

Wai 1040

IN THE WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD

3 September 2018

1. This memorandum-directions addresses requests for filing extensions for claimant replies to Crown closing submissions for stage 2 of the Te Paparahi o Te Raki inquiry (Wai 1040) and other matters.

Extension requests to file claim-specific replies in August 2018

2. In my memorandum-directions dated 27 June 2018, I granted a blanket extension for claimants and counsel to file claim-specific replies to Crown closing submissions by 15 August 2018 (Wai 1040, #2.7.18).
3. The Tribunal has since received several requests for further extensions.
4. Leave is granted for the extension requests outlined below.

Requests to file claim-specific replies by 17 August 2018

5. Counsel Daniel Watkins and Roslyn Park sought leave to file specific replies for the Te Popoto and Te Honi Honi Claim (Wai 1347) claims by 17 August 2018 (#3.2.2743).
6. This reply has now been received by the Tribunal.

Requests to file claim-specific replies by 20 August 2018

7. Counsel Bryce Lyall sought leave to file a specific reply for the claim by Kathleen Florence Smith, Maia Pitman and Georgina Clark on behalf of the uri of Te Waitote Natanahira Pera and Ringi Hone Pera (Wai 2373) by 20 August 2018 (#3.2.2735).
8. Mr Lyall's reply for Wai 2373 has now been received by the Tribunal.
9. Counsel Kelly Dixon and Alisha Castle sought leave to file specific replies by 20 August 2018 for the following claims:
 - (a) Paki Pirihi on behalf of Patuharakeke (Wai 745) and 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 (Wai 1308) (#3.2.2741); and
 - (b) Nga Hapū o Te Wahapū o Hokianga nui a Kupe (Wai 250 and 2003) (#3.2.2739).
10. These reply submissions have now been received by the Tribunal.
11. Counsel Janet Mason and Yvette Rigby sought leave to file a specific reply for the Te Rarawa (Piripi) Claim (Wai 1701) by 20 August 2018 (#3.2.2742).
12. These reply submissions have now been received by the Tribunal.

Request to file claim-specific replies by 24 August 2018

13. Counsel Linda Thornton sought leave to file specific replies for the following claims by 24 August 2018 (#3.2.2738):
 - (a) Ani Taniwha on behalf of herself and others (Wai 1666);
 - (b) Owen Hape Kingi on behalf of himself and others (Wai 1832); and
 - (c) Amelia Taniwha on behalf of herself and others (Wai 2149).

14. These have now been received by the Tribunal.

Request to file claim-specific replies by 27 August 2018

15. Counsel Season-Mary Downs and Heather Jamieson sought leave to file claim-specific replies for the following claims by 27 August 2018 (#3.2.2732):

- (a) Hira Hunapo (Wai 68);
- (b) Pari Peihopa (Wai 565);
- (c) Phillip Bristow for Ngāti Manu (Wai 1440);
- (d) Phillip Bristow for Te Roroa (Wai 1445);
- (e) George Davies and Huhana Lyndon for the descendants of Hairama Pita Kino (Wai 1544/1677);
- (f) Sadie Mcgee (Wai 1710); and
- (g) Wattie Cooper (Wai 1972).

16. On 24 August 2018, counsel filed replies for the following claims:

- (a) Pari Peihopa (Wai 565);
- (b) Phillip Bristow for Ngāti Manu (Wai 1440);
- (c) Phillip Bristow for Te Roroa (Wai 1445);
- (d) George Davies and Huhana Lyndon for the descendants of Hairama Pita Kino (Wai 1544/1677);

17. Counsel advised that upon reflection, they have considered that no further submissions are necessary for the Wai 68, Wai 1710 and Wai 1972 claims.

Requests to file claim-specific replies by 31 August 2018

18. Counsel Alana Thomas sought leave to file a specific reply for a claim by Te Huranga Hohaia on behalf of Te Rūnanga o Ngāti Rēhia for and on behalf of the Hapū of Ngāti Rēhia (Wai 1341) by 31 August 2018 (#3.2.2747).

19. Counsel Tavake Afeaki, Neuton Lambert and Siaso Tofi sought leave to file specific replies for the following claims by 31 August 2018 (#3.2.2745):

- (a) Himiona Tūoro (D), Rev. Miriama Solomon (Nee Tūoro), Graeme Prebble Jnr on behalf of the Whānau and Hapū of Hokianga Ngāpuhi and Ors (Wai 985);
- (b) Peter Lunden, Te Whānau Lunden and the Descendants of Ngāi Tūpoto (Wai 1525);
- (c) Dr Mary-Anne Tapu Baker on behalf of ngā Uri o Maikuku rāua ko Huatakaroa, namely Kaiteke Te Kemara I, Te Ruki Kawiti, Hongi Hika, Ngāti Rahiri and Ngāti Kawa (Wai 1536); and
- (d) Amelia Broderick (D), and Thomas Harris on behalf of Ngāti Toro (Wai 2059).

Request to file claim-specific replies by 14 September 2018

20. Counsel Cameron Hockly sought leave to file specific reply submissions for the Kohewhata Block and Parahirahi C Claim (Wai 1478) by 14 September 2018. Counsel submits that the extension is necessary because he did not receive instructions to act for the claimants until 20 August 2018.

21. The leave sought is granted.

Counsel Moana Tuwhare's request to file combined closing and reply for Wai 1679

22. Counsel Moana Tuwhare filed a 'combined closing and reply' submission on 16 August 2018 for Wayne Stokes and Maurice Penney for the people of Te Urikapana and Ngare Hauata hapū, the beneficiaries of the Kiwikiwi Whanau Charitable Trust and Remana and Arihi Kiwikiwi Whanau Trust (Wai 1679).
23. Counsel refers to her extenuating personal circumstances that prevented Wai 1679 closings from being filed by the deadline set and emphasises that this was not the claimants fault.
24. Counsel acknowledges this combined closing submission is unorthodox but submits due to the generic nature of the Crown's closings in that it has not addressed specific claims, not having Wai 1679 specific closings to respond to would likely not have altered the Crown's position as submitted. Counsel seek leave to file this out of time.
25. In my memorandum-directions dated 20 July 2017 (#2.6.264) I noted that Ms Tuwhare had not filed closings for Wai 1679 by the 10 July 2017 deadline. I advised counsel they would need to seek leave to file them later. On 18 June 2018, counsel sought leave to file claim-specific replies for Wai 1679 by 31 July 2018 (#3.2.2715), which I granted (#2.7.18). However, those closing submissions were not received.
26. The time for claimant closings ended a long time ago. Even with multiple filing extensions, the closing submissions for Wai 1679 should have been filed more than a year ago. This request is declined on the basis that the closings were filed very late.

Other matters

Wai 58

27. On 25 May 2018, claimant counsel Darrell Naden and Stephanie Roughton filed a memorandum and supporting affidavit requesting that the Tribunal "affirm that claim representation for the Wai 58 claim is with the Whangaroa Maori Executives and its representatives" (#3.2.xxx at [1]). The Whangaroa Lands and Fisheries Claim (Wai 58), which was originally lodged by Terry Smith on behalf of the Whangaroa Maori Executives, but was amended in 1992 to replace the named claimant with Hiwi Tauroa, then Chairman of Te Runanga o Whaingaroa (Wai 58, #1.1(b)). This amendment was registered on 9 June 1992 by the then Chairperson of the Tribunal (Wai 58, #2.3). Counsel submit that this amendment to the claim should not have been registered without the consent of the Whangaroa Maori Executives.
28. This is essentially a request for the Tribunal to reconsider a decision that has already been made. I do not intend to revisit that decision.

Request to withdraw allegations relating to the Marine and Coastal Area (Takutai Moana) Act 2011

29. On 8 August 2018, claimant counsel Darrell Naden and Stephanie Roughton sought leave to withdraw the allegations relating to the Marine and Coastal Area (Takutai Moana) Act 2011 (the MACA Act) in the Te Whānau o Rataroa (Aldridge) Claim (Wai 2376) from the Wai 1040 inquiry. Counsel submits that none of the evidence advanced in support of this claim related to the MACA Act and although issues relating to the MACA Act were included in the claimants' closing submissions (#3.3.316(1) at [86] to [102]), this was only as a precautionary measure in case the Tribunal did not grant a separate inquiry into the MACA Act. Given that the Tribunal has since commenced the Marine and Coastal Area (Takutai Moana) Act Inquiry (Wai 2660), the Wai 2376 claimants seek for the MACA Act aspects of their claim to be inquired into as part of that inquiry. Counsel

further submit that they have consulted with counsel for the Crown and the Crown does not object.

30. Mr Naden and Ms Roughton's request is granted. The MACA Act allegations in claim were not added until the claimants' amended statement of claim dated 16 May 2018 (#1.1.392(b)) and claimants have not in fact advanced evidence in relation to the MACA Act before this Tribunal.
31. Counsel have filed an amended statement of claim with the allegations relating to the MACA Act removed. The amendment is to be entered on Wai 2376, the Te Whānau o Rataroa (Aldridge) Claim, as document #1.1.1(d) and on Wai 1040, the Te Paparahi o Te Raki Inquiry, as document #1.1.392(d). This amended statement of claim will now be the final statement of claim for Wai 2376 for the purposes of the Wai 1040 inquiry.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki inquiry.

DATED at Rotorua this 3rd day of September 2018



Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL