

BEFORE THE WAITANGI TRIBUNAL**WAI 1750
WAI 1782****IN THE MATTER OF**

the Treaty of Waitangi Act 1975

AND**IN THE MATTER OF**

claims relating to the North-Eastern Bay of Plenty Inquiry District (WAI 1750)

AND**IN THE MATTER OF****a claim by Te Riaki Amoamo and Mereaira Hata for and on behalf of Ngāti Ruatakenga (WAI 1782)**

MEMORANDUM OF COUNSEL FOR NGĀTI RUA**Dated 20th August 2025**

RECEIVED

Waitangi Tribunal

20 Aug 25Ministry of Justice
WELLINGTON**ANNETTE
SYKES & Co.**
barristers & solicitors8 – Unit 1 Marguerita Street
Rotorua, 3010
Phone: 07-460-0433
Fax: 07-460-0434**Counsel Acting:** Karen Feint KC/ Annette Sykes**Email:** karen.feint@chambers.com; asykes@annettesykes.com

MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel is filed on behalf of the Ngāti Rua claimants (Wai 1782) concerning hearing week 5.
2. The hearing week 5 timetable (Wai 1750, #3.2.167(a)) records that the Wai 2160 claimants (Whakatōhea and Ngāti Muriwai) will be appearing on Wednesday 27 August. No witnesses are mentioned, but counsel has clarified with Mr Sharp that Nepia Tipene (#C58(c)) will be the sole tangata whenua witness (this is also set out in his opening submissions).
3. Counsel seeks leave to cross-examine Mr Tipene for up to 15 minutes. It is submitted that this is necessary because Peter McBurney's report for the "Ngāti Muriwai Authority Trust" (#A33) relies extensively on oral history for key assertions relating to Ngāti Rua, the so-called "Ngāti Muriwai a Rua" and Ōmarumutu Marae. Accordingly, while counsel can question Mr McBurney on these topics, the information provided to him cannot be effectively tested without cross-examining the tangata whenua witnesses who have provided that oral history. Counsel is aware that the hearing protocols state that tangata whenua witnesses should only be asked questions of clarification. However, the issues raised are sensitive topics, and counsel is instructed that these assertions are incorrect and cannot go unchallenged.
4. In seeking leave, counsel appreciates that the focus of the Tribunal inquiry is on the Crown's breaches of Te Tiriti o Waitangi, rather than the relationship between Ngāti Rua and Ngāti Muriwai whānau, but Mr McBurney's report appears to contend that the non-recognition of Ngāti Muriwai is a consequence of the raupatu and the Crown's actions in recognising only 6 hapū of Te Whakatōhea (i.e that it is prejudice caused by the Crown's Tiriti breaches).
5. Nonetheless, in counsel's submission, the Tribunal ought to tread carefully in delineating the scope of its inquiry. The Supreme Court has observed in its part 2 judgment delivered last week that whether Ngāti Muriwai is a hapū of Te Whakatōhea "is a matter for Te Whakatōhea and Ngāti Muriwai to determine, in accordance with tikanga, not for this Court" (*Whakatōhea Kotahitanga Waka & ors v Ngāti Ira o Waioweka & ors (No 2)* [2025] NZSC 104, at [253];

attached for convenience). These parameters circumscribing the appropriate role of the law and tikanga apply equally to the Tribunal.

6. Finally, having mentioned the Supreme Court decision, counsel notes that other aspects of the judgment may impact this inquiry. The Court decided that it may be necessary to revisit its finding that Te Upokorehe do not have exclusive customary marine title in Ōhiwa Harbour if the Waitangi Tribunal's findings warrant that (see [203]-[205], [221] of the judgment). In other words, the Court appears to be envisaging that the Tribunal will be making findings on customary rights. While it is up to counsel for Te Upokorehe to address the Tribunal on that prospect, counsel observes that the Supreme Court's decision may require a refinement of the scope of the inquiry, and that in turn may necessitate revisiting the protocols on cross-examination of tangata whenua witnesses.
7. Counsel respectfully suggests that it would be helpful to discuss these issues at the proposed judicial conference during the forthcoming hearing week.

Dated this 20th day of August 2025



Karen Feint KC
Counsel for Ngati Rua (Wai 1782)