

IN THE WAITANGI TRIBUNAL

Wai 2568

CONCERNING

the Treaty of Waitangi Act 1975

AND

an application for an urgent hearing by Roimata Minhinnick on behalf of Te Iwi o Ngāti Te Ata Waiohua Inc.

**DECISION
ON APPLICATION FOR AN URGENT HEARING**

27 Poutū-te-rangi 2018

Introduction

1. On 17 August 2016, the Tribunal received an application for an urgent hearing of Wai 2568, the Ngāti Te Ata (Minhinnick) Claim, from Roimata Minhinnick on behalf of Te Ara Rangatū o Te Iwi o Ngāti Te Ata Waiohū Inc. (TAR) (Wai 2568, #2.1.1). The application concerns the Crown's process regarding the Ngāti Te Ata settlement negotiations, as well as the Ngāti Tamaoho Deed of Settlement.

Procedural History

2. The statement of claim was received on 15 August 2016 and registered on 25 August 2016 (Wai 2568, #2.1.1).
3. On 7 and 8 September 2016, the Tribunal received the submissions from the Crown responding to the application for urgent hearing. The Crown's submissions were accompanied by the affidavit of Stephen Ross Church (Wai 2568, #A1).
4. On 11 April 2017, I directed the applicant to file submissions addressing the relationship between TAR and the Ngāti Te Ata Claims Support Trust Whānau Trust (NTA) (Wai 2568, #2.5.3). I also directed the applicant to respond to the issue of the connection between TAR and NTA by 27 April 2017.
5. On 19 April 2017, the Crown filed a memorandum informing the Tribunal that the Ngāti Tamaoho Deed of Settlement was due to be signed on 30 April 2017.
6. On 26 April 2017, the Tribunal received a response from Josie Smith, Chairperson of NTA, addressing the connection between TAR and NTA.
7. On 27 April 2017, the applicant, Mr Minhinnick, filed a third brief of evidence in response to my directions dated 11 April.
8. On 30 April 2017, the Ngāti Tamaoho Deed of Settlement was signed.
9. On 30 June 2017, the Crown filed a memorandum updating the Tribunal on the Ngāti Tamaoho Claims Settlement Bill that was introduced into the House of Representatives on 22 June 2017. Further, informing the Tribunal that Ngāti Te Ata commenced proceedings in the High Court with a disputes hearing date set down for 4 August 2017.

Background

10. In May 2011, the Crown recognised the mandate of the NTA to represent Ngāti Te Ata in negotiating a comprehensive Treaty settlement. NTA and the Crown signed Terms of Negotiation in June 2011.
11. Clause 19.1 of the Terms of Negotiation states that 'during these negotiations, the Trustees agree not to initiate or pursue, before any court or Tribunal, any legal proceedings relating to any other claims that are within the scope of the negotiations, except as provided in clause 20'.
12. In December 2013, TAR initiated legal proceedings in the High Court against the Crown relating to the Wai 31 claim. Wai 31 raised issues in respect of Maioro and the wāhi tapu situated there (Wai 2568, #1.1.1).
13. In January 2014, the Crown paused Ngāti Te Ata's Treaty negotiations in light of TAR's litigation (Wai 2568, #1.1.1(a)).

Applicant's Submissions

14. The applicant alleges that Ngāti Te Ata's customary interests, as well as Ngāti Te Ata's rangatiratanga, will be prejudicially affected by the Crown's ongoing settlement negotiations with Ngāti Tamaoho.
15. The applicant notes that the Crown has paused settlement negotiations with Ngāti Te Ata because of legal proceedings brought by the trustees of TAR against the Crown. The applicant submits that it is contrary to the principles of the Treaty of Waitangi for the Crown to pause settlement negotiations with Ngāti Te Ata.
16. The applicant argues that the Crown's decision to suspend negotiations with Ngāti Te Ata in 2014 was unjustified as it was not Ngāti Te Ata that initiated legal proceedings in the High Court against the Crown; rather that legal action was brought by TAR.

Crown's submissions

17. The Crown opposes the application and says the grounds for urgency have not been met.
18. The Crown submits Ngāti Te Ata will not suffer significant and irreversible prejudice as a result of the proposed redress. The Crown has followed a robust overlapping claims process and the proposed Ngāti Tamaoho settlement does not provide exclusive redress in the disputed areas, Maioro and the Awhitū Peninsula, but rather the recognition of customary interest in those areas (Wai 2568, #3.1.1).
19. The Crown submits that it is inconsistent with settlement negotiations for Ngāti Te Ata to pursue High Court proceedings that examine the nature of those negotiations.
20. The Crown submits that following Ngāti Te Ata's rejection of the Crown's quantum and on-account offer in 2013, and TAR bringing litigation of broad scope in response to this offer, the decision to pause negotiations was reasonable in the circumstances. The Crown did not consider that further negotiations would result in comprehensive settlement of NTA's claims and under cl 20.1.4 of the Terms of Negotiation both parties reserved the right to withdraw from negotiations if they became untenable (Wai 2568, #3.1.9).

Urgency Criteria

21. The Tribunal's *Guide to Practice and Procedure* states the following with regards to applications for an urgent hearing:

In deciding an urgency application, the Tribunal has a regard to a number of factors. Of particular importance is whether:

- 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;
- There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- The claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- The claim or claims challenge an important current or pending Crown action or policy;

- An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
- Any other grounds justifying urgency have been made out.

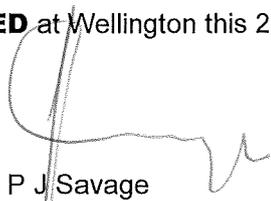
Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

Decision

22. It is clear from the above recital of the steps taken before this Tribunal that this application for urgency is dormant, although the applicant may be pursuing the issue in other fora.
23. For that very reason the application for urgent hearing does not meet the criteria and the application is declined.
24. This decision is, however, without prejudice to the applicant's right to bring a further application at a later date should circumstances change.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel and those on the notification list for Wai 2568, the Ngāti Te Ata Settlement (Minhinnick) claim.

DATED at Wellington this 27th day of March 2018



Judge P. J. Savage
Deputy Chairperson

WAITANGI TRIBUNAL