

OFFICIAL

Wai 1510, #3.1.55  
Wai 2180, #3.1.55  
Wai 2200, #3.1.55

THE WAITANGI TRIBUNAL

1510

207

In the matter of the Treaty of Waitangi Act 1975

and

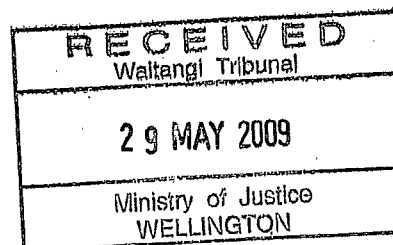
in the matter of The Taihape ki Kapiti Inquiry

and

in the matter of Claims by Akuhata Wineera, Pirihiira Hammond, Ariana Rene, Ruta Rene, Matuaiwi Solomon, Ramari Wineera, Hautonga te Hiko Love, Wikitoria Whatu, Ringi Horomona, Harata Solomon, Rangi Wereta, Tiratu Williams, Ruihi Horomona and Manu Katene for and on behalf of themselves and all descendants of the iwi and hapu of Ngati Toa Rangatira

**Memorandum of Counsel for Ngati Toa Rangatira**

Dated this 29<sup>th</sup> day May 2009



**KENSINGTON SWAN**

89 The Terrace  
PO Box 10246  
Wellington 6143

[www.kensingtonswan.com](http://www.kensingtonswan.com)

Ph +64 4 472 7877  
Fax +64 4 472 2291  
DX SP26517

Solicitor: Deborah Edmunds

## May it please the Tribunal:

### 1 Introduction

- 1.1 This memorandum is in response to the Memorandum and Directions of the Presiding Officer and Acting Chairperson dated 27 April 2009 (Wai 1510 #2.5.3, referred to as 'Directions').
- 1.2 A detailed Memorandum of counsel (Wai 1510 #3.1.14, referred to as the 'Memorandum') was filed in anticipation of the judicial conference held in Otaki on Thursday 16 April. Unfortunately, Ngati Toa's counsel did not have an opportunity to speak to this memorandum. Consequently in some cases this memorandum reiterates the points made in that earlier Memorandum.
- 1.3 Despite the conduct of the 16 April 2009 conference, Ngati Toa Rangatira is pleased to see that the Tribunal has now, through its Directions, confirmed Ngati Toa Rangatira's understanding of:
  - a the present state of the Waitangi Tribunal process and procedure, and in particular that the basis of an Inquiry is based on a district approach rather than a claim specific approach as has been Tribunal practice since 2001;
  - b the rights of all claimants who have customary interests in an Inquiry district to participate in that Inquiry fairly and equally with others, and that this will include filing of research in accordance with the Tribunal's normal practice;
  - c that the choice of counsel or representatives is a matter for the claimants and no-one else, and that the Tribunal will not deny selected claimants legal representation if that is what they prefer to have;
  - d that the right to participate is based on the Treaty of Waitangi Act 1875, section 6 and resides in the named claimants, which does not require a formal mandate process (although it is noted that Ngati Toa Rangatira is one of the few claimant iwi in the proposed regional inquiry area who has in fact a long standing and confirmed iwi mandate); and
  - e that all claimants have a right to be heard fairly and equally with all others, through their counsel or representatives or counsel, and whether at judicial conferences or at hearing.

## **2 The claimants and the scope of this Inquiry**

- 2.1 Ngati Toa Rangatira was disappointed that at the judicial conference on 16 April a number of matters in respect to their rohe, right to be heard, to select their counsel and claimant, to be represented, and so forth was disputed.
- 2.2 This memorandum addresses these issues as well.

### ***Rohe***

- 2.3 As the matter was disputed by some at the judicial conference on 16 April, Ngati Toa Rangatira wishes to re-emphasise the fact that the area the subject of the Inquiry Region does in fact contain a large part of Ngati Toa Rangatira's traditional northern rohe. That rohe has been described as being:

*From Whangaehu in the north, thence to the Tararua ranges in the east, south by Turakirae Heads to Kaikoura and thence west to Arahura, then returning to Whangaehu.*

- 2.4 In particular the inquiry region includes Porirua, Kapiti, Mana, Pukerua and lands to the north which may be seen as the heartland of Ngati Toa not to mention the Marae matua, Takapuwahia. Given that this area has not yet been included in any Waitangi Tribunal district inquiry Ngati Toa has every right to be heard in regard to these lands.

### ***Claimants***

- 2.5 The claimants in Wai 207 are Akuhata Wineera, Pirihiara Hammond, Ariana Rene, Ruta Rene, Matuaiwi Solomon, Ramari Wineera, Hautonga te Hiko Love, Wikitoria Whatu, Ringi Horomona, Harata Solomon, Rangi Wereta, Tiratu Williams, Ruihi Horomona and Manu Katene. Regretfully all have now passed on save for Tiratu Williams.
- 2.6 Representatives of other iwi disputed the right of the remaining claimant to represent the iwi. The right of Tiratu Williams to be the named and sole nominal claimant for the iwi has never been disputed within the iwi and the mandate of herself and that of Te Runanga o Toa Rangatira Inc has been reaffirmed at the AGM of the Runanga every year. The original claimants in the claim have been retained and no new ones added as others have passed on to recognise those that began the claim. Ngati Toa believes it is for them to determine who is named as their claimant/s and for no-one else to say.

### **Mandate**

- 2.7 On the matter of the mandate, as has been said already, and should be known to all, Te Runanga of Toa Rangatira Inc is the iwi organisation who has been mandated by the iwi to represent the iwi in Treaty negotiations with the Crown. This mandate was given in 2007 by, at that time, an unprecedented unanimous vote, and that mandate has been reaffirmed at every AGM since then. Tiratu Williams (the surviving claimant) is also a member of Te Kaha, the negotiating team who has been authorised by the Runanga to manage the negotiations. In other words, the claim, the claimant, and any decisions to protect Ngati Toa in negotiations or in the Tribunal are supported by a full mandate of the iwi.

### **3 Boundaries of the Inquiry/ies**

- 3.1 Ngati Toa would support the division of the region into two inquiries as this will reduce the need for participation in a much wider and larger inquiry. However it would be their preference for the southern district to include the lands up Whangaehu in the north as this is the northern extent of their rohe. Ngati Toa has already participated in two Tribunal Inquiries: for it to have to participate in four would, it is submitted place unfair demands on their resources and Kaumatua and Kuia.
- 3.2 In any event the lands to the north of the Rangitikei are a necessary part of the Ngati Toa and Raukawa ki te Tonga story of occupation and need to be heard together with the lands to the south.

### **4 Inquiry management**

- 4.1 Ngati Toa would support the proposal that Judge Wainwright be appointed to deal with the interlocutory matters in the southern district.
- 4.2 In the Directions the Tribunal noted that it is essential for counsel for claimants to be able to represent their client's interests appropriately and asked that counsel address any issues such as this before the Tribunal reconvenes.
- 4.3 At the judicial conference on 16 April it was noted that Kensington Swan acts for some Ngati Raukawa ki te Tonga claimants as well as Ngati Toa Rangatira and queries were raised as to whether this allowed resolution of any shared and overlapping interests between the two groups.

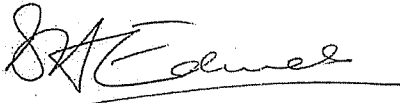
- 4.4 This question has been already addressed some time ago on 27 July 2007 between Wai 207 and Te Runanga o Toa Rangatira and the Wai 113 claim cluster. These parties reached a clear understanding of the shared interests between Ngati Raukawa ki te Tonga and Ngati Toa Rangatira. This has been set out in a formal memorandum of understanding ('MOU') signed by representatives of Te Runanga o Ngati Toa Rangatira (which included the chair of the Runanga Te Ariki Wi Neera) and representatives of the Wai 113 Claimants.
- 4.5 The purpose of the MOU was to ensure traditional bonds between the iwi were recognised at the time Ngati Toa was moving into negotiations and to ensure that Iwikatea Nicholson (who was a Wai 113 claimant) could feel free to assist Ngati Toa in its negotiations also.
- 4.6 In that MOU the parties acknowledged the relationship between the iwi and the basis of Raukawa ki te Tonga customary interests in the lands between Whangaehu to Kukutauaki. The MOU acknowledged customary rights of Ngati Raukawa ki te Tonga through the customary and traditional practice of Tuku Whenua. The MOU also acknowledged the customary and traditional rights and obligations of support and acknowledgement between Ngati Raukawa ki te Tonga and Ngati Toa Rangatira arising from the tuku.
- 4.7 Following this Te Runanga o Ngati Toa Rangatira negotiated a Letter of Agreement (in effect an Agreement in Principle) with the Crown regarding the settlement of their historical Treaty claims. It is the intention that the final Deed of Settlement will not provide for any property or exclusive redress to be provided to Ngati Toa north of the Kukutauaki stream. The property lists have yet to be finalised but will be checked to ensure this intention is met.
- 4.8 Ngati Toa could have quite rightfully and consistent with Crown Treaty policy sought additional forms of redress north of Paraparaumu. The decision by Ngati Toa to limit the scope of the Treaty redress was one reached by Te Kaha and Te Runanga o Ngati Toa Rangatira as a gesture of goodwill to Ngati Raukawa ki te Tonga. It is hoped that Ngati Raukawa ki te Tonga will reciprocate in its future dealings with Ngati Toa.
- 4.9 The terms of the MOU have therefore been adhered to throughout Ngati Toa's Treaty settlement negotiations.
- 4.10 As a consequence it is our client's view that there is a clear understanding between the Wai 113 Claimants and Te Runanga o Ngati Toa Rangatira regarding their respective rights and interests.

**5 Right of Reply**

5.1 At the last judicial conference Judge Harvey assured other claimants that they would have a right of reply on various matters. Ngati Toa does not see any need to pursue this matter as long as the conduct of the Inquiry proceeds according to standard Tribunal practice and procedure in future and Ngati Toa's rights to participate and be heard are preserved.

5.2 Ngati Toa reserve the right to reply to any issues arising in any memoranda filed subsequent to the filing of this memorandum.

**Dated** this 29<sup>th</sup> of May 2009

A handwritten signature in black ink, appearing to read 'D Edmunds', written over a horizontal line.

---

**Deborah Edmunds**  
Counsel for the Claimants