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IN THE WAITANGI TRIBUNAL	**WAI 2200**
IN THE MATTER OF	The Treaty of Waitangi Act 1975
AND IN THE MATTER OF	**Wai 2200** Porirua ki Manawatu Inquiry District
AND IN THE MATTER OF	**WAI 1623**
	WAI 2361
	Wai 2199
	Wai 2032
	Wai 1707
	Wai 2261
	Wai 1815
AND IN THE MATTER OF	**other claimants with instructions pending**

MEMORANDUM OF COUNSEL
NGA KORERO TUKU IHO HUI

Dated 20 May 2013

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Waitangi Tribunal
21 May 2013
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Moana Sinclair
Acting Counsel
PO Box 138
Otaki 5542
Tel: 06 364 5504
Cell: 027 238 5854
Email: moana@tehaalegal.co.nz

Janet Mason
Instructing Solicitor
Pacific Law
PO Box 27400
Wellington
Tel: 04 384 1304
Email: janet.mason@pacificlaw.co.nz

INTRODUCTION

1. This Memorandum of Counsel is filed in response to Memorandum-Directions (no.46) of Deputy Chief Judge C L Fox (Wai 2200, #2.5.59). Counsel will address the proposal of holding *Nga Korero Tuku Iho hui* in the Porirua ki Manawatu Inquiry District ("PKM").

2. Counsel would like to report that there has been favourable support from ALL claimants regarding *Nga Korero Tuku Iho* hui.

3. The claimants represented by counsel are introduced in turn.

WAI 2361

4. Wai 2361 claimants are descendants of Wi Kakakura Parata and Hona Webber from Ngati Toa Rangatira, Ngati Raukawa, Te Atiawa ki Kapiti and Horowhenua districts, which includes Kapiti Islands and the surrounding environs.

5. The Wai 2361 claimants support the concept of *Nga Korero Tuku Iho hui*. (Wai 220, 2.5.59, para 19.1) The claimants of Wai 2361 invite the Waitangi Tribunal to discuss with Whakarongotai Marae and Iwi representatives the holding of *Nga Korero Tuku Iho* hui at Whakarongotai marae in Waikanae for the three Iwi affiliated to that Marae, Ngati Te Atiawa, Ngati Toa Rangatira, and Ngati Raukawa.

WAI 1623

6. Wai 1623 is a claim on behalf of Ngati Rangatahi ki Rangitikei. The claim is made by Turoa Karatea, Mason Durie, Danny Karatea-Goddard and Sue Tumanako Herangi. Ngati Rangatahi ki Rangitikei locate themselves at Te Hiri o Mahuta Marae, the only functioning traditional marae for Ngati Rangatahi ki Rangitikei.

7. The claimants support *Nga KoreroTuku Iho* hui. The claimants invite the Waitangi Tribunal to discuss with Te Hiri Marae representatives and Iwi representatives on how they wish to hold *Nga Korero Tuku Iho* hui for Ngati Rangatahi Ki Rangitikei at Te Hiri marae.

GENERIC CLAIMS

8. a) Wai 2199 is a claim by Kim Poananga & Others in regard to the Returned Servicemen's Claim from WWII)

   b) Wai 2032 claim by Lee Iranui Lee and others in regard to the imposition of the Rating Act on Maori Land)

   c) Wai 1707 Dawn- Mitai-Pehi and others in regard to the Turakina Maori girls kura and Mana Wahine issues and the disempowerment of Mana Wahine matters as it relates to generations of Maori girls and women.

   d) Wai 2261 is a claim by Kim Poananga & Others in regard to the issues of the loss of Mana Tane and the loss of their Mana in Maori society and society as a whole. That is, the inculcation of patriarchal values to the detriment and disempowerment of Maori Men whereby Maori men were named as "non-entities".

   e) Wai 1815 claim by Kahu Stirling and others in regard to the imposition of Crown policies and the loss of Tino Rangatiratanga.

CLAIMANTS' INSTRUCTIONS

9. The following responses to the *Nga Korero Tuku Iho* proposal, are instructions received from most of the claimants counsel acts for.

10. They collectively instruct that *Nga Korero Tuku Iho* is an opportunity for the claimant community to present localised history for the benefit of their people. In particular the history of their communities, their political, social cultural and economic environment and of course the developments which may have worked for the betterment of their people and also such Crown involvement which led to Treaty of Waitangi breaches against them with detrimental impacts on the claimant community.

11. *Nga Korero Tuku Iho* allows whanau and hapu histories to be told within a hau-kainga environment and is welcomed. The claimants will indulge both the time and space to korero among themselves and with the Waitangi Tribunal, away from the dynamics and political issues of other larger Iwi groupings and organisations and without fear of cross examination of their stories. They see it as their opportunity to tell their versions of their history.

CLAIMANTS AND CLAIMS RECOGNITION

12. It is important for Iwi, hapu and whanau to have the opportunity to meet informally and in a marae setting with good coordination and preparation, assisted by their counsel so that named claimants can. meet with their claimant community to inform them about their claim in the context of *Nga Korero Tuku Iho.* The claimants propose that they will then be able to explain and clarify the claim. For example, what stage they are at and where and how they plan to progress the claim. *Nga Korero Tuku Iho* oral evidence submitted at the hui will be valuable as an instrument to both clarify who the claimants are, their migrations and movements, and it will also serve as a back-ground to their claim against alleged Crown breaches.

13. The *Nga Korero Tuku Iho* process has an element of *'no hea koe?"* which is invaluable to Crown officials, claimants and claimant counsel, and Waitangi Tribunal members. This is for the purpose of clarification as to the identity of persons and entities who have submitted claims to the Waitangi Tribunal in the name of others **without** the most fundamental of Maori cultural protocols of "no hea koe, I ahu mai I hea?" usually understood in tikanga Maori. The claimants suggest that this is the very process that should have been carried out at the very beginning of the Treaty claims process, so that one avoids individuals and groupings to usurp the tangata whenua and the governance of their traditional lands and resources.[1]

14. Counsel submits that *Nga Korero Tuku Iho* hui on the appropriate marae will often expose those on, 'the Marae who try to "ham up"' their claims to land or resources. In that situation those individuals or groupings will be immediately challenged as to the veracity of their stories and claims".

NGA KORERO TUKU IHO CLAIMS & REQUIRED RESOURCES

15. Waitangi Tribunal facilities and resources used to record the histories and knowledge of the local claimant community is very much appreciated by the claimants. *Nga Korero Tuku Iho* allows for whanau and hapu members of various generations to collectively gather and pass on their shared histories and herstories.

16. The claimants wish to know what use will be made of those resources and by whom and to whom the responsibility to collectively store such information. Some claimants have made it clear they wish to store such knowledge and to authorise the use of such information and knowledge in an adequately resourced holding archive to be developed by hapu and iwi, with the requisite resources to do so.

17. The reasons given by the Waitangi Tribunal for *Nga Korero Tuku Iho* in paragraphs 6 and 7 in the

[1] A case in point is the Rangitane o Manawatu pending settlement where the Office of Treaty Settlements have recognised a *"mandate"* of an Incoroporation, the Tanenuiarangi Manawatu Incorporation (TMI) over the traditional leaders and their descendants in the pending settlement for Rangitane o Manawatu.

Memorandum of Directions (Wai 2200, #2.5.59).are both supported and appreciated by all claimants.

COORDINATION OF *NGA KORERO TUKU IHO* HUI

18. The Wai 2361 claimants of Kapiti Coast of Waikanae have both a claimant committee and a research management unit. Current discussions are taking place among Ngati Toarangatira-Ngati Raukawa-TeAtiawa ki Kapiti rohe regarding the establishment of a representative Waitangi Tribunal claimant cluster group for those affiliated to the three Iwi. Presently no cluster representative of those three iwi exists for those claimants, but that matter should be clarified before the 28th May 2013 Judicial Conference.
19. Wai 2361 claimants are willing to assist in a coordinating *Nga Korero Tuku Iho* role. It is envisaged marae committees and relevant Trust Boards should be involved. A letter has been forwarded to Crown Forest Rental Trust on behalf of the Wai 2361 claimants who belong to the three Iwi the claimants descend from, to assist with *Nga Korero Tuku Iho* hui and also with other research assistance required for the Wai 2361 claim. We seek recommendations from the Waitangi Tribunal in the research matters and ideas on how to finance archival type storage and holdings of such taonga.
20. The claimants request that the Waitangi Tribunal make it known the scope of work required of potential hui coordinators. If the hui coordination works are significant, it may require that the capacity and commitment of potential hui coordinators be first assessed through a simple relevant criteria checklist.
21. The checklist may include references from key research institutions, regarding the ability of organisations to manage effective hui. An appropriate selection process for responsible persons to manage *Nga Tuku Iho* hui, could begin with advertisements placed in newspapers and on email lists requesting interested applicants to express interests.
22. It is anticipated the coordinating role would manage time schedules for persons presenting oral histories. A speakers list may be distributed prior to the hui by the hui coordinators with flexibility for 'on the day' adjustments.
23. The Waitangi Tribunal guidance is requested on these matters having previously utilised this process in Te Rohe Potae district inquiry in 2010 (Wai 2200, #2.5.59). An analysis of what worked and what did not work.

PRESENTATIONS AT *NGA KORERO TUKU IHO* HUI

24. The claimants and counsel support in principal paragraph 11 (Wai 2200, #2.5.59);
25. 'The process would be designed to limit the role of legal counsel and to let the claimants control the production of their own evidence'
26. And further in the same paragraph;
27. 'In fact, there will be limited need for claimants from other Iwi to attend such hui, as they will be provided with a full transcript and all the material that is presented'
28. However Wai 2361 claimants have cautioned that some briefing from counsel would be advised, in particular regarding issues of a sensitive legal nature, they do not wish to give of valuable knowledge without any meaningful result. A concern of the claimants is that if speakers are not adequately briefed to focus on evidence that supports the claimants, better-financed Crown analysts can take advantage and draw conclusions regarding the claimant's oral history which claimant's them-selves are not sufficiently resourced to do. Good preparation is requested of the Waitangi Tribunal as well as adequate funding from Crown Forestry Rental Trust for such a project so that it is successful for the claimants.
29. Counsel support the claimants view that adequate briefing from counsel is essential and more-so due to the future intended use of expert witnesses who will present for the claimants during the Porirua ki Manawatu hearings. Counsel and claimants have a concern that such expert evidence and any further researched historic reports and evidence should not be compromised by *Nga*

Korero Tuku Iho oral presentations due to a lack of adequate briefing from counsel.

30. Counsel notes the provision inserted by Judge Fox at paragraph 13 (Wai 2200, #2.5.59);

    "Any information filed with the Waitangi Tribunal during the hui would not replace the need for the later presentation of the claimant evidence in other forms such as briefs of evidence, archival tribal research or other historical research at hearings".

31. This goes someway in reassuring the claimants that oral evidence would not replace or usurp other forms of evidence. The claimants understand oral evidence can be used in a legal sense but in *Nga Korero Tuku Iho* hui its main influence is in the cathartic influence an inquiry of the Waitangi Tribunal was intended.

INTELLECTUAL PROPERTY OWNERSHIP

32. The ownership of the stories and oral evidence, their intellectual property, must remain with the contributors and be afforded adequate protective measures by the Waitangi Tribunal.
33. Wai 2361 claimants have offered rationale as to why sensitive oral evidence must be dealt with in a culturally sensitive manner outside the normal constraints of a western legal paradigm.
34. Particular evidence may include facts presented by some ancestors which were mis-truths. Some ancestors had specific and very particular reasons for mis-construing the truth. The process for addressing these matters should remain within the claimant community and not be forwarded into the public domain for the use of others, without the express approval and consent of the claimants.
35. *Nga Korero Tuku Iho* history gathered at hui should be classified as draft and available for deliberaton within claimant communities with the opportunity for further comment before it is made available for public viewing. The Waitangi Tribunal is sought for direction on this matter.

FORMAL SEATING PLAN

36. *Nga Korero Tuku Iho* presentations require some thought regarding seating arrangements. The typical seating arrangement of a Judicial hearing may not be appropriate as it still holds the same culture and influence of a Colonial Judicial setting. A circle arrangement has its physical limitations in regard to appropriate spaces but it also has some unifying aspects which maintain a level of integrity and control. A small example is that once the banner (microphone) has passed around from one to another, it does not return. Another example is repetitive dialogue gravitating to the centre observed by the circle for the corroboration of it by others in the circle.

SCOPE OF *NGA KORERO TUKU IHO* HUI

37. The scope of subjects covered by the oral presentations should be determined well before *Nga Tuku Iho* hui, with all participants notified through claimant counsel and cluster committees, research committees, Marae and Iwi representatives; email lists, newspaper advertisements and the Waitangi Tribunal contact list.
38. Key themes more suited to oral history could be repeated in each area for example horticulture and harvesting of local land based food production, gathering kai from fresh water and salt water sources such as eeling, shellfish, fishing and aquaculture, changing education and social conditions, environmental issues, political and legal influences; changes in tribal dynamics including land and resource ownership.
39. The claimants request that each hui incorporates 'whakawhanaungatanga time' for claimants to network, share kai together and build working relationships.
40. Preparatory hui prior to the Tuku Iho hui would be essential and may be co-ordinated by coordinating committees.
41. The claimants support the process as long as there continues to be ways to ensure it is appropriate and if not for alternatives to exist if the process becomes unsuitable.
42. The claimants will present themes that will involve history which will include recent history, that

some have lived, 'lived experience' and will be invaluable to those claimants in understanding that history is being created in their lifetimes.

GUIDELINES FOR KORERO AND TUKU IHO TOPICS

43. The topic matters to be discussed may follow the line of the claimant's statement of claim against the Crown or a timeline or subject matter. The claimants should be given prompts to assist them with their presentation and delivery of their korero.

    a) Migrations of people through the particular districts;

    b) Iwi, hapu and whanau relationships;

    c) Pre-signing the Treaty of Waitangi 1840 Maori history; Maori to Maori relationships Maori and early European relationships;

    d) 1840 Treaty of Waitangi – the signing of the Treaty in the local regions;

    e) 1840 – 1890

    f) 50 years post the signing of the Treaty of Waitangi – the progress of Maori development – Crown breaches which altered Maori lifestyle and progress

    g) 1890 – 1940

    h) 100 years post the signing of the Treaty of Waitangi – progress of Maori development – Crown breaches which altered Maori lifestyle and progress

    i) 1940 – 1990

    j) 150 years post the signing of the Treaty of Waitangi - progress of Maori development – Crown breaches which altered Maori lifestyle and progress

TOPICS FOR CONSIDERATION

a) Migrations and displacement of peoples

b) Legislative Acts and decisions of Courts

c) Wi Parata and the Bishop of Wellington – the Church and the Judiciary

d) The Rating Act and its impact on Maori lands and Peoples

e) The Public Works takings and it impact on Maori lands and Peoples

f) The economic and social impact on Maori people due to the activities of Crown officials;

g) The impact of war on families and communities left without menfolk and the impact of those returned soldiers from those wars

h) The control and use of all resources in the local areas, including water usage, plant life, native flora and fauna, access ways and use rights of foreshore and seabed; and other such taonga

i) The development of towns and cities upon Maori lands and whether such development was a fair use of Maori lands or were Maori lands targeted for being a cheaper source than general lands;

j) Tuku Whenua – gifted lands with reciprocal conditions and understandings

k) Hapu movements – Ahi kaa – Mana whenua – he Taua movements

l) Kapiti Island and the surrounding environs – migrations – displacement – internal arrangements – a confiscated jewel

m) Waahi Tapu – the significance of wahi tapu

NUMBER AND LOCATION OF *NGA KORERO TUKU IHO* HUI

45. The claimant's preference is for *Nga Korero Tuku Iho* hui to be held in geographical locations.

GENERIC ISSUES

46. The presentation of *Nga Korero Tuku Iho* generic claims may be held in a central neutral location unless there is a specific reason such presentations should be held within a geographical local community within the Porirua ki Manawatu Inquiry District.

WAITANGI TRIBUNAL JUDICIAL CONFERENCE INVITATION

47. Wai 2361 claimants note a judicial conference of the Waitangi Tribunal has not been held in the claimant's rohe. The claimants wish the Waitangi Tribunal to discuss with the appropriate representatives of Whakarongotai marae the holding of the next Judicial Conference at Whakarongotai or an appropriate venue nearby for the three Iwi noted above and their claimants affiliated to that Marae.

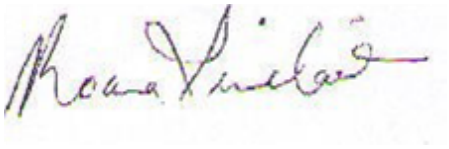
CONCLUSION

48. Counsel are acting for other claimants in the PKM Inquiry District but at the due date and time of this Memorandum of Counsel, we have not yet received instructions. It is anticipated that the claimants will be in touch between now and the day of the judicial conference.

    Counsel anticipate that instructions will not be materially different from those included in this memorandum.

49. Counsel seek leave to elaborate further on the matters contained in this memorandum at the Judicial Conference on the 28th May 2013, and also to put forward any other submissions which may be received between today and the day of the judicial conference.

Dated this 20th day of May 2013



Moana Sinclair
Acting Counsel for the named claimants above