
**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI**

BEFORE THE WAITANGI TRIBUNAL

WAI 3450

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

**of the Natural Resources and Environmental Management
Kaupapa Inquiry**

**MEMORANDUM OF COUNSEL FOR NGĀTI KUKU HAPŪ AND
WHAREROA MARAE**

31 October 2024

Next event: Judicial conference on 31 October 2024 at 10am

Tu Pono Legal Ltd
Solicitor: Jason Pou
pou@tupono.co.nz

Counsel Acting:
RB Enright | MR Enright
Magdalene Chambers
Wānaka & Tāmaki Makaurau
rob@publiclaw9.com
memarte00@gmail.com
021 276 5787

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Waitangi Tribunal

31 Oct 24

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

- 1 This memorandum is filed on behalf of Ngāti Kuku hapū and authorized representatives of Whareroa Marae.
- 2 Leave is sought for an extension of time to file this Memorandum, to enable an appearance at the Judicial Conference scheduled today, and corresponding leave is sought by Counsel to attend the Judicial Conference on behalf of these parties as interested parties and (subject to directions) potential claimants on this Kaupapa Inquiry.
- 3 Counsel is instructed to advise that these parties apologise for the delay in filing this Memorandum on the basis that they only became aware yesterday (30 Oketopa 2024) of the Tribunal's Memorandum-Directions dated 4 Oketopa 2024, and of today's scheduled judicial conference.¹
- 4 It is not anticipated that any party would be prejudiced by the granting of leave, given that initial directions are still pending for case management of these proceedings, and the tikanga-based approach (including wānanga) indicated for progressing this Inquiry.
- 5 Counsel understands that the Tribunal has directed a judicial conference on 31 October 2024 to address preliminary matters including:
 - (a) Eligibility;
 - (b) Issues;
 - (c) Whether proceedings ready to commence;
 - (d) Interlocutory steps.

¹ Given that Counsel was only engaged yesterday afternoon, it is noted that Counsel reserves the ability to update or correct factual matters traversed in this Memorandum, including acknowledging shared interests. Counsel is also travelling by plane this morning and will be attending from out of the office as a result.

Atmospheric environmental resources, including air quality

- 6 In brief terms, Ngāti Kuku hapū and Whareroa Marae assert that they are significantly affected, on an ongoing basis, by air quality issues associated with industrial activities from the adjacent Port of Tauranga, Tauranga Airport, and industrially zoned land.
- 7 These activities take place on ancestral whenua of Ngāti Kuku hapū, confiscated under raupatu and Public Works Act processes.
- 8 These issues have been the subject of several Environment Court decisions, and reports issued by Toi te Ora.
- 9 These are contemporary issues, with a significant historical backdrop and context. While there have been (and continue to be) Environment Court assessment of these issues, the Crown's underlying responsibility for these issues, including associated breaches of te Tiriti o Waitangi, failure to actively protect the mauri of air as a taonga fundamental to human health, and impacts on customary and contemporary practices at Whareroa Marae, on a daily basis, have not been systematically addressed in light of te Tiriti rights and duties; nor have the wider policy implications, particularly entitlement to health and wellbeing, through air-shed protections and controls, and a consequential obligation to reduce the scale and extent of incompatible activities.
- 10 Accordingly, the focus for these parties would be on atmospheric environmental resources including air quality, albeit their interest is likely to qualify as a potential Claimant as well as interested party. By reference to the Tribunal's directions:
 - (a) Eligibility – Ngāti Kuku hapū and Whareroa Marae will raise relevant, material issues within scope of the Inquiry;
 - (b) Issues – further time is required to articulate these;

- (c) Ngāti Kuku hapū and Whareroa Marae are ready to commence this Inquiry;
- (d) Relevant interlocutory steps are identified by Counsel for the Crown in their memorandum dated 24 Oketopa 2024 at [19]. This includes provision for additional parties to seek leave to join as interested parties.

Dated this 31st October 2024



RB Enright
Counsel for Ngāti Kuku hapū and authorized
representatives of Whareroa Marae