

IN THE WAITANGI TRIBUNAL

Wai 2200

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Porirua ki Manawatū District
Inquiry

**MEMORANDUM-DIRECTIONS (NO. 443) OF CHIEF JUDGE DR C L FOX
ADDRESSING SUBMISSIONS ON A REQUEST FOR A SEPARATE REPORT
AND MEDIATION REGARDING THE FORMER ŌTAKI HOSPITAL,
SANATORIUM AND CHURCH GIFT LANDS**

15 July 2025

Tēnā koutou katoa

1. This memorandum-directions addresses further submissions from parties on a proposal for a separate priority report and mediation regarding lands at Ōtaki.

Procedural context

2. On 18 December 2024, I released memorandum-directions that (Wai 2200, #2.6.283):
 - (a) sought further clarity as to whether parties seek an early priority report on the whole of the gifted lands at Ōtaki (in addition to the land taken under the public works legislation);
 - (b) invited parties to submit on the scope and issues for any priority report; and
 - (c) invited parties to submit on the Wai 113A, Ngāti Koroki proposal for Tribunal mediation.
3. The Crown was directed to file its response two weeks following the receipt of the final claimant submissions (Wai 2200, #2.6.283 at [22]).

Response of the Ngāti Huia ki Matau (Kiriona) (Wai 113F) and the Fisheries (Kaimoana Customary Fishing Regulations) (Wai 757) claimants

4. On 14 January 2025, the Tribunal received a memorandum from Rox Soriano on behalf of the Ngāti Raukawa Lands and Resources (Ngāti Huia ki Matau) (Wai 113F) and the Fisheries (Kaimoana Customary Fishing Regulations) (Wai 757) claims (Wai 2200, #3.2.1699).

Request for a separate report

5. Counsel advises the claimants do not oppose the request for a priority report into the Ōtaki Gift Lands, provided it does not delay reporting for the Ngāti Raukawa and affiliated groups phase, and on the understanding the report recognises the collective interest of Ngāti Raukawa ki te Tonga and affiliated groups and the specific interests of groups who have claims to the Ōtaki Gift Lands (Wai 2200, #3.2.1699 at [3]).
6. Counsel further notes the claimants' concerns that a separate report should not set a precedent of the Crown engaging exclusively with those hapū groups who have claimed interests without due recognition of the collective interest of Ngāti Raukawa ki te Tonga. The claimants seek a guarantee from the Crown that should a separate report be issued, discussions in respect of the Church Gift Lands happen at an iwi-wide level in the first instance (Wai 2200, #3.2.1699 at [4]–[5]).

Proposed mediation

7. Counsel advises the claimants do not necessarily oppose the request for Tribunal mediation but believe the matter ought first be discussed at an iwi-wide level, in order to wānanga which specific interests are to be negotiated and subsequently managed, and by which hapū or affiliated groups (Wai 2200, #3.2.1699 at [6]).

Response of the Te Kotahitanga o te Iwi o Ngāti Wehiwehi (Wai 1482) claimants

8. On 14 January 2025, the Tribunal received a memorandum from Peter Johnson, Danyon Chong and Annie Benefield on behalf of the Te Kotahitanga o te iwi o Ngāti Wehiwehi (Wai 1482) claim (Wai 2200, #3.2.1700).

Request for a separate report

9. Counsel submit any separate report should provide an opportunity for claimants with customary interests in Ōtaki to file submissions regarding their interests in the Church Gift Lands, including submissions in relation to compensation and/or the return of those lands (Wai 2200, #3.2.1700 at [4]).
10. In respect of the scope of the priority report, the claimants agree with Tribunal panel member Dr Grant Phillipson's preliminary view that any separate report needs to consider and take into account all of the Church Gift Lands at Ōtaki. Counsel submit it would not be appropriate for only part of the Church Gift Lands to be inquired into and reported on in isolation from the remaining lands in the original gift(s) (Wai 2200, #3.2.1700 at [5]–[6]).

Proposed mediation

11. Counsel advise the claimants support mediation as a means for resolving the claim issues, provided that any mediation regarding the Church Gift Lands involves and includes all impacted claimants, including the Wai 1482 claimants (Wai 2200, #3.2.1700 at [9]).
12. Counsel submit that the scope of any mediation should cover the whole of the Church Gift Lands, and that the claimants are ready to participate in mediation (Wai 2200, #3.2.1700 at [10]–[11]).
13. In the event mediation does not proceed, counsel consider it would be unclear whether any benefit would be obtained from a priority report. Counsel instead suggest that it may be more efficient to include aspects relating to the Church Gift Lands as part of the Tribunal's full report for the Ngāti Raukawa and affiliated groups phase (Wai 2200, #3.2.1700 at [12]).
14. Finally, counsel submit that, alongside other claimants, consideration should be given to enable appointed hapū member representatives from impacted hapū to be involved in any mediation process (Wai 2200, #3.2.1700 at [13]).

Response of the Kauwhata Lands and Resources (Wai 784) claimants

15. On 14 January 2025, the Tribunal received a memorandum from Peter Johnston, Danyon Chong and Annie Benefield on behalf of the Kauwhata Lands and Resources (Wai 784) claim (Wai 2200, #3.2.1702).

Request for a separate report

16. Counsel submit that any separate report should provide an opportunity for claimants with customary interests in Ōtaki to file submissions regarding their interests in the Church Gift Lands, including in relation to any compensation and/or the return of these lands.
17. In respect of the scope of the priority report, the claimants agree with Dr Phillipson's preliminary view that any separate report needs to consider and take into account all of the Church Gift Lands at Ōtaki. Counsel submit it would not be appropriate for only part of the Church Gift Lands to be inquired into and reported on in isolation from the remaining lands in the original gift(s) (Wai 2200, #3.2.1702 at [5]–[6]).

Proposed mediation

18. The Wai 784 claimants support the proposed mediation as an alternative to a separate Tribunal report and advise they will abide the Tribunal's decision regarding the 'other matters' concerning the proposed mediation (Wai 2200, #3.2.1702 at [7]).

Response of the Austin Lands (Wai 2031) claimants

19. On 14 January 2025, the Tribunal received a memorandum from Peter Johnston and Danyon Chong on behalf of the Austin Lands (Wai 2031) claim (Wai 2200, #3.2.1701).

Request for a separate report

20. Counsel submit any separate report should provide opportunity for claimants with customary interests in Ōtaki to file submissions regarding their interests in the Church Gift Lands, including in relation to compensation and/or the return of those lands (Wai 2200, #3.2.1701 at [4]).

Proposed mediation

21. Counsel note the substantial evidence already on the Wai 2200 Record of Inquiry regarding the Church Gift Lands, and advise that the claimants are both supportive of the proposal for mediation and willing to participate if needed (Wai 2200, #3.2.1701 at [5]).

Response of the Ngāti Koroki (Rikihana) (Wai 113A) claimants

22. On 14 January 2025, the Tribunal received a memorandum from Donna Hall, Lyle Swainson and Darshini Dorn on behalf the Ngāti Raukawa Lands and Resources (Ngāti Koroki) (Wai 113A) claim (Wai 2200, #3.2.1704).

Request for a separate report

23. Counsel submit the claimants support the addition of the Church Gift Lands to the scope of an early report and further request the report includes the Taumānuka block (Wai 2200, #3.2.1704 at [2]–[3]).

24. Counsel submit the claimants' underlying rationale for early reporting concerning the lands relating to the hospital, sanatorium and school is that (Wai 2200, #3.2.1704 at [6]):

- (a) the Crown possesses a part of those lands, or in the case of the school, could and should recover possession of the lands that remain;
- (b) claims are made for the recovery of those lands by specific hapū; and
- (c) the lands should not be available for general settlement of the claims of the whole of Ngāti Raukawa and affiliated groups, or at least not without first resolving the specific claims for recovery.

25. Counsel submit the Taumānuka lands now held by the Crown are in the same position as the Church Gift Lands as they were part of the Ōtaki lands allocated for those who are now the current hapū of Ōtaki and who retain ahi kā in respect of them. Counsel submit that, if the claim to Taumānuka and others like it are not given priority, the lands are likely to be used in the settlement of the claims of the Ngāti Raukawa hapū as a whole, whether or not the hapū have a customary entitlement to them (Wai 2200, #3.2.1704 at [7]–[8]).

26. Regarding the scope of the report, Ngāti Koroki propose the report could cover (Wai 2200, #3.2.1704 at [9]–[11]):

- (a) the circumstances leading to the acquisition of the land by the Crown;
- (b) the transfer on trust to church officials;
- (c) the terms of the trust;

- (d) the administration of the trust, changes of the terms, and changes of the trustees, including the New Zealand Mission Trust Board;
- (e) Māori protest, or the pertinent history from the assumption of sovereignty to the present;
- (f) the lease and subsequent acquisition of part of the gift lands for the Ōtaki hospital;
- (g) the acquisition of a further part as a buffer zone for the sanatorium;
- (h) the amalgamation of the Ōtaki and Porirua trusts and the establishment of the Ōtaki and Porirua Trusts Board (ŌPTB);
- (i) the ŌPTB'S acquisition of the Manakau lands following the sale of assets of the former Porirua Trust;
- (j) the history of the hospital and sanatorium lands through to the present; and
- (k) the acquisition of Māori land for the sanatorium and subsequent history of events.

27. Counsel submit that the primary issues for reporting are (Wai 2200, #3.2.1704 at [12]):

- (a) whether the actions of the Crown were consistent with the Treaty of Waitangi in the appointment of trustees and in the establishment and amendment of the trusts;
- (b) whether at any stage the trust should have been terminated and the land returned to Māori;
- (c) whether it was necessary or appropriate that the land was taken for a hospital and that further land was taken subsequently for use as a buffer for the sanatorium;
- (d) whether it was necessary or appropriate that part of the land taken was alienated for Haruatai Park;
- (e) whether it is appropriate that the land still held by the Crown from out of the hospital and sanatorium buffer zone should be land-banked or whether there is a specific claim that should be dealt with first; and
- (f) whether the whole or any part of the Māori land should have been taken for the sanatorium and whether that land should now be land-banked without prior disposal of specific claims to that land.

28. Ngāti Koroki asks the Tribunal to make findings on the Crown's culpability, with leave for claimants to apply for recommendations as to relief (Wai 2200, #3.2.1704 at [13]).

Proposed mediation

29. Counsel submit that, while the priority report should focus on whether the Crown acted consistently with the Treaty, the mediation should focus on the steps the Crown may take in rectification (Wai 2200, #3.2.1704 at [14]–[15]).

30. Counsel propose the mediation take place between claimants and the Crown, with notice and an opportunity to be heard provided to the Anglican Church, the ŌPTB, Ngāti Toa, and those with an interest as tenants or occupiers. This includes Te Wānanga o Raukawa

and the three resident kohanga reo. The mediation should proceed in three stages, covering (Wai 2200, #3.2.1704 at [16]–[18]):

- (a) the respective claims to the lands and other assets of the trust including the lands on the flats, the Makuratawhiti lands, the Manakau lands, and the funds held;
 - (b) the lands formerly held by the New Zealand Mission Trust Board but taken for a hospital as to part and as buffer lands for a sanatorium as to the balance, and now held and land banked by the Crown for the purpose of settlement; and
 - (c) compensation, as claimed by Ngāti Koroki, for that part of the buffer lands taken for Haruatai Park.
31. Counsel submits Ngāti Koroki claims an exclusive interest in the Makuratawhiti lands still held on trust, and an interest in the Manakau lands as a consequence of land lost, but makes no claim to the main land area on the Ōtaki flats. Counsel further advise that Ngāti Koroki claims an exclusive interest in the lands formerly held by the New Zealand Mission Trust Board.
32. Counsel submit that, at the time lands were taken for the sanatorium, some were Māori customary land and some were Māori freehold land and were taken at the same time as the land was taken from the New Zealand Mission Trust Board for a hospital and as a buffer. Ngāti Koroki proposes the land be handed back as one to the customarily entitled hapū. Ngāti Koroki claims to be one such hapū. Counsel submit those who may be heard on the issue are claimants and the descendants of the former owners of the Māori freehold lands (Wai 2200, #3.2.1704 at [19]–[21]).
33. Finally, counsel submit that, in relation to Taumānuka, those entitled to possession in accordance with tikanga Māori are the Ōtaki hapū, of which Ngāti Koroki is one. Counsel submit this does not disrespect the ‘numerous hapū’ that exist with associational interests (Wai 2200, #3.2.1704 at [22]–[24]).

Further response of the Te Kotahitanga o te Iwi o Ngāti Wehiwehi (Wai 1482) claimants

Inclusion of Taumānuka in a priority report

34. On 24 January 2025, the Tribunal received a further memorandum from Peter Johnston, Danyon Chong and Annie Benefield on behalf of the Wai 1482 claim and in response to the submissions made at [23]–[33] above (Wai 2200, #3.2.1708).
35. Counsel submit the claimants oppose the inclusion of the Taumānuka block within a priority report and request that the block remain included in the full report for the Ngāti Raukawa and affiliated groups phase (Wai 2200, #3.2.1708 at [5]).
36. Counsel state the claimants are concerned that including the block would remove it from the larger historical context of the Porirua ki Manawatū inquiry. They also consider its inclusion within a priority report would be less efficient than if included within the full report for the Ngāti Raukawa and affiliated groups phase (Wai 2200, #3.2.1708 at [6]–[7]).
37. Counsel submit the initial scope expressed by Ngāti Koroki for the priority report included only lands which were alienated through gifting to the Church Mission Society. In contrast, land was alienated in the Taumānuka block in a number of ways over a vast period of time, including through private purchasing, public works takings, vesting, Crown purchases and Europeanisation (Wai 2200, #3.2.1708 at [8]).

38. Counsel note that a specific report on the Taumānuka blocks would also have a 'significant impact' on the customary interests of a number of claimants. Counsel submits that this is because the nature and extent of customary interests in the block are currently contested in this inquiry (Wai 2200, #3.2.1708 at [9]–[10]).
39. In the event the Taumānuka block is included in a separate report, the claimants request that an opportunity be provided for them to participate and/or file submissions relating to any separate report (Wai 2200, #3.2.1708 at [11]).

Inclusion of Manakau lands in mediation

40. The Wai 1482 claimants oppose the inclusion of the Manakau lands in the items for the mediation. Counsel submit that Wehi Wehi Marae is located at Manakau, and the method by which the lands in Manakau were obtained by the Ōtaki and Porirua Trust Board does not diminish the mana that Ngāti Wehi Wehi exercises over the lands in Manakau (Wai 2200, #3.2.1708 at [12]–[15]).

Response of the Ngāti Kapumanawawhiti (Wai 1630), Ngāti Raukawa (Vertongen) (Wai 113B), Taumānuka 3A Cemetery-Ōtaki (Wai 256) and Palmerston North Hospital Land (Wai 267) claimants

41. On 5 February 2025, the Tribunal received a memorandum from Dr Season-Mary Downs, Chelsea Terei-Tipene and Heather Jamieson on behalf of the Ngāti Kapumanawawhiti (Wai 1630), Ngāti Raukawa Lands and Resources (Vertongen) (Wai 113B), Taumānuka 3A Cemetery - Ōtaki (Wai 256) and Palmerston North Hospital Land (Wai 267) claims (Wai 2200, #3.2.1712).

Request for a separate report

42. Counsel submit the claimants do not oppose the request for a priority report into the Ōtaki Hospital and Sanatorium Lands on the basis it does not delay reporting for the Ngāti Raukawa and affiliated groups phase. The claimants also see the benefit in including Taumānuka but say they require time to discuss this both internally and with the other hapū (Wai 2200, #3.2.1712 at [6]).
43. The claimants support Dr Phillipson's view that any report needs to consider and take into account all of the Church Gift Lands at Ōtaki, and further support the scope proposed by Ngāti Koroki at [23]–[29] above (Wai 2200, #3.2.1712 at [7]).

Proposed mediation

44. Counsel advise the claimants do not oppose mediation but suggest that time is provided for all parties with claims relating to the Ōtaki Hospital and Sanatorium Lands and the Taumānuka block to engage and attempt to come to a consensus as to scope and next steps. The claimants suggest that the scope proposed by Ngāti Koroki provides a good starting point for such discussions, and seek leave to file more detailed submissions regarding their interests if the request for a separate report and/or mediation is granted (Wai 2200, #3.2.1712 at [8]–[9]).

Response of the Ngā Hapū o Kererū (Wai 1944), Te Iwi o Ngāti Tukorehe (Wai 1913), and Ngāti Raukawa (Turner) (Wai 113C) claimants

45. On 5 February 2025, the Tribunal received a joint memorandum from Jerome Burgess, Hemi Te Nahu and Chris Beaumont on behalf of the Ngā Hapū o Kererū (Wai 1944), Te Iwi o Ngāti Tukorehe (Wai 1913), and Ngāti Raukawa (Turner) (Wai 113C) claims (Wai 2200, #3.2.1713).

46. Counsel respond to the Tribunal's 18 December 2024 directions seeking clarification in relation to the reference to the Waitoki block, and confirm the correct reference is to the 'Waitohu' block (Wai 2200, #2.6.283 at [20(a)] & #3.2.1713 at [4]–[5]).

Request for a separate report

47. Counsel submit that the claimants initially supported the request for a separate report on the Ōtaki Hospital and Sanatorium Lands, believing it would benefit the entire iwi. Counsel advise the claimants no longer hold this position due to the following (Wai 2200, #3.2.1713 at [6]–[8]):

- (a) The lands in question belong to more than just those involved with the Ōtaki and Porirua Trusts Board. The claimants consider all Ngāti Raukawa have an interest in these lands.
- (b) The rationale for including Taumānuka and Ōtaki Gift Lands alongside the Haruatai and Sanatorium lands and Waitohu lands is impractical. The claimants say these lands are distinct and multiple hapū from across Ngāti Raukawa have interests.
- (c) The claimants say that Te Hono ki Raukawa does not currently have a mandate to represent all those with interests in these lands.

48. Counsel advise the claimants disagree with the rationale that Taumānuka and gifted Ōtaki lands should not be available for general settlement of the claims of the whole of Ngāti Raukawa and affiliated groups. The claimants assert that (Wai 2200, #3.2.1713 at [9]–[10]):

- (a) Taumānuka was the block in which Rangiuuru Pā and Ōtaki Pā existed;
- (b) these pā were strategic hubs for all of Raukawa; and
- (c) the assertions made do not consider or recognise that these processes occurred while Te Rauparaha was being illegally held.

49. The claimants assert Ngāti Koroki should not have to deal with these matters on their own and there should instead be involvement and input from others. They further assert that the Ōtaki and Porirua Trusts Board does not have a mandate to represent other hapū of Ngāti Raukawa (Wai 2200, #3.2.1713 at [11]–[12]).

Proposed mediation

50. The claimants do not support the three-stage mediation proposed by the Ngāti Koroki claimants and believe that alternative approaches should be considered to address these matters effectively.

51. The claimants submit that the landowners of the Waitohu and Titokitoki blocks, which adjoin the Church Missionary Society lands, should be involved in any discussions concerning the Ōtaki Hospital and Sanatorium Lands. This is because the owners of these blocks share whakapapa ties with those who historically occupied and exercised customary rights over the wider area. Their historical interests and ongoing ahi kā presence also make their input essential to any discussions regarding the land's future (Wai 2200, #3.2.1713 at [15]–[16]).

Response of the Ngāti Huia ki Poroutawhao (Hirama Tamihana) (Wai 113H) claimants

52. On 7 February 2025, the Tribunal received a memorandum from Rox Soriano on behalf of the Ngāti Raukawa Lands and Resources (Ngāti Huia ki Poroutawhao) (Wai 113H) claim (Wai 2200, #3.2.1714).

Inclusion of the Taumānuka block in separate report and mediation

53. Counsel submit Ngāti Huia ki Poroutawhao have historical links to the Taumānuka block and assert customary interests alongside Ngāti Huia and other Ngāti Raukawa hapū (Wai 2200, #3.2.1714 at [3]).

54. The claimants therefore oppose the inclusion of the block in the scope of either a separate report or mediation, and consider the block should be reported on in the full report for the Ngāti Raukawa and affiliated groups phase as (Wai 2200, #3.2.1714 at [4]):

- (a) the Taumānuka block has a complex history that connects all hapū of Ngāti Raukawa ki te Tonga, including Ngāti Huia ki Poroutawhao, since before 1840 and continuing to the present day;
- (b) the issues surrounding the Taumānuka block to be addressed by the Tribunal are not discrete enough to warrant a separate report, nor can it be appropriately dealt with through mediation without most, if not all, Ngāti Raukawa hapū; and
- (c) the claimants are of the view that it is necessary for Ngāti Raukawa ki te Tonga to come to an iwi-wide consensus relating to the block prior to any external discussions being progressed.

55. In respect of the original scope proposed by Ngāti Koroki, the claimants do not necessarily oppose either of the proposals but wish to have their concerns noted regarding the need for iwi-wide discussions in the first instance (Wai 2200, #3.2.1714 at [5]).

Response of the Beneficiaries of the Ōtaki and Porirua Trusts (Wai 437) claim

56. On 24 February 2025, the Tribunal received a memorandum from Phillip Cornegé on behalf of the Beneficiaries of the Ōtaki and Porirua Trusts (Wai 437) claim. The claimants have consulted with the Ōtaki and Porirua Trusts Board (the Trusts Board) and advise that the Trusts Board (Wai 2200, #3.2.1715 at [4]):

- (a) opposes an early report on the Ōtaki Hospital and Sanatorium and Ōtaki gift lands and supports a report without delay on the Porirua ki Manawatū district in its entirety;
- (b) opposes mediation as set out in the proposals from the Wai 113A claimants and Ngāti Koroki; and
- (c) does not take a position on whether the Taumānuka block should be included in any mediation.

57. On 26 February 2025, I directed counsel for Wai 437 to file more detailed submissions regarding the rationale for the claimants' opposition to an early report and mediation by 7 March 2025 (Wai 2200, #2.6.288 at [5]). The Tribunal received these submissions as directed (Wai 2200, #3.2.1727).

58. Counsel submits that, to the extent that what was proposed was a mediation regarding land currently held by the Trusts Board, including general land purchased in the last ten years, the Trusts Board is opposed to such a mediation. Counsel submits the Trusts Board has statutory obligations to its beneficiaries and Te Ātiawa, Ngāti Raukawa, Ngāti

Toarangatira (ART) and could not agree to land it presently holds being given to another party. They further note that multiple parties claim an interest in the land (Wai 2200, #3.2.1727 at [4(a)]).

59. In relation to a mediation regarding the Ōtaki Hospital and Sanatorium, the Trusts Board advises it will ultimately abide the decision of the Tribunal. Given the competing claims, counsel advises the Trusts Board did not consider it could support a mediation proposal that might appear to be supporting one party's claim to the land at the expense of others. If the proposed mediation involved a wider range of parties, the Trusts Board would not necessarily be opposed (Wai 2200, #3.2.1727 at [4(b)]).
60. Finally, counsel submits the claimants understood the purpose of an early report was to assist with the proposed mediation. If no mediation takes place, counsel observes that there appeared little point in receiving an early report (Wai 2200, #3.2.1727 at [4(c)]).

Crown memorandum regarding timing of response

61. On 4 March 2025, the Tribunal received a memorandum from the Crown (Wai 2200, #3.2.1724).
62. The Crown refers to the Tribunal's direction that the Crown file its submissions two weeks following the receipt of the final claimant submission, and notes that the Tribunal had since requested further submissions on behalf of Wai 437 as outlined at [57]–[62] above (Wai 2200, #3.2.1724 at [2]–[3]).
63. The Crown further notes a substantive submission had not yet been received from the Wai 1626 claimants, and that it would like the opportunity to consider the submission if one were to be received (Wai 2200, #3.2.1724 at [4]).
64. The Crown observes that Ngāti Koroki's proposal for mediation appears to involve the prospect of dissolving the Trusts Board and the distribution of all the assets it holds to Ngāti Raukawa hapū. The Crown submits that, as the future of the Trusts Board is a matter directly affecting Ngāti Toa and Ngāti Awa/Te Ātiawa, it would be useful to understand the views of those iwi on the proposal and aspirations for the future of the Trusts Board, as well as those of the Anglican Diocese of Wellington (Wai 2200, #3.2.1724 at [6]–[8]).

Response of the Descendants of Hoani Te Puna I Rangiriri Taipua (Wai 1626) claim

65. On 18 March 2025, the Tribunal received a memorandum from Leo Watson and Cameron Hockly on behalf of the Descendants of Hoani Te Puna I Rangiriri Taipua (Wai 1626) claim (Wai 2200, #3.2.1734).
66. Counsel submit the claimants do not support the mediation and priority report proposal as (Wai 2200, #3.2.1734 at [3]):
- (a) the claimants are concerned that the priority report may deflect Tribunal resources from the completion of reporting on the claims generally, which is where the claimants consider priority should lie;
 - (b) the claimants acknowledge the historical evidence on the record is compelling, and share the view already expressed that it would be very difficult to differentiate the particular land blocks and grievances that could be the subject of a discrete priority report; and

(c) it is also relevant that the Trusts Board has not expressed support for the proposal, and the Wai 1626 claimants consider the proposal should have wide support from Ngāti Raukawa claimants.

67. The claimants remain open to exploring mediation or other avenues to 'expeditiously progress' the resolution of Ngāti Raukawa claims with the Crown (Wai 2200, #3.2.1734 at [4]).

Response of the Crown

68. On 28 March 2025, the Tribunal received a memorandum from the Crown in response to the early report and mediation proposal (Wai 2200, #3.2.1738).

69. In summary, the Crown advises it does not support an early report and/or mediation (Wai 2200, #3.2.1738 at [3]).

70. For clarity the Crown summarises the relevant land in its submissions. It categorises the relevant land as follows (Wai 2200, #3.2.1738 at [4]):

(a) Ōtaki and Porirua Trusts Board (OPTB) land

(b) OPTB land: Makuratawhiti/Haruatai

(c) Other OPTB land

(d) Mission Station

(e) Hospital/sanatorium: CMS land

(f) Sanatorium: Māori land

(g) Mill Road Properties

(h) Haruatai Park

(i) Taumānuka

71. Counsel for the Crown submit that the report is proposed to assist with dispute resolution, but in respect of the Crown land (and/or any other redress for settlement of historical claims) the parties are not ready to engage in dispute resolution. The Crown considers it would be premature to enter into negotiations over land in this area ahead of comprehensive negotiations (Wai 2200, #3.2.1738 at [3.1.1]).

72. Counsel further submit that, in respect of the Trusts Board, there remains a range of jurisdictional obstacles to what has been proposed. The Crown attributes this to the scope of the relevant claims, the range/identity/views of relevant parties and the involvement of privately owned land. The Crown does not support the proposed mediation but notes it is open to discussions about the future of the Trusts Board occurring outside the Tribunal process with all relevant parties (Wai 2200, #3.2.1738 at [3.1.2]).

73. In these circumstances, the Crown does not consider there would be significant benefit in an early report and submits that such a report would also risk delay to the remainder of the claims of Ngāti Raukawa and affiliated groups (Wai 2200, #3.2.1738 at [3.2]).

74. I note the Crown's submissions have been more fully summarised in my previous direction (Wai 2200, #2.6.293).

Reply of Wai 113A, Ngāti Koroki

75. On 2 April 2025, I directed counsel for Wai 113A Ngāti Koroki to respond to the Crown (Wai 2200, #2.6.293). Counsel accordingly filed submissions in reply on 22 April 2025 (Wai 2200, #3.2.1749).

Primary concern for mediation

76. Counsel submit the primary concern for Ngāti Koroki is to resolve differences regarding entitlement amongst the hapū who have indicated an interest in the lands. Counsel further submit that these differences should be settled first, that a mediation would assist the process and that the matter is capable of ready resolution. In the event that an agreement is not reached, counsel consider the matter may be referred to the Māori Appellate Court to determine the entitlement according to Māori custom, as provided for in section 6A(1) of the Treaty of Waitangi Act 1975 (the Act) (Wai 2200, #3.2.1749 at [6]).

77. Counsel submit the need for a formal process to resolve issues of rights and entitlements is apparent from the outcome of a hui held on 25 March 2025 called by Ngāti Koroki to bring the Ōtaki hapū together (see Wai 2200, #3.2.1749(b) for the finalised minutes of this hui). Counsel refer to submissions made to the Tribunal from other Ōtaki claimants which expressed concern that Ngāti Koroki had not called a meeting of all the hapū before it took the case to the Tribunal, and submit that the hui was called to explain the circumstances that led to Ngāti Koroki adopting the position that it did. While those present expressed support for the initiatives taken by Ngāti Koroki, not all of the hapū leadership were present. Counsel submit that, in a formal mediation, a failure of representatives to attend a meeting is not necessarily fatal for an agreement to be reached so long as there has been adequate notice given (Wai 2200, #3.2.1749 at [8]–[9]).

78. Counsel submit that the minutes of the hui show the attendance and positive mood of the meeting. Counsel further submit the mediation could commence now, or as soon as the Tribunal is able to arrange for it, even ahead of the priority report. Counsel consider it preferable, however, that the hapū who are entitled to pursue the claims to the lands concerned should be determined first (Wai 2200, #3.2.1749 at [10]–[11]).

Relevant lands

79. Counsel acknowledge the Crown's summary in its memorandum regarding the relevant lands involved in the proposed mediation (Wai 2200, #3.2.1749 at [12] & #3.2.1738 at [4]–[4.9]).

80. Counsel advise the Mission Station land is not proposed to be included as an item for mediation, while the Mill Road properties adjacent to the hospital should be included. Counsel submit that Haruatai Park is not part of the mediation as they understand it is no longer Crown land and the mediation is concerned only with land that is reasonably recoverable. Counsel advise Haruatai Park accordingly forms part of the general claim of Ngāti Koroki for compensation for historical losses (Wai 2200, #3.2.1749 at [12]).

81. Counsel submit that while the Crown's analysis and categorisation of the relevant lands is helpful, the level of detail it engages in is confusing for those who are not in 'everyday contact with the papers.' Counsel advise that the lands sought to be recovered may be described as counsel sets out in their memorandum, and categorised for practical purposes as (Wai 2200, #3.2.1749 at [13]):

(a) part Taumānuka;

(b) the ŌPTB lands;

- (c) the Hospital Land; and
- (d) the Sanatorium land.

The case for the return

82. Counsel next outline the Ngāti Koroki case for the return of the relevant lands for the purpose of providing the background to mediation participants, and as a starting point for mediation discussions (Wai 2200, #3.2.1749 at [15]–[26]).

How the proposals for priority and mediation developed

83. Counsel then turn to the development of the proposals for priority and mediation, and address the perception raised by other claimant groups that Ngāti Koroki has acted without consultation. Counsel submit that, contrary to these inferences, Ngāti Koroki have sought to secure for the benefit of all hapū, the prospect of a formal process under the guidance of a mediator by which claims for the return of Crown and Church land in Ōtaki may be advanced (Wai 2200, #3.2.1749 at [27]–[42]).

Responses of other hapū

84. Counsel note the Crown relies on the concerns expressed by other hapū to the priority and mediation proposals as support for its position that such steps are premature ahead of negotiations under the Crown’s programme for the settlement of historical claims. Counsel submit that the Crown effectively encouraged opposition to these proposals by requesting this Tribunal seek further submissions from the Descendants of Hoani Te Puna I Rangiriri Taipua (Wai 1626) claimants as per the Crown memorandum (Wai 2200, #3.2.1724) of 4 March 2025 (Wai 2200, #3.2.1749 at [43]–[44]).

85. In response to claimant counsel submissions received from 3 September 2024 to 18 March 2025, counsel submit the issue of who is entitled to the above lands can be resolved by the proposed mediation. Counsel submit the Tribunal has made clear that it is not the Tribunal’s function to determine ‘who is entitled’. Rather, the Tribunal is ‘only concerned’ with claims against the Crown. Counsel further submit the process proposed by Ngāti Koroki does provide for a resolution and that, if the matter cannot be resolved by agreement, it may be resolved by the Māori Appellate Court as provided for by the Act (Wai 2200, #3.2.1749 at [44]–[49]).

86. Counsel note the suggestion of other claimant counsel that a wānanga be held to discuss options, and refer to the Ōtaki hapū hui held on 25 March 2025 for that purpose. Counsel submit that, although not all of the Ōtaki hapū leaders were present, the participants were positive about the proceeding, and the concerns expressed by other claimant counsel do not weigh against the priority and mediation proposals (Wai 2200, #3.2.1749 at [51]–[52]).

87. Counsel submit the submissions for the claimants who have expressed an interest do not support the Crown’s contention that the Ōtaki lands should be disposed of under a comprehensive settlement for the whole of Ngāti Raukawa and affiliate groups without a prior discussion in the form of mediation (Wai 2200, #3.2.1749 at [53]–[54]).

88. Counsel note that some claimants have expressed concerns that the main Tribunal report should provide a ‘seamless historical account’ on all claims. Counsel submit that the inclusion of the Taumānuka block in a priority report should not lead to its exclusion from the Tribunal’s main report, and that the history of Taumānuka is a critical step in the overall historical narrative (Wai 2200, #3.2.1749 at [55(a)]).

89. Counsel submit that the Trusts Board should not participate in the proposed mediation, and that the Trusts Board is right to adopt a neutral stance on the matter. Counsel considers the function of the OPTB is to administer the assets, not determine whether the Trust should be terminated. Counsel contends that the latter remains a consideration for the Church and the Crown (Wai 2200, #3.2.1749 at [55(d)]).
90. Counsel further submit the Anglican Church should not participate in the proposed mediation since the claim is against the Crown and the outcome sought is for the Crown to return the land. Counsel submit the mediation should, however, seek an agreement on who should engage with the Church as it is necessary that Ngāti Raukawa engages with the Church and the Crown will hesitate to move should the Church be opposed (Wai 2200, #3.2.1749 at [55(e)]–[55(f)]).

The use of Crown land for the settlement of historical claims

91. Counsel submit that it is fairer to all Ngāti Raukawa and affiliated groups that the available Crown lands in the district should be as general compensation for the historical claims as assessed by the Crown.
92. Counsel submit that it cannot be fair to all of Ngāti Raukawa if the rights of any one hapū are subjugated to the interests of all. Counsel submits Ngāti Raukawa is a 'confederation of hapū' and, as an alliance, has 'limited authority'. Individual hapū accordingly retain their own customary independence and power (Wai 2200, #3.2.1749 at [58]).
93. Counsel consider that the Crown places 'exaggerated' value on its historical claims settlement policy. Counsel contend the Crown's primary objective is instead the dismantling of customary infrastructure by shifting power from hapū to a centralised entity. Counsel submit the Crown's policy was not developed in consultation with Māori but rather unilaterally composed by itself (Wai 2200, #3.2.1749 at [59]–[60]).
94. Counsel submit the Crown's submission 'over-rates the strength of the process'. Counsel argues that in practice negotiations are more akin to an application for funding. This is because applicants must meet certain criteria to establish their right to engage, while the Crown assesses the amount to be paid based on its own criteria (Wai 2200, #3.2.1749 at [61]).
95. Counsel further submit the standing of the Crown policy is not strong in terms of the principles of constitutionality. Counsel note that it is not provided for by legislation and any interpretation of, or departure from, the policy cannot be readily challenged in the Courts (Wai 2200, #3.2.1749 at [62]).
96. Counsel dispute the Crown's submission that hapū claims to the hospital and other lands could be resolved internally by the duly mandated entity for Ngāti Raukawa following the general settlement with all of Ngāti Raukawa. Counsel submit the claims of the Ōtaki hapū are unlikely to be fairly resolved post-settlement and therefore must be dealt with ahead of any general settlement (Wai 2200, #3.2.1749 at [63]–[64]).
97. Counsel refer to section 6A of the Act which enables the Māori Land Court or Appellate Court to determine entitlement to land recovered from the Crown. Counsel submit the existence of this mechanism shows the Crown 'contemplated specific claims would be made, and that effect should be given to such claims' (Wai 2200, #3.2.1749 at [65]).
98. For the reasons outlined at [92]–[97] above, counsel conclude the Crown's reliance on its historical claims settlement policy does not support the proposition that negotiations for an all-Raukawa settlement should precede any steps required for the return of any lands

that may be due to local hapū. Counsel instead supports the proposition that negotiations for the return of specific lands should take precedence (Wai 2200, #3.2.1749 at [66]).

Submissions of other claimants

99. Counsel note the Crown's reference to issues arising from the submissions of other claimants on the proposed priority report and mediation. In regard to Ngāti Maiotaki seeking recommendations for the return of the Hospital and Sanatorium lands, counsel submit that the grounds 'are not well stated' but that mediation would allow this to be set out. Counsel refers to the Crown's emphasis on the importance that others place on recognising the collective interests of Ngāti Raukawa. Counsel contends, however, that the nature of these 'collective interests' are not clear. Counsel submit that the concerns here relate to property and, if that is the matter referred to, the concerns may be 'either mediated or sent for adjudication' (Wai 2200, #3.2.1749 at [68]).

Whether claims are contemporary or historical

100. Counsel note that the Crown challenges the Ngāti Koroki characterisation of its claims to the Hospital and other lands as 'contemporary'. In response to the Crown's view that those claims are 'historical' and its inference that they should be dealt with under its policy for the settlement of such claims, counsel submit that the Crown policy for the settlement of historic claims uses that term to mean claims that may arise out of or relate to Crown acts or omissions before 21 September 1992, which broadly aligns with the definition provided in section 2 of the Act. However, counsel consider this should not be taken to mean the Crown policy is contained within the statute. Counsel submit the term 'historical Treaty claim' is used in the Act for the purpose of disallowing the filing of further historical claims (as per section 6AA of the Act) and is therefore used for a different purpose (Wai 2200, #3.2.1749 at [69]–[71]).

101. Counsel refute any suggestion that the Ngāti Koroki claims should be dealt with under the Crown policy for historical claims and submit there can be no element of compulsion when the Crown's policy is not prescribed by statute. Counsel further contends that the claims are 'properly contemporary' since the Crown's ongoing failure to return the land is what gives rise to those claims (Wai 2200, #3.2.1749 at [72]).

Legal standing

102. Counsel submit the Supreme Court decision of *Haronga v Waitangi Tribunal* strongly supports proposition that the Tribunal must both hear the claims for the Ōtaki hapū for the return of the land and, if it finds those claims to be well-founded, consider the relief required to achieve an appropriate outcome.¹ Counsel submit a priority report is necessary since the claims might otherwise be settled if they are reported on alongside those of the whole inquiry. Counsel argue this is a real consideration since 'others' are already 'working with the Crown to start the process for a settlement' (Wai 2200, #3.2.1749 at [73]–[77]).

103. Counsel submit that whilst the context of the *Haronga* decision refers to a specific statutory provision, namely s 8HB(1)(a) of the Act, the principle applies to all claims that are held to be well-founded (Wai 2200, #3.2.1749 at [75]).

104. Counsel submit the Ngāti Koroki proposals are a process by which the provision of relief may be achieved 'consensually', or by a process that allows all affected parties to have a further opportunity to engage, and through which entitlement may be determined. Counsel submit the Tribunal has effectively deferred consideration of the claims but that the

¹ *Haronga v Waitangi Tribunal* [2011] NZSC 53.

'deferral should not be such as to defeat the completion of the inquiry with the necessary recommendations' (Wai 2200, #3.2.1749 at [78]–[80]).

Key considerations

105. Counsel submit the return of the lands claimed on behalf of the Ōtaki hapū to all Raukawa as part of the settlement of the claims is wrong, as counsel contends the lands should have been returned independently of the historical claims process (Wai 2200, #3.2.1749 at [81(a)]).
106. Counsel further submit that the Crown's contention that there can be no negotiations or mediation with the hapū ahead of comprehensive negotiations with Ngāti Raukawa and affiliated groups fails to recognise hapū rangatiratanga is central in Ngāti Raukawa tradition. Hapū authority was evident, counsel submit, when the Tribunal opted to hear each of the hapū through 17 hapū-based hearings (Wai 2200, #3.2.1749 at [81(b)]).
107. Counsel reiterate their position that Ngāti Koroki are not seeking to 'take over' the claims but to provide a process by which all with an interest can advance their positions and questions of entitlement can be resolved – either through consent, or by adjudication through the Māori Appellate Court. Counsel states the question of entitlement should be resolved ahead of the priority report. This would enable only those who are known to be entitled to the land to negotiate its return, should the Tribunal find the land should return to Māori (Wai 2200, #3.2.1749 at [81(c)]–[81(d)]).
108. Counsel submit mediation is the fairest and most efficient way to deal with the issues, rather than hui ā-hapū or hui ā-iwi because of the capacity of groups to defeat a resolution by non-attendance, or by attendance of individuals without a group mandate, and because a hui ā-iwi does not adequately protect minority interests (Wai 2200, #3.2.1749 at [81(e)]).
109. Counsel further submit the return of the land to all of Raukawa as part of the general settlement without the Tribunal first dealing with the specific claims of the Ōtaki hapū would be unlawful as it would deny the Ōtaki hapū their statutory right to be fully heard according to section 6(2) of the Act, and to seek recommendations for the return of the land to hapū (Wai 2200, #3.2.1749 at [81(f)]).
110. Counsel consider the priority report is furthermore important as some groups have already engaged with the Crown to begin the process for the settlement of historical claims. There is a prospect that a settlement will be sought ahead of the Tribunal's report. Counsel suggest there is 'no practical reality' in the suggestion that the mandated representatives for the iwi or post-settlement governance entity (PSGE) will determine whether the land should be allocated to the local hapū as the Act provides for the Māori Appellate Court to determine that matter, and the members of the PSGE would be conflicted in any event (Wai 2200, #3.2.1749 at [81(g)]–[81(h)]).
111. Counsel submit that, if the Ōtaki hapū are entitled to the land, but the land was given to all Raukawa in a settlement, the Crown would be using, and Raukawa would be receiving, land to which neither were entitled. Counsel further submit that specific claims to Crown lands must be dealt with before any Crown land is used for general compensation, and that the hospital and sanatorium lands should be taken out of the landbank for all Raukawa and held for those determined to be entitled (Wai 2200, #3.2.1749 at [81(i)]–[81(k)]).
112. Finally, counsel address concerns that the return of the lands would unfairly enrich those hapū who claim interest at the expense of the Ngāti Raukawa confederation. Counsel note that the Crown land claimed totals only 120 acres. Counsel submit several hapū of the confederation have Māori lands of similar scale while the Ōtaki hapū are virtually

landless. They further observe that 500 acres of Church land is not land that can be included in the settlement since it is not land owned by the Crown (Wai 2200, #3.2.1749 at [82]).

Statutory provision for mediation

113. Counsel submit that the Tribunal has a wide discretion to structure this inquiry in such a way to manage these particular circumstances so long as natural justice requirements are met. Counsel note the Tribunal has previously appointed a mediator to resolve issues on a single aspect of the claims, including Kevin Prime who was appointed as mediator to resolve competing claims to rights in the all-Raukawa claim, Wai 113 (Wai 2200, #3.2.1749 at [83]–[86]).

Mediation relating to the OPTB land

114. Contrary to the Crown's submission that it is willing to engage in discussions about the future of the OPTB outside the Tribunal process, counsel submit the process should properly continue under 'the aegis of the Tribunal'. Counsel submit this is primarily due to the capacity of the Tribunal to refer a question of customary entitlement to the Māori Appellate Court, state a case to the High Court on a question of law, use its powers as a Commission of Inquiry and carry out its inquisitorial functions. Counsel further submit the claimants would be prejudiced by losing the availability of legal aid where matters are progressed outside Tribunal proceedings (Wai 2200, #3.2.1749 at [87]).

115. Counsel submit that the Crown's concerns regarding the participation of third parties – including the Anglican Church and the Trusts Board – do not arise since the case is against the Crown only (Wai 2200, #3.2.1749 at [88]–[89]).

Shape of the mediation

116. Counsel submit that the Tribunal should establish a mediation as follows (Wai 2200, #3.2.1749 at [92]):

- (a) for all those claimants who have notified an interest;
- (b) including other representatives of any groups they represent;
- (c) with their counsel or other spokesperson if they wish;
- (d) in respect of the lands at [81] above;
- (e) for the purpose of generating a discussion around the persons or groups entitled to the lands concerned in the event that the Tribunal considers that any of the Crown lands should return to the persons or groups entitled to them; and
- (f) with the mediator to advise the Tribunal on:
 - i. the areas of agreement and difference;
 - ii. the drafting of a reference to the Māori Appellate Court if required; and
 - iii. any other matter the Tribunal thinks fit.

117. Counsel submit the mediator should be a judge, retired judge, or lawyer, including a judge of the Māori Land Court. The Tribunal should draft the precise terms of reference and may do so with the proposed mediator. The Crown may engage in the mediation for the purpose of advising the mediator on any issues. Upon any determination of the groups

entitled in custom to any land, the Tribunal should then consider whether any further mediation is advisable before considering its final recommendation (Wai 2200, #3.2.1749 at [93]–[96]).

Considerations for early report

118. Counsel refer to the Crown’s submission that any priority report should follow claimant reply submissions for the Ngāti Raukawa and affiliated groups phase, which at the time of submission were due by 28 November 2025 (Wai 2200, #3.2.1749 at [97]–[99]).

119. Counsel agree with the Crown’s position provided there is an opportunity for counsel to review this in the event of changes to the current inquiry timetable. Counsel submits this does not extend to the time needed to complete the final report for the Ngāti Raukawa and affiliated groups phase since the Tribunal would have to report on these matters ‘in any event’ (Wai 2200, #3.2.1749 at [100]–[101]).

Decision

120. I would like to thank all counsel for their detailed submissions, and I address the request for mediation and an early report below.

Mediation

121. It is, in our view, premature for a mediation to be called “for the purpose of generating a discussion around the persons or groups entitled to the lands concerned in the event that the Tribunal considers that any of the Crown lands should return to the persons or groups entitled to them.” Rather this should be something that should follow a carefully written Tribunal report setting out the full history of the lands at issue.

Considerations for early report

122. We note the Crown’s submission that any priority report should follow claimant reply submissions for the Ngāti Raukawa and affiliated groups phase, which at the time of submission were due by 28 November 2025. We agree with the Crown’s position. Thus, the Tribunal considers that the report on these issues is best dealt with as part of the reporting for the Ngāti Raukawa and affiliated groups phase of the inquiry. As will be evident, the Tribunal has been releasing its report in tranches and will consider reporting on the Ōtaki ‘gifted’ lands first after all submissions have been received. After the parties have had an opportunity to consider that part of the Tribunal’s report, the issue of whether some form of mediation is appropriate can be addressed at that time.

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 15th day of July 2025



Chief Judge Dr C L Fox
Presiding Officer

WAITANGI TRIBUNAL