

**IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

**WAI 745
WAI 1308**

IN THE MATTER OF Te Tiriti o Waitangi Act 1975

AND

IN THE MATTER OF The Ngatiwai Trust Board Deed of
Mandate Inquiry

AND

IN THE MATTER OF a claim filed by Paki Pirihi on behalf
of Patuharakeke Te Iwi Trust Board
and a claim filed by Ngawaka Pirihi and
others on behalf of the owners of
Pukekauri 1B1, 1B2, 1B3, 1B4 and 1B5
and Takahiwai 4C, 4D1, 4E, 7A, 7B2
and 7C

**STATEMENT OF CLAIM ACCOMPANYING AN APPLICATION BY THE
CLAIMANTS OF WAI 745 AND WAI 1308 FOR AN URGENT HEARING
INTO THE CROWN'S RECOGNITION OF THE NGATIWAI DEED OF
MANDATE**

Dated the 4th day of December 2015

TAMATEKAPUA LAW

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The Claimants

1. This claim is made by the following claimants:
 - 1.1. Paki Pirihi on behalf of Patuharakeke Te Iwi Trust Board under the claim Wai 745; and
 - 1.2. Ngawaka Pirihi and others on behalf of the owners of Pukekauri 1B1, 1B2, 1B3, 1B4 and 1B5 and Takahiwai 4C, 4D1, 4E, 7A, 7B2 and 7C under the claim Wai 1308.
2. Patuharakeke hapu claim interests over a vast area over the eastern sea board and in particular has mana whenua in all the areas known as Ruakaka, Takahiwai, One Tree Point, Waipu and Mata.
3. The comprehensive claim of Patuharakeke (Wai 745) was presented before the Te Paparahi o te Raki ('TPR') Waitangi Tribunal on 16 October 2013.
4. The claimants are Maori and are entitled to the protections of Te Tiriti o Waitangi/The Treaty of Waitangi and all of its statutory implementations.

The Claim - Introduction

5. This Statement of Claim is accompanied by an Application for Urgency in relation to the Crown's recognition of the Ngatiwai Deed of Mandate.
6. On 21 October 2015, the Crown agreed to recognise the Deed of Mandate that was submitted by Ngatiwai. That Deed of Mandate was submitted by Ngatiwai for the purpose of entering negotiations with the Crown for the comprehensive settlement of all historical claims of hapu that affiliate with Ngatiwai, including that of the claimants.

Cause of Action

7. The Crown, in breach of its duties under Te Tiriti o Waitangi, recognised the Ngatiwai Deed of Mandate that seeks to negotiate and settle the historical claims of the claimants, when the Crown was well aware that the claimants have been actively seeking to settle their grievances independently.

8. The Crown, in breach of its duties under Te Tiriti o Waitangi failed in its duties to act fairly and in good faith to the claimants by:
 - 8.1. Failing to act impartially in its recognition of the Ngatiwai Deed of Mandate;

 - 8.2. Failing to adequately address and or respond to the claimant's concerns over the application of the Crown's large natural grouping policy;

 - 8.3. Failing to address or resolve concerns relating to the Ngatiwai mandating process;

 - 8.4. Failing to have due regard to the opposition of the claimants to the Ngatiwai mandating process and inclusion in the Ngatiwai Deed of Mandate itself, when it made its decision to recognise the Ngatiwai Deed of Mandate; and

 - 8.5. Failing to protect the right of the claimants to retain their own mandate to settle their own historical grievances in any settlement negotiation process.

Particulars

9. The Ngatiwai Trust Board is a Charitable Trust established in 1984 with its governance and management arrangement set out in its Trust Deed. The Trustees are appointed through Marae elections that are held every three years.
10. Attached to this Statement of Claim and marked "Schedule A" is a timeline setting out events leading to the Crown's recognition of the Ngatiwai Trust Board's Deed of Mandate.
11. On 21 October 2015 the claimants were advised that the Crown had recognised the Ngatiwai Deed of Mandate. The Ngatiwai Deed of Mandate continues to include Patuharakeke hapu, marae and Waitangi Tribunal claims.
12. The claimants are now forced to withdraw from the Ngatiwai Deed of Mandate. The claimants are prejudiced as they do not have funding assistance from the Crown to conduct a withdrawal process and the claimants do not have sufficient resources to carry out such a process. Withdrawal of the Wai 745 and Wai 1308 claims and funding to do so was requested from the Crown by Ani Pitman on behalf of the Patuharakeke Te Iwi Trust Board on 11 November 2015. The Patuharakeke Te Iwi Trust Board have received acknowledgement of receipt of their letter by the Crown, however they have not yet received a response to their request.

Prejudice

13. As a result of the Crown's breaches of Te Tiriti o Waitangi as described above, the claimants are suffering and are likely to continue to suffer irreversible prejudice in the following ways:

- 13.1. The claimants are being represented in settlement discussions with the Crown by an entity based on a marae structure that does not represent them and that they have never mandated;
- 13.2. The claimants are being subjected to settlement negotiations processes before the conclusion of the Wai 1040 Te Paparahi o Te Raki Inquiry;
- 13.3. The claimants are being deprived, against their wishes, of their rights to a full Waitangi Tribunal Inquiry into their claims and a determination provided for by the Treaty of Waitangi Act 1975;
- 13.4. The claimants are being deprived of their rights to seek remedies upon hearings and findings, among other things;
- 13.5. The claimants are in a position of having to redefine their tribal relations;
- 13.6. The claimants do not have the capacity or resourcing to continue to oppose the Ngatiwai Deed of Mandate process as well as progress other matters of priority to the claimants; and
- 13.7. The claimants will not achieve a fair, robust and enduring settlement of their Te Tiriti o Waitangi claims if the Crown continues to engage with Ngatiwai.

Findings and Recommendations Sought

14. The claimants seek:

- 14.1. That an urgent hearing of this claim before the Waitangi Tribunal be granted;
- 14.2. A recommendation that the Crown, as a matter of urgency, cease all negotiations with the Ngatiwai Trust Board until the issues raised in this claim are resolved;
- 14.3. A recommendation from the Waitangi Tribunal that the Crown retract its recognition of the Ngatiwai Deed of Mandate;
- 14.4. A finding from the Waitangi Tribunal that the Crown has breached its obligations and duties under the Treaty of Waitangi/Te Tiriti o Waitangi by recognising the Ngatiwai Deed of Mandate;
- 14.5. A finding from the Waitangi Tribunal that the Ngatiwai Deed of Mandate fails to ensure that the claimants are adequately represented;
- 14.6. A finding from the Waitangi Tribunal that the Ngatiwai Trust Board did not obtain recognition of their Deed of Mandate via a fair, open and transparent process;
- 14.7. A recommendation from the Waitangi Tribunal that the Crown recognise that the claimants have withdrawn from the Ngatiwai Deed of Mandate without their having to follow a costly and time consuming process;
- 14.8. That the Tribunal hear and report on the claims of the claimants without interference by the Crown; and

14.9. Such other relief as the Tribunal sees just and proper.

Dated the day of 2015 in Auckland.

Two handwritten signatures are shown side-by-side. The signature on the left is in black ink and appears to be 'K. Dixon'. The signature on the right is in black ink and appears to be 'A. Castle'.

Kelly Dixon/Alisha Castle
Counsel for WAI 745 and WAI 1308

This Statement of Claim is filed by Kelly Dixon and Alisha Castle, Solicitors for the Claimants, of Tamatekapua Law, Auckland. The address for service of the claimants is at the offices of Tamatekapua Law, 2A Kings Road, Mt Roskill, Auckland.

Documents for service on the plaintiff may be left at that address for service, or may be-

- Posted to the solicitor at PO Box 10081, Dominion Road, Auckland;
- Transmitted by facsimile to 09 620 6250;
- Emailed to kelly@tamatekapua.co.nz or alisha@tamatekapua.co.nz

A handwritten signature in black ink, which appears to be 'P. Pirihi'.

Signed by the claimant Paki Pirihi