

ORIGINAL

Wai 1040 #3.1.33

IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of the Northland Inquiry

AND

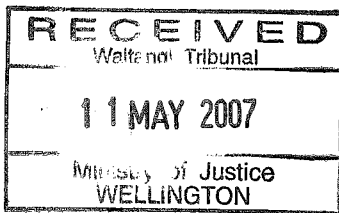
IN THE MATTER

of the claims to the Waitangi Tribunal
by the **NGĀI TAI KI TAMAKI** (Wai
423)

AND

IN THE MATTER

of the claims to the Waitangi Tribunal
by the **TE KAWERAU A MAKI**
(Wai 470)



**MEMORANDUM OF COUNSEL ON BEHALF
OF NGĀI TAI KI TAMAKI AND TE KAWERAU A MAKI**

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MAY IT PLEASE THE TRIBUNAL

1. This memorandum is filed on behalf of Ngāi Tai Ki Tamaki – Wai 423 (“NTKT”) and Te Kawerau A Maki – Wai 470 (“TKAM”). Counsel appeared at the recent Northland judicial conference and requested that the Tribunal consider establishing a separate Mahurangi and Gulf Islands district inquiry. Chief Judge Williams requested submissions in writing on this point.¹
2. Both NTKT and TKAM claim customary interests in the Mahurangi and Gulf Islands district (as defined for Tribunal purposes).

Nga Puhi Design Report

3. NTKT and TKAM acknowledge the work that has been undertaken by the Nga Puhi Design Group and support in principle the suggestion of having a comprehensive Ngā Puhi inquiry so that Ngā Puhi claims are heard together (i.e. in the 4 remaining sub-districts).
4. The reality for NTKT and TKAM is that they are not Ngā Puhi. A reality is that Ngā Puhi are but one of a number of claimants in the Mahurangi and Gulf Islands district.

A Separate Mahurangi and Gulf Islands Inquiry?

Geographically Distinct

5. Geographically the Mahurangi and Gulf Islands district is removed from the other four Northland districts. The Kaipara District Inquiry intercepts between the Whangarei district and the Mahurangi and Gulf Islands district. Attached is the Northland Districts Overview Map produced by CFRT, that, counsel understands accords to the current boundaries of the Mahurangi and

Gulf Islands district. Ideally Mahurangi and Gulf Islands should form part of an Auckland/Tamaki Makaurau inquiry.²

Shared Interests

6. There are a number of groups who claim customary interests in Mahurangi and Gulf Islands, who are not Nga Puhi, including NTKT, TKAM, Marutūāhu iwi and Ngāti Whatua.

Division of Claims & the Tamaki Makaurau Context

7. One of the counter arguments that may be raised by Ngā Puhi is that a separate Mahurangi and Gulf Islands inquiry will mean that their claims will be split and heard in two separate inquiries. Countering that is the fact that for TKAM and NTKT their claims have been split between numerous Tribunal districts. For example between the Hauraki, South Auckland, Central Auckland, Kaipara and Mahurangi and Gulf Islands districts.
8. One option is to establish a separate stand alone Mahurangi and Gulf Islands inquiry or consider a plan for a greater Auckland/Tamaki Makaurau inquiry including Mahurangi and Gulf Islands. The Tribunal with respect, should in the context of making decisions about the Northland inquiry, consider its plan for the Auckland/Tamaki Makaurau claims (including central (which includes west Auckland), south Auckland, and Mahurangi and Gulf Islands).
9. Discussion and resolution of the broader issue of how to deal with Tamaki Makaurau claims should also be considered in the context of making decisions about the final make up of the Northland inquiry.

¹ Counsel did not get an opportunity to make full oral submissions at the Judicial Conference given the tight timeframes.

A Five Sub-District Inquiry – Too Ambitious?

10. At the Judicial conference the Chief Judge alluded to the fact that the Northland Inquiry (involving five sub-districts) poses distinct challenges for all stakeholders in the process, we concur with these concerns.
11. Geographically and demographically the Northland inquiry poses logistical challenges. The large number of claimants with diverging views at this early stage of the process is already evident (exemplified by discussion at the three judicial conferences to date). To expect one Tribunal to manage this large Inquiry may prove difficult.
12. Recent experience in the Stage One CNI Inquiry (involving three districts) suggests that there are very real challenges that all stakeholders face when an inquiry is not only geographically large but also involves a large number of claimants with different iwi make-up.³
13. A separate Mahurangi and Gulf Islands inquiry will ease significant pressure for a Northland/Ngā Puhi inquiry (involving only four sub-districts) in that it will: reduce the number of claimants involved; reduce the issues to heard; and geographically reduce the inquiry area. In reality this may mean faster production of the Tribunal report for both Ngā Puhi/Northland claimants and Mahurangi and Gulf Islands claimants.

Non Exclusion of Claims/Boundaries

14. A separate Mahurangi and Gulf Islands inquiry will not of course exclude those Ngā Puhi from prosecuting their Mahurangi and Gulf Islands claims within a stand alone Mahurangi and Gulf Islands inquiry or a greater Auckland/Tamaki Makaurau inquiry.

² During the development of the boundaries for the Kaipara Inquiry, thought was given to including the Mahurangi Inquiry in the Kaipara Inquiry.

³ Admittedly, the CNI Inquiry was a fast-tracked/modular approach, which exacerbated the pressure on all parties. It is yet unclear what type of approach is to be adopted in the Northland/Ngā Puhi Inquiry.

Research

15. One of the key factors in determining whether a separate Mahurangi and Gulf Islands inquiry is viable and be accorded a degree of priority is an assessment as to whether there is a reasonable level of research available to form the basis of a Mahurangi and Gulf Islands casebook.

16. There is a reasonable level of research available which would (at a minimum) justify the commissioning of an interim casebook review to ascertain what further research is needed. Apart from the generic CFRT reports currently being finalised, there are a number of historical reports which would assist in identifying research gaps and the development of a research programme for Mahurangi and Gulf Islands some examples include:
 - Dr Barry Rigby – Mahurangi and the Crown (Waitangi Tribunal commission);

 - Michael Belgrave – Tikapa Moana and Auckland Tribal Cross Currents Report (jointly commissioned by Marutūāhu and the Hauraki Māori Trust Board);

 - Graeme Murdoch – Te Kawerau A Maki and the Crown in Kaipara (Wai 674, #J 2), 27 April 2007;

 - Bruce Stirling – Ngāti Whatua, the Crown and North Shore Lands – 1840-1865 (commissioned by Ngati Whatua o Orakei);

 - Maurice Alemann – Early Land Transactions in the Ngāti Whatua Tribal Area 1992.

17. There would be no sound reason why CFRT could not continue to fund a separate Mahurangi and Gulf Islands inquiry as well as a Northland/Nga

Puhi inquiry, because that is what is occurring now. Research for both Inquiries could continue to be developed in parallel.

Modular or Comprehensive Inquiry

18. NTKT and TKAM would consider adopting a fast track or modular approach subject to other claimants' view, direct negotiation opportunities and whether their core Tamaki Makaurau claims are to be included.

Path Forward

19. Apart from the Crown, it is likely that interested parties such as Marutūāhu, Hauraki Māori Trust Board, Ngāti Whatua o Orakei, Ngāti Whatua Runanga, Ngāti Wai hapū, (Ngāti Manuhiri and Ngāti Rehua) and others will want to be heard on this issue.
20. No doubt the Tribunal will make time available for submissions to be made by all interested parties. We suggest that the Tribunal consider convening a chambers conference or a judicial conference (so long as sufficient time is set aside for Counsel to make submissions on this issue).
21. It would be helpful if CFRT could advise the Tribunal and interested parties whether funding for an interim casebook review would be available if the Tribunal made a direction accordingly. In fact, an interim case book review for the entire district would be beneficial at some point soon.

DATED

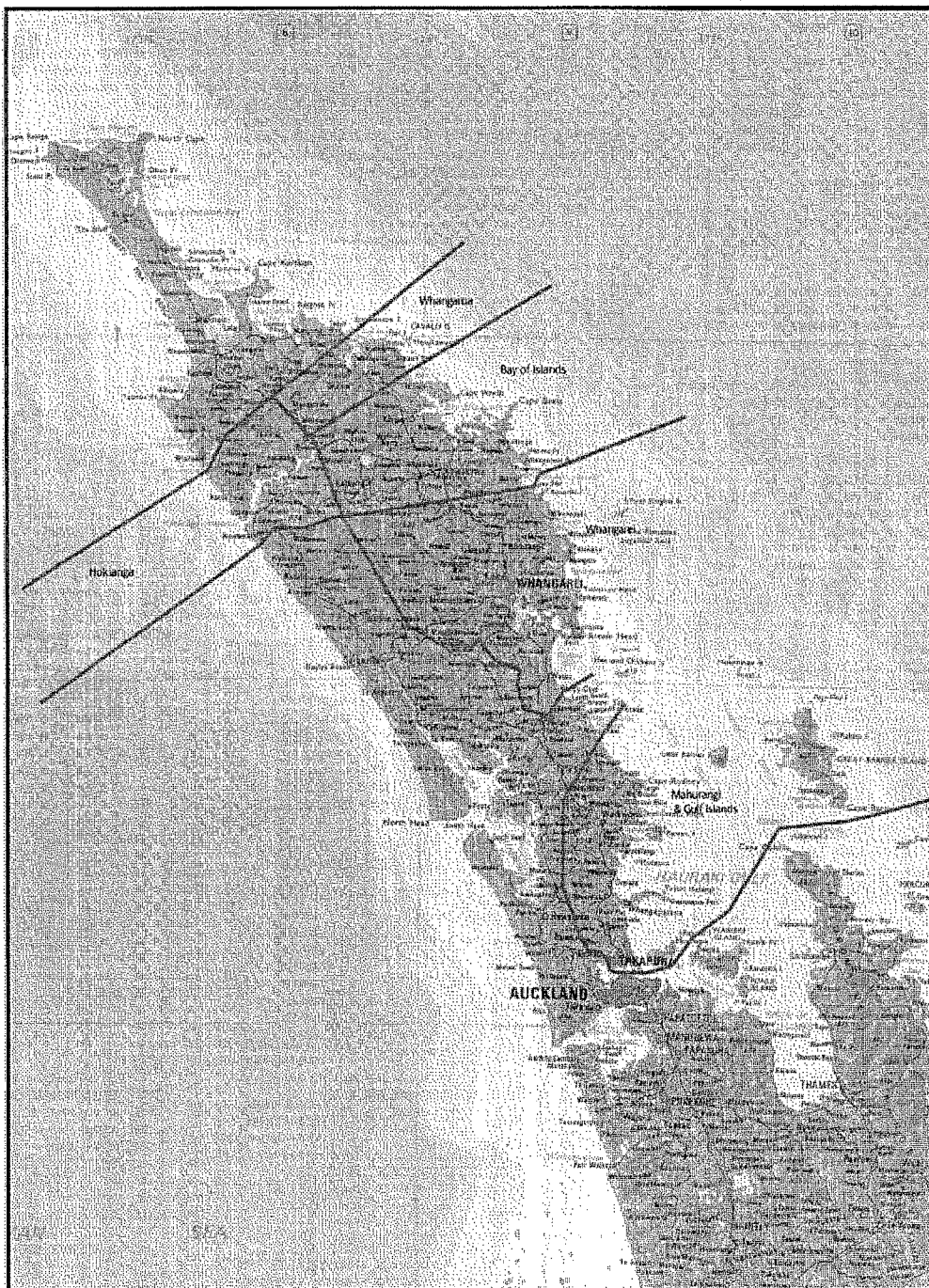
11 May

2007.



S R CLARK/A H C WARREN
Counsel for Ngāi Tai Ki Tamaki and
Te Kawerau A Maki

Draft Northland Overview Maps



Overview of the Northland Inquiry Districts as of 15 April 2005
Traced from a Waitangi Tribunal PDF

Unshaded is an approximation only.