

**IN THE WAITANGI TRIBUNAL**

**CONCERNING** the Treaty of Waitangi Act 1975

**AND** the Te Paparahi o Te Raki Inquiry

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**MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD**

20 December 2017

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1. This memorandum-directions responds to requests by counsel in stage 2 of the Te Paparahi o Te Raki inquiry (Wai 1040) for:
  - a) this Tribunal to make a preliminary finding in respect of Te Horo claims prior to, and distinct from, the release of the stage 2 Te Paparahi o Te Raki report;
  - b) extensions to file Crown answers to Tribunal questions; and
  - c) an extension to the filing deadline for replies to Crown closings.

### **Request for preliminary finding on a targeted remedy for 10 Te Horo-related claims**

2. On 8 December 2017, claimant counsel representing certain Te Horo-related claims filed a joint memorandum (#3.2.2675) requesting a targeted preliminary finding on behalf of:
  - a) the Te Orewai Te Horo Trust claim, Wai 1753 (counsel B D Gilling/S Dawe);
  - b) Te Horo Block Development Scheme Claim, Wai 149 (counsel C Terei/K Hopkins);
  - c) Pīpīwai C and Pīpīwai G Claim, Wai 455 (counsel C Terei/K Hopkins);
  - d) Descendants of Te Moananui-a-Kiwa Anaru Claim, Wai 1518 (counsel C Terei/K Hopkins);
  - e) Te Orewai Hapū Claim, Wai 1520 (counsel C Terei/K Hopkins);
  - f) Descendants of Ataiti Te Rehu Hoterene Claim, Wai 1527 (counsel C Terei/K Hopkins);
  - g) Te Horo 2B2B2B Block (Tohu) Claim, Wai 2182 (counsel C Terei/K Hopkins);
  - h) Descendants of Hoori Rarani and Te Orewai Hapū Claim, Wai 1533 (counsel D Stone/A Bagsic/C Leauga);
  - i) Te Orewai Lands (Lawrence) Claim, Wai 2153 (counsel D Stone/A Bagsic/C Leauga); and
  - j) Crown Administration of Lands (Murphy) Claim, Wai 2240 (counsel D Stone/A Bagsic/C Leauga).
3. Counsel's submission is on behalf of the Te Horo-related claims about which counsel were able to obtain instruction. Counsel refer to the closings submissions for the Te Orewai Te Horo Trust claim (Wai 1753), filed on 27 June 2017 and presented at hearing week 25 on 1 August 2017 at Otangaroa Marae, Whangaroa (#3.3.309). Counsel say the all the claimants listed above adopt the specific remedy sought. These closings seek a 'Te Horo specific remedy, targeting Te Horo and administered through the Trust rather than being part of an amorphous and anonymous portion of a Ngāpuhi wide settlement' (#3.3.309, para 141).
4. Counsel submit these claimants seek a private Act enabling a de-amalgamation of the Te Horo blocks, which would redress the alleged Crown breaches of Te Tiriti concerning the Te Horo blocks and the Te Horo Development Scheme. Counsel refer to Deputy Chief Judge Fox's conclusion, during a Maori Land Court Hearing held in Whangarei on 22 October 2014, that de-amalgamation in order to return the land is not possible under Te Ture Whenua Maori Act 1993.
5. Counsel point out that the Crown has, to date, not addressed claimants' request for this targeted remedy.
6. Counsel seek a Tribunal direction that the Crown provide a response 'regarding engagement with the Claimants to negotiate a targeted settlement for Te Horo which would include the drafting of a private act and the other elements set out in closing submissions' (#3.2.2675 at [10]).

### *Next steps*

7. To assist my decision on this matter, I would like the Crown to respond to counsel's request in paragraph 10 of the joint memorandum (#3.2.2675) outlined immediately above.
8. Crown counsel are to advise on a response to this matter by **12pm, 5 March 2018**.

### **Crown counsel request extensions to file answers to Tribunal questions**

9. On 18 December 2017, Crown counsel Gillian Gillies sought extensions to file answers for the 30 Tribunal questions in my direction of 13 November 2017 (#2.7.2). The answers were due on 18 December. The extensions sought are as follows:
  - a) 4-day extension to Friday 22 December 2017 for answers to questions numbered 2–4, 6–12, 14, 18–19, 21–23, 25–27 and 29–30 to allow final instructions to be obtained.
  - b) A longer extension to 19 February 2018 to answer the remaining questions numbered 1, 5, 13, 15–7, 20, 24, 28 because;
    - i. counsel are seeking further instructions in relation to question 1;
    - ii. question 5 is extensive and the Crown seeks further time to review Professor Brookfield's *Waitangi and Indigenous Rights*, 2006 publication;
    - iii. questions 13, 15–17 and 20 require further research; and
    - iv. questions 24 and 28 require further input and instructions from departments.
10. Crown counsel point out that the 19 February 2018 deadline is the same for the other tranche of Tribunal questions in my direction of 4 December 2017 (#2.7.5).
11. I grant the extensions sought. Crown counsel are to file answers to the Tribunal questions specified in paragraph 9(a) above by **12pm, Friday 22 December 2017** and in paragraph 9(b) above by **12pm, Monday 19 February 2018**.

### **Joint claimant counsel request to further extend filing deadline for replies to Crown closings**

12. On 23 November 2017, claimant counsel jointly requested (#3.2.2665; #3.2.2666) that the filing deadline for replies to generic and specific Crown closings be further extended as follows:
  - a) 60 working days for replies to generic closings after receiving Crown responses to all Tribunal questions; and
  - b) 90 working days for replies to specific closings after receiving Crown responses to all Tribunal questions.
13. The earliest date counsel ask for these extensions to be calculated from is 15 January 2018 (excluding a Christmas break period from 23 December 2017 to 14 January 2018).
14. This is the second joint request from counsel to extend the filing deadline for replies. I granted counsel's first request in my memorandum-directions dated 11 October 2017 to extend (from December 2017) the filing deadline for replies to generic Crown closing submissions to 2 February 2018, and for specific Crown closing submissions to 2 March 2018 (#2.6.285).

15. Counsel sought this first extension due to delays in the Crown filing its closings, their concurrent work on other Tribunal inquiries, other non-Tribunal work events, and the proximity to Christmas.
16. Counsel now seek a further extension due to Crown answers to all Tribunal panel questions not being available until the New Year. At the time of writing their 23 November memoranda, counsel noted that the Tribunal's questions concerning the TSOI environmental issue were yet to be issued. Counsel submitted that this timing would have significant flow-on effects in respect of claimant counsel drafting both generic and claim-specific replies to Crown closing submissions, both written and oral. This would be particularly so given the impending Christmas break and the involvement of various counsel in other inquiries.

*Decision*

17. Counsel have provided no specific reasons for the proposed 60 and 90-working day measures. Replies are not a time to regurgitate closing submissions and should be focussed on points raised by the Crown not addressed in claimant closings. Given that claimants have already had from 20 October 2017 to start on their replies to Crown closings, an extension is granted but limited to 20 working days for replies to generic Crown closing submissions and 30 working days for replies to specific Crown closing submissions.
18. I accept that the deadline calculation can start from when the Crown has answered all Tribunal questions and that statutory days are excluded from the count. As outlined above, the Crown is to file answers to all the Tribunal questions in my memoranda-directions of 13 November 2017 (#2.7.2) and 4 December 2017 (#2.7.5) by 19 February 2018.
19. Claimants, therefore, are directed to file their replies to:
  - a) generic Crown closing submissions by **12pm, Monday 19 March 2018**; and
  - b) specific Crown closing submissions by **12pm, Wednesday 4 April 2018**.

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 20<sup>th</sup> day of December 2017



Judge C T Coxhead  
Presiding Officer

**WAITANGI TRIBUNAL**