

IN THE MATTER of The Treaty of Waitangi Act 1975

AND

IN THE MATTER of THE NORTHLAND INQUIRY

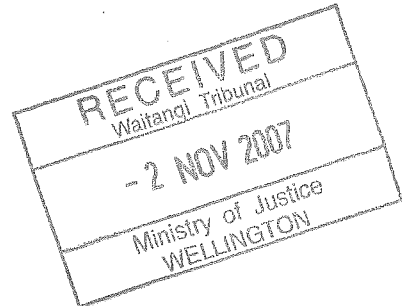
AND

IN THE MATTER of THE NGATI TAMATERA CONSOLIDATED CLAIMS (WAI 720, 778 and 349)

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MEMORANDUM ON BEHALF OF NGATI TAMATERA CLAIMANTS JOINING  
PROCEEDINGS AND SUBMITTING ON MAHURANGI-OMAHA HAURAKI GULF  
INQUIRY DISTRICT  
(2 NOVEMBER 2007)

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## MAY IT PLEASE THE TRIBUNAL

1. Counsel for Ngati Tamatera claims Wai 720, 778 and 349 is filing submissions on behalf of the Ngati Tamatera claimants for the first time in this preliminary stage of the inquiry.
2. The claims to which the title "Ngati Tamatera consolidated claims" refers are claims filed by Te Wiremu Matai Nicholls (Wai 349); Tamatehura Nicholls (Wai 720) and Te Wiremu Nicholls with Te Runanga o Ngati Tamatera (Wai 778). All of these claims were consolidated by way of an amended statement of claim filed in the Waitangi Tribunal on 19 July 2002. The claim was brought for and on behalf of the named claimants and all the descendant hapu and whaanau of Ngati Tamatera. The description of the claimant group set out therein.
3. Ngati Tamatera is one of the major Iwi of the Hauraki tribes in terms of population and geographic area and continues to hold mana Rangatira within Hauraki's geographic boundaries. Accordingly, Ngati Tamatera has important and enduring interests in all of its tribal boundaries which necessarily include the district area known as the Mahurangi-Omaha/Hauraki Gulf Islands district inquiry.
4. Counsel has been briefed on the issues and been appraised of the submissions on the record filed in the past two years.
5. The purpose of these submissions is as follows:
  - a. To formally join the proceedings as the Ngati Tamatera Consolidated claims Wai 720, 778 and 349. In particular Wai 720 which substantive statement of claim filed with the Tribunal in 1998 relates specifically to Mahurangi Hauraki Gulf Islands;
  - b. To provide some assistance to the tribunal with regards to the question of 'Whether the Mahurangi-Omaha/Hauraki Gulf Islands district inquiry ought to be heard separately or together with the wider Northland inquiry';
  - c. To provide some assistance that answering this question might give to the other matters raised by the Chairperson<sup>1</sup>.

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<sup>1</sup> Memorandum-Directions of the Chairperson dated 4 July 2007

**Whether the Mahurangi-Omaha/Hauraki Gulf Islands district inquiry ought to be heard separately or together with the wider Northland inquiry?**

6. Counsel advises it is Ngati Tamatera's preference to hear the Omaha-Mahurangi and Hauraki Gulf Islands inquiry separate from the wider Northland/Ngapuhi Inquiry.
7. Counsel has had the benefit of reading the submissions which have been filed by the various parties on this point. It is clear that there is a distinction drawn between those Ngapuhi groups who have submitted on this point (who would prefer the Inquiry to be heard as part of the Northland/Ngapuhi Inquiry) and those groups which for ease of reference we will refer to as 'Non Ngapuhi groups', all of whom submitted on this point (who would prefer the Inquiry to be heard separately)<sup>2</sup>.
8. Counsel points to the submissions that have been filed by the Ngapuhi-Nui-Tonu Design Group ("**the Design Group**"). Those submissions cannot more readily and apparently reflect the "Ngapuhi" focus of the Design Group. Whilst this is completely understandable from a Ngapuhi perspective, it necessarily has the effect of excluding Non Ngapuhi tribes. These groups include the various Hauraki representative groups ("**Hauraki**"), Te Kawerau a Maki ("**TKM**"), and Ngai Tai ki Tamaki ("**NTKT**") and perhaps more groups as the proceedings progress.
9. As the Chairperson has rightly stated, and applying the principle of whanaungatanga, it would not be appropriate to proceed on a basis where groups feel excluded in some way. It is Counsel's concern that 'appending' the Mahurangi-Omaha and Hauraki Gulf Islands Inquiry onto the wider Northland/Ngapuhi inquiry, with the particular "Ngapuhi-led" focus of the Design group in the Northland/Ngapuhi inquiry, will necessarily have the effect of excluding most if not all Non Ngapuhi groups in the discussion and design of the Northland/Ngapuhi and therefore necessarily the Mahurangi-Omaha Inquiry.
10. Whilst this general "Ngapuhi led" approach by the Design Group is understandable in relation to those areas that might be identified as its "core areas of interest" as one might see in the other districts, this same approach cannot apply in the Mahurangi-Omaha Hauraki Gulf Islands district.

<sup>2</sup> Refer to submissions of what can generally be described as "Ngapuhi" iwi, hapu or collectives- Ngati Kahu Wai 619 dated 28 September 2007; Ngapuhi-Nui-Tonu Design Group dated 12 March 2007; Taumata Kaumaatua o Ngapuhi dated 27 April 2007 and 4 July 2007; Mahurangi Collective dated 10 May 2007. Refer to submissions of what can generally be described as Non-Ngapuhi iwi, hapu or collectives – Hauraki Maori Trustboard Wai 100 dated 14 December 2005, 30 March 2005 and 27

11. As Counsel for the Marutuaahu claimants (812 and 454) states, the Mahurangi Omaha district cannot be viewed in the same way as the other districts because there are *"no homogenous customary interests"* in this area. Accordingly, we submit that there needs to be some 'give and take' from all parties involved because the Tribunal must necessarily consider the interests of all groups equally. There is some risk that this will not occur were the district to be included within the wider Northland/Ngapuhi Inquiry because of the 'Ngapuhi focus' of that Inquiry.
12. This 'focus' is noted in the submissions of Mr John McEnteer on behalf of Hauraki Maori Trust Board<sup>3</sup>. He points to the use of the name "Gulf Islands" instead of the correct "Hauraki Gulf Islands". Most other fora including that of the Hauraki Gulf Marine Park forum and its related legislation, he states, recognizes that the area of Islands and water to which this area pertains is referred to as the Hauraki Gulf Islands.
13. Counsel respectfully submits that use of words and names are important in the Tribunal context.
14. As another example the use of the terminology Ngapuhi *vis a vis* Non Ngapuhi groups, used partly for ease of reference, has the effect of making Ngapuhi the central focus of the discussion. In the Omaha-Mahurangi Hauraki Gulf Islands Inquiry District it would be unfair to make any group the central focus until further research and primary interests are established. Counsel respectfully submits that including the Omaha-Mahurangi Hauraki Gulf Islands district within the Ngapuhi/Northland Inquiry will have the effect of making the district an "add on" to the Ngapuhi inquiry rather than a separate and distinct inquiry in its own right. Again, prematurely bringing the debate back to a Ngapuhi focus as opposed to a completely neutral focus.
15. Counsel refers to submissions filed on behalf of the Mahurangi collective<sup>4</sup>. Much like the Design Group, the Mahurangi Collective clearly has a very strong preference to *"consolidate and unify Ngapuhi-Nui-Tonu people, taonga and lands"*. Again, whilst this is understandable from a Ngapuhi perspective, the lack of inclusiveness reflected in the submissions has the effect of excluding Non Ngapuhi groups.

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April 2007; Ngai Tai ki Tamaki and Kawerau a Maki dated 31 March 2006 and 11 May 2007; Marutuaahu claimants dated 11 May 2007

<sup>3</sup> Refer para 11 of Hauraki Maori Trust Board dated 27 April 2007

<sup>4</sup> Refer para 6.2 of Memorandum of Counsel for Mahurangi Collective dated 10 May 2007

16. We note that to date the Hauraki groups have had little involvement with either the Ngapuhi Design Group or the Mahurangi collective.
17. The Mahurangi collective further states that the unilateral separation of the Mahurangi District from the Northland Inquiry will put the Mahurangi Omaha work in jeopardy and result in the hearings for Mahurangi and Omaha being delayed indefinitely.
18. A similar point was most recently raised by Counsel for Ngati Kahu o Torongare Te Parawhau (Wai 619) Mr Hirschfield and Afeaki with regards to the burden and prejudice of having a separate and severed inquiry district. In addition they also raise the issue of the administrative burden of having their interests severed out in more than one Inquiry District.
19. With all due respect there is no guarantee that including the Mahurangi Inquiry in the Northland Inquiry would not result in long term delays. Mr Stephen Clark in his submissions on behalf of Ngai Tai ki Tamaki and Kawerau a Maki<sup>5</sup> makes strong arguments in the alternative that an unnecessarily large inquiry area involving all five districts may in fact ultimately be ineffectual.
20. As Mr Clark states in relation to the CNI Inquiry, 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.
21. Furthermore, Mr Clark goes on to say that a separate Mahurangi and Gulf Islands Inquiry may in fact have the effect of easing significant pressure for a Northland/ Ngapuhi Inquiry (which would only involve the four sub-districts) which may in reality result in a faster track approach for all parties<sup>6</sup>.
22. As to the burden both the Design Group and Ngati Kahu o Torongare Te Parawhau state in having their claims split in a number of districts. Counsel refers to the submissions put by many of the parties to date that many, if not all, of the parties in these proceedings have had their claims split between a number of inquiry districts<sup>7</sup>.

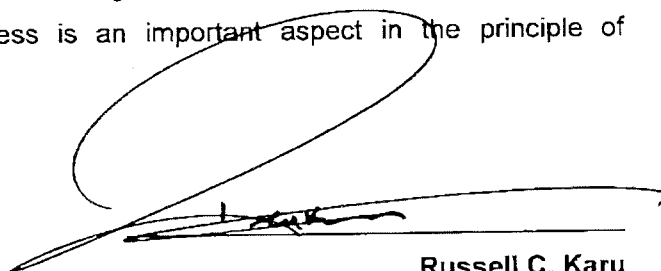
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<sup>5</sup> Refer para 11 of submissions of Ngai Tai Ki Tamaki and Kawerau a Maki dated 11 May 2007

<sup>6</sup> *Supra*, para 13

23. Counsel also notes Mr Clark's point that the Mahurangi-Omaha Hauraki Gulf district actually more correctly sits within the Auckland/Tamaki Makaurau claims district; severed, as Counsel understands Mr Clark's submissions to say, by the Kaipara District Inquiry on its northern boundaries and Auckland/Tamaki Makaurau on its western boundaries, from Ngapuhi Nui Tonu<sup>8</sup>. All the more reason, it is submitted, for Mahurangi-Omaha Hauraki Gulf Islands to remain separate from the Ngapuhi/Northland Inquiry.

24. Ultimately Counsel will abide the directions of the Tribunal but notes the very real risk that including the Mahurangi-Omaha Hauraki Gulf Islands District within the wider Ngapuhi/Northland inquiry will risk excluding the Non Ngapuhi groups and lead to a lack of inclusiveness. Inclusiveness is an important aspect in the principle of whanaungatanga.



**Russell C. Karu**

Counsel for Ngati Tamatera Claimants (Wai 720, 778 and 349)

DATED the 2<sup>nd</sup> day of November 2007

<sup>7</sup> *Supra*, para 7

<sup>8</sup> *Supra*, Map Reference "Overview of the Northland Inquiry Districts as of 15 April 2005"