

Appendix C - Research hui speaking notes

Hui to discuss research programme, 27 October 2022, Taipā

Waitangi Tribunal Unit Research Services Team research programme proposal

- why we have taken the approach we have;
- how we hope our research programme will fit into the wider body of research for the Muriwhenua inquiry, to which everyone can contribute.

In March 2021, the High Court issued its judgment in *Mercury NZ Limited vs the Waitangi Tribunal*¹ on the judicial review of the preliminary decision of the Tribunal for Wairarapa ki Tararua. That decision, and the judicial review, are about the proper exercise of the Waitangi Tribunal's jurisdiction to make binding recommendations. The High Court decision determined that a high threshold was required for Waitangi Tribunal resumption hearings.

Judge Wainwright acknowledged the importance of this decision to the Muriwhenua Inquiry in a memorandum-directions issued last year. Although the matter is still before the superior courts and is yet to be resolved, it nonetheless appears to set an expectation that any subsequent remedies inquiries will require a high evidential standard.²

Stage One of the Muriwhenua inquiry now needs to be less summary. It needs to be more broadly-based, and more detailed in its approach. Any Tribunal findings must now link the current claimants to land areas and to the consequences of the Crown's actions and inactions in those areas where their interests lay. The evidence must establish what they are calling a nexus, between the claim, the land in question, and the alleged breach.

The Tribunal must aim, where possible, to make findings that draw out the connections between specific people and specific places in as detailed a way as the evidence will allow, as well as depicting the consequences of Crown actions and inactions that were felt widely and across the district (as the *Muriwhenua Land Report 1997* did).

¹ *Mercury NZ Limited v Waitangi Tribunal* [2021] NZHC 654 (*Mercury*)

² Wai 45, #T14, p3

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This suggests that the research programme for the district stage of the Renewed Muriwhenua Inquiry will need to be more thorough than may have been originally planned for.

In June this year, Judge Wainwright issued a memorandum-directions outlining a proposed research programme. With the intention of helping to solidify the findings made in the 1997 *Muriwhenua Land Report* and providing the level of detail necessary following the *Mercury* decision, Judge Wainwright proposed four research projects, in addition to the Social Issues report and the Environmental Impacts report which are already underway. They are:

- A Customary Landscape Report – specifically linking iwi and hapū to the whenua, which will be important for understanding the nexus between claimants, whenua, and alleged Treaty breaches;
- A report on Pre-1865 Crown Purchasing – which will review and update, where necessary, the existing research on pre-1865 land transactions. The intention of this report is to extend and strengthen previous research and the Tribunal’s 1997 findings, with additional source material now available;
- A report on The Native Land Court and post-1865 Crown purchases – which will focus on specific land blocks in the inquiry rather than the Native Land Court generally, with the aim of identifying any particularly egregious examples of Native Land Court processes or Crown transactions; and
- A report on The fate of Reserves and any Other Lands set aside for Māori – which will investigate what happened to reserves and other land set aside from Crown transactions in the inquiry district. This is an area that has not previously been thoroughly researched.

These reports would include the whole inquiry area and all the claimants included in the inquiry. This proposed research programme is a fairly standard approach to district inquiry research, and would provide the evidence necessary to complete the district stage of the Renewed Muriwhenua Inquiry and advance to remedies hearings.

The research programme proposed is designed to provide the Muriwhenua Tribunal panel with a baseline of evidence required for them to make findings and recommendations.

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It is not intended for the research in this plan to cover everything, or to constitute the full research quota. There is absolutely room for more reports, more evidence, more layers of detail and alternative perspectives.

Our position is that the research programme proposed by Ngāti Kaha is complementary to this. Both research programmes will provide the Tribunal panel with evidence they need to hear in order to complete this phase of the inquiry.

As an independent commission of inquiry, the research commissioned by the Tribunal needs to remain independent. Any researchers commissioned by the Tribunal will be subject to cross examination and have their evidence tested by all parties, in the same way any non-Tribunal research will be tested. Each research report represents one perspective for consideration and is given equal status as evidence before the Tribunal.

It is necessary for the Tribunal's independent expert-witnesses to conduct research and produce evidence based on government records; they are required to produce reports incorporating archival sources from government agencies. Understanding the actions and perspectives of the Crown at the time these transactions and events were taking place is a necessary piece of the evidence puzzle. We acknowledge, however, that it is not the only piece of the puzzle and adding claimant evidence to this picture is extremely important and necessary.

Claimant research will provide a complementary layer of evidence, from the claimant's perspective.

It is our understanding that claimants in this inquiry have secured funding from CFRT in order to complete their own research. We support all research that claimants are able to bring to the table and have tested in front of the Tribunal.

Of course, research reports are not the only way for claimants to present evidence to the Tribunal. It is our expectation that briefs of evidence and amended statements of claim, as well as submissions and feedback to commissioned researchers, will all contribute evidence to the inquiry.