

**BEFORE THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

AND IN THE MATTER of the Crown's Treaty settlement policy regarding overlapping claims and the proposed redress in relation to the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

AND IN THE MATTER of a claim filed by **HAYDN THOMAS EDMONDS** on behalf of Ngātiwai Trust Board and the iwi of Ngātiwai for an urgent inquiry into the Crown's settlement policy regarding overlapping claims and the proposed redress in the Hauraki Collective, Marutūāhu Collective and individual Hauraki iwi settlements.

APPLICATION FOR AN URGENT INQUIRY

24 JULY 2017

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MAY IT PLEASE THE TRIBUNAL

The Claimants seek:

1. An urgent inquiry in respect of the Crown's proposals to provide redress as part of the Hauraki and Marutūāhu collective and Hauraki iwi settlements that would have the effect of causing significant and irreversible prejudice to the Claimants.
2. Urgent recommendations are sought that the Crown ought not to:
 - (a) sign the Hauraki Collective Deed of Settlement initialled on 22 December 2016 (the **Hauraki Deed of Settlement**) or take any steps to give effect to the Hauraki Deed of Settlement;
 - (b) take any steps to give effect to the Ngai Tai ki Tamaki Deed of Settlement signed on 7 November 2015 (the **Ngai Tai ki Tamaki Deed of Settlement**); or
 - (c) take any steps to provide the redress further described in this application and the statement of claim to the Marutūāhu collective and/or iwi of Hauraki.
3. This application for an urgent inquiry (the **Application**) is filed by Haydn Thomas Edmonds on behalf of Ngātiwai Trust Board (the **Claimants**) who have filed a statement of claim.
4. The claim seeks an urgent inquiry into the actions and processes followed by the Crown as follows:
 - (a) **Overlapping claims process**: the treatment of overlapping claims and related redress in the context of Treaty settlement negotiations (the **Overlapping Claims Process**);
 - (b) **Hauraki Deed of Settlement**: the process followed, and decisions made, by or on behalf of the Crown that has resulted in the Crown

agreeing to grant to the Hauraki Collective a right of first refusal to purchase certain quota as set out in a fisheries right of first refusal deed in relation to an area that specifies a boundary point within the Ngātiwai Rohe (the **Hauraki Collective Fisheries RFR**). The Hauraki Fisheries RFR is included in the Hauraki deed of settlement initialled on 22 December 2016 (the **Hauraki Deed of Settlement**);

(c) **Protocols Redress**: the process followed, and decisions made or proposed to be made, by or on behalf of the Crown that will result in protocols between iwi of Hauraki and certain Crown agencies, in relation to areas that overlap with the Ngātiwai Rohe. These protocols are proposed to be offered as redress in individual iwi settlements with Ngāti Maru, Ngāti Whanaunga, Ngāti Paoa, Ngāti Tamaterā and Ngāi Tai ki Tamaki (**Protocols Redress**);

(d) **Aotea Redress**: the process followed, and decisions made, or proposed to be made, by or on behalf of the Crown that resulted in the Minister for Treaty of Waitangi Negotiations (**Minister**) proposing to:

(i) offer the following cultural redress:

- to Ngāti Maru, the vesting of the majority of the Cape Barrier Conservation Area and the adjacent Cape Barrier Marginal Strip (approx. 24 hectares) as one site subject to scenic reserve status; and
- to Ngāti Tamaterā, the vesting of Tryphena North Conversation Area and Hilltop Recreation Reserve (approx. 16.3 hectares, two sites) subject to a recreation reserve;

(together, the **Aotea Cultural Redress**);

(ii) offer the following commercial redress:

- to Ngāti Whanaunga: exclusive right of first refusal (**RFR**) over the Tryphena Hall Local Purpose (Site for Community Buildings) Reserve (0.2 ha, land only); and

- to Ngāti Maru, Ngāti Tamaterā and Te Patukirikiri: shared rights of first refusal (**RFR**) over specified conversation land in the south and central areas of Aotea (18 sites);

(the **Aotea Commercial Redress**);

- (iii) offer a statement of association relating to a pā site on Aotea to Hako (the **Hako Aotea Redress**);

(together, the redress specified in this paragraph (d) is defined as the **Aotea Redress**);

- (e) **Marutūāhu Collective redress**: the process followed, and decisions made, by or on behalf of the Crown that has resulted in the Minister proposing to provide the following redress to the collective comprising Ngāti Maru, Ngāti Paoa, Ngāti Tamaterā, Ngāti Whanaunga and Te Patukirikiri (the **Marutūāhu Collective**):

- (i) a statutory acknowledgement or other similar redress in relation to the coastal area from Te Arai Point east to Aotea (Great Barrier Island) and southwards to include the Waitemata Harbour, the Tamaki Strait and the Firth of Thames, including the motu within that area (**Coastal Statutory Acknowledgement**); and

- (ii) potential collective cultural redress properties, comprising:

- Kawau Island Scenic Reserve (3.0351 ha)
- Mahurangi Scenic Reserve (8.1212 ha); and
- Motuora Island Recreational Reserve (79.7230 ha);

(together, the redress specified in this paragraph (e) is defined as the **Marutūāhu Collective Redress**);

- (f) **Ngāti Whanaunga redress**: the proposed vesting of the following properties in Mahurangi to Ngāti Whanaunga;

- (i) 0.063 ha, at 2 Riverside Road, Orewa;

(ii) 0.0885 ha, being a deferred selection property located at 27 Otanerua Road, Hatfields Beach; and

(iii) 0.0961 ha, being a deferred selection property located at 29 Otanerua Road, Hatfields Beach;

(together, the redress specified in this paragraph (f) is defined as the **Ngāti Whanaunga Redress**).

The redress specified in paragraph 4(b) to (f) above is together defined as the **Proposed Hauraki Redress**.

5. Five (5) affidavits will be filed in support of the Application.
6. The ratification vote on the Hauraki Deed of Settlement was held between 4 February 2017 and 17 March 2017.
7. The Claimants respectfully request that the Waitangi Tribunal hold an urgent inquiry into the matters detailed in the statement of claim.
8. The Waitangi Tribunal's practice note, *Guide to the Practice and Procedure of the Waitangi Tribunal*, sets out the information that must be provided by any Claimant seeking an urgent inquiry and the factors that the Waitangi Tribunal will consider, including:
 - (a) the specific reasons why an urgent inquiry is sought, including whether:
 - (i) the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
 - (ii) there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise;
 - (iii) the claimants are ready to proceed urgently to a hearing; and

- (jjj) the claim challenges an important current or pending Crown action or policy;
- (b) whether the application relates to a claim or group of claims in their entirety or whether it relates to an aspect of a claim or of a group of claims;
- (c) whether the applicant is ready to be heard or whether any research first needs to be carried out or completed and if research is required, its nature and extent;
- (d) any people or bodies whom the claimants believe should be notified by the Waitangi Tribunal because they are affected by the application; and
- (e) any other information that is relevant to the application.

Reasons why an urgent inquiry is sought

- 8. The Claimants seek an urgent inquiry into this matter on the grounds set out in the statement of claim and for the reasons set out below.

Significant and irreversible prejudice to Ngātiwai

- 9. The Claimants, and the members of Ngātiwai, will suffer significant and irreversible prejudice as a result of the Crown's actions and omissions because the provision of the existing Overlapping Claims Process and the Proposed Hauraki Redress will:
 - (a) create rights, through means inconsistent with tikanga and the Treaty, which rights erode the customary rights and tikanga of Ngātiwai;
 - (b) undermine the mana, rangatiratanga, tikanga and customary interests of Ngātiwai;
 - (c) create divisions and further damage the relationship between Ngātiwai iwi of Hauraki;

- (d) in relation to the properties which the Crown proposes to transfer to iwi of Hauraki, preclude Ngātiwai hapū from purchasing such land on Aotea or preclude the Crown from offering such land to Ngātiwai hapū.
10. The Claimants challenge important Crown policies and processes in relation to overlapping claims.
17. The Crown is on notice of the issue and refuses to resolve the Claimants' concerns before taking any further steps to progress the Aotea Redress.

No alternative remedy

18. There is no alternative remedy available to the Claimants.
19. The Claimants have made extensive efforts to make their concerns known to the Crown, the Hauraki Collective, the Marutūāhu Collective and individual Hauraki iwi. Despite raising these concerns, the Crown has determined to proceed with offering the Hauraki Redress.
20. The courts are likely to view the Crown's signing of Deeds of Settlement as a political matter and, therefore, outside of the courts' jurisdiction. Matters of this nature fall squarely within the Tribunal's jurisdiction.
21. Once the deeds of settlement are signed in relation to the Hauraki Collective, the Marutuahu Collective and individual iwi of Hauraki (and in relation to Ngāi Tai ki Tamaki, settlement legislation to give effect to the Ngāi Tai Deed of Settlement has been introduced), the Claimants' ability to address their concerns, insofar as they relate to the terms of deeds of settlement, will be extremely limited if not impossible. An amendment to signed Deeds of Settlement would be required.
22. Further, the Claimants could not challenge Crown policy through the Select Committee process. This is a matter that falls within the Tribunal's jurisdiction.

Readiness to Proceed to Hearing

23. The Claimants are ready to proceed to an urgent hearing.
24. The Claimants' evidence is focused on the recent actions of the Crown in relation to the failure to engage with the Claimants and to resolve their concerns as set out above.
25. The Claimants would expect the Crown to have evidence of its policies and processes in relation to the Overlapping Claims Process and the Proposed Hauraki Redress available such that full disclosure could be readily provided to the Claimants and the Tribunal prior to any urgency hearing.

Current or Pending Crown Action

26. The Crown current and pending actions and policies that are causing the Claimants' significant prejudice include:
 - (a) the Crown's treatment of overlapping claims and related redress in the context of Treaty settlement negotiations;
 - (b) the Crown's initialling of the Hauraki Deed of Settlement on 22 December;
 - (c) the Crown's proposal to introduce the Ngai Tai ki Tamaki settlement legislation into the house 26 July 2017;
 - (d) the introduction of settlement legislation to give effect to the Hauraki Deed of Settlement; and
 - (e) the Crown's decisions to provide the redress set out above, in breach of tikanga and the Treaty and in such a way which will erode the customary rights and tikanga of Ngātiwai.

Notice to other groups

27. The Claimants acknowledge that the following parties are interested and should be notified of this claim:

- (a) the Crown;
- (b) the Hauraki Collective;
- (c) the Marutuahu Collective;
- (d) Ngai Tai ki Tamaki;
- (e) Ngati Whanaunga.

DATED at Rotorua this 24th day of July 2017



Kiri Tahana
Counsel for the Claimant

- TO:** The Registrar, Waitangi Tribunal, Wellington.
- AND TO:** Crown Law Office.
- AND TO:** Counsel for the Hauraki Collective
- AND TO:** Counsel for the Marutūāhu Collective
- AND TO:** Counsel for Ngāi Tai ki Tamaki
- AND TO:** Counsel for Ngāti Whanaunga

This **STATEMENT OF CLAIM** is filed by **KIRI TAHANA** solicitor for the above named Claimants of the firm of Kahui Legal.

The address for service on the above named Claimant is at the offices of Kahui Legal, Level 1, GHA Centre, 1108 Fenton St, PO Box 1177, Rotorua 3040.

Documents for service on the above named Claimant may be left at the address for service or may be:

- (a) posted to the solicitor at Kahui Legal, PO Box 1177, Rotorua;
- (b) emailed to the solicitors at Kiri@kahuilegal.co.nz and Matewai@kahuilegal.co.nz or
- (c) transmitted to the solicitor by facsimile to Facsimile No. (04) 495 9990.