statement of issues and/or an agreed statement of facts is desirable.[15]

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14 Wai 3550, #2.5.2. at [13].
15 Wai 3550, #2.5.2 at [14].

31. Counsel suggest a first step would be to set a filing date for any new or amended statements of claim. Issues will flow from these claims and the scope and structure of the inquiry can then be finalised.

32. In terms of a prioritised 'phase' of the inquiry, if the Tribunal is minded to hold a joint sitting with the Wai 3325 Tribunal, then a prioritised first stage could be about Māori forestry given the priority status of the Wai 3325 inquiry.

**Dated** at Wellington this 4th day of February 2025

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**Tom Bennion / Emma Whiley / Kudrat**
Counsel for the claimants