

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

22 November 2017

1. This memorandum-directions concerns the request by the Awataha Land Claim (Wai 187) claimants to remove their claim from the Te Paparahi o Te Raki inquiry (Wai 1040) inquiry, for the Wai 1040 Tribunal not report on Wai 187, and for Wai 187 to be heard separately.

Request by Awataha Land Claim (Wai 187) claimants to remove their claim from the Wai 1040 inquiry, not report on it, and for Wai 187 to be heard separately.

Counsel Philip Creagh's submission for Wai 187

2. On 20 October 2017, Counsel Philip Charles Creagh representing Mrs Rangitina Otene Wilson on behalf of the Awataha Marae Incorporated Society's Awataha Land Claim (Wai 187) filed a memorandum seeking directions to remove the Wai 187 claim from the Wai 1040 inquiry, for the Wai 1040 Tribunal not to report on it, and for the claim to be heard separately.
3. The Wai 187 statement of claim alleges the Awataha Marae site at Northcote (75C/536 Allot. 698 Takapuna Parish DP 37999 being 3.6702 ha) was acquired by the Crown from the Catholic Church (land adjoins Hato Petera) around the mid-20th century for broadcasting, and then, educational purposes. The claimants say when the land was declared surplus to educational requirements in 1982, the Society tried to obtain the freehold by either gift or purchase but were granted a perpetually renewable 33-year leasehold under the Land Act 1948. Mr Creagh says the Wai 187 claimants allege the Crown has breached duties owed to them by only giving them a leasehold interest rather than a freehold interest in the Marae site.
4. Counsel say Wai 187 is a claim as a non-iwi affiliated pan/urban-Māori incorporated body. It is not affiliated with or an extension of any iwi or hapū. Counsel says though Wai 187 is mentioned in s 12(3)(b)(i) of the Ngāti Whatua Orākei Claims Settlement Act 2012, the claimants advised the Minister of Treaty Negotiations that Ngāti Whatua Orākei had 'no involvement in or entitlement to any oversight of Awataha and Awataha is not affiliated in any way with Ngāti Whatua Orākei, so it is not a representative entity'. Accordingly, counsel submit that the purported settlement continues to be a simple nullity, and so would any further purported settlement of Wai 187 by any iwi or hapū.
5. Similarly, Mr Creagh signals the claimants will be amending their claim to include allegations concerning the Crown breaching its Treaty obligations by 'virtue of' the 'Te Rūnanga o Ngāti Whatua Agreement in Principle (AIP) to Settle Historical claims', dated 18 August 2017. He says clause 6.4 of the AIP, treats 'the Awataha Marae site as surplus Crown land and land in which its freehold interest can be made available to a third party by way of purely commercial and not cultural redress'. Counsel submit Wai 187 is not a claim in which any iwi or hapū including Te Rūnanga o Ngāti Whatua has any interest or right and entitlement to purport to settle the Wai 187 claim. He indicates the supplemented claim, therefore, will be that the Crown has breached duties owed to Wai 187 claimants i.e. to first offer the land to them 'in priority to any other organisation'.
6. Mr Creagh says the claimants seek removal of Wai 187 from the Wai 1040 inquiry due to a failure of the Tribunal to adequately inform them about the inquiry. He says that, the claimants have received no further correspondence or documents from the Tribunal in relation to their claim since 24 April 1991 when the claim was registered. Specifically, he says the claimants have not been notified of any proceeding or hearing relating to Wai 187 claim. Mr Creagh submits, therefore, the claim has 'never been satisfactorily advanced' because of the Tribunal's reluctance to recognise 'Awataha' as a party to a Waitangi Tribunal hearing as they are not an iwi or a hapū.

7. Counsel say the general nature of their submission is due to urgency and that they have not yet been provided with any proceedings or documents to respond to regarding Wai 1040. Counsel say they would be happy to provide further or more detailed submissions once the position is clearer.

Wai 187 claim and the Te Paparahi o Te Raki inquiry (Wai 1040)

8. The Registrar advises the latest Wai 187 Statement of claim on record is the original filed in February 1991 (Wai 187 #1.1, Wai 406 #1.11). This statement of claim listed the then representatives of the Awataha Marae Incorporated Society and their hapū affiliations as Rangitinia Otene Wilson (Ngāpuhi/Te Rarawa/Tainui), Manaaki Wilson (Tuhoe/Arawa), Heremaia Hopihana Romana (Jerry) Norman (Ngāti Kuri/Te Aupouri/Ngāti Whatua), Hineira (Betty) Woodard (Tuhoe/Kahungunu/Ngāti Porou) and Harata Manihera Cash, (Ngātihine/Ngāpuhi). The claim says the Awataha Marae Incorporated Society made up of representatives from the various Māori committee of Raki Pae Whenua sought a place to site a marae for spiritual and educational purposes for their people and was granted a lease of the site concerned.
9. Wai 187 was registered in on 24 April 1991 (Wai 187 #2.1, Wai 406 #2.34). The registration direction raised some preliminary questions about Awataha Marae Incorporation being a pan-tribal body laying claim to the land concerned and their relationship with tangata whenua, in particular Te Kawerau a Maki. Correspondence from Rangitinia Wilson and Te Warena Taua in respect of these questions was received in March 1992 (Wai 187 #2.3, #2.4 and Wai 406, #2.28 #2.59).
10. Wai 187 was grouped into the Auckland-South, Auckland-Hauraki Consolidated Claims district (Wai 406). The claim was then formally consolidated into the Wai 1040 inquiry on 22 December 2011 (#2.5.106). The claim and its unrepresentative status has been recorded in several Wai 1040 memoranda-directions issued between December 2011 and November 2012 concerning planning for the stage 2 hearing programme (#2.5.106, #2.5.123, and #2.5.141), and then in memorandum-directions of 2 July 2015 concerning rotation 3 of the stage 2 hearing programme (#2.6.141).
11. Evidence and submissions have been filed on the Wai 1040 record concerning the Mahurangi block transactions in the nineteenth century and the history of the adjoining urupā. For instance, the #A14 2008 report entitled 'Northland Language, Culture and Education Part Two: Wahi Tapu, Taonga and Te Reo Māori' by David Armstrong, Vincent O'Malley, and Bruce Stirling uses the urupā as a case study and at p165 refers to the Wai 187 claim. In December 2013, coordinating counsel for Mahurangi Taiwhenua claimants submitted claimants wish to hold the pōwhiri for hearing week 7 (stage 2) at Awataha Marae (#3.2.413). (The hearing itself was held at the North Harbour Stadium Albany between 10 and 13 February 2014.) Awataha Marae is specifically mentioned in Mahurangi Taiwhenua counsel submissions filed in January and March 2016 seeking more hearing time for Mahurangi Taiwhenua claims (#3.2.1500 & #3.2.1544(b)).
12. The Wai 187 claim has till now not been represented by counsel for Wai 1040 inquiry purposes.

Next steps

13. Wai 187 counsel seek a direction for the claim to be heard separately and refer to their submission of 20 October 2017 being compiled under 'urgency'. However, it is not clear what is meant by 'urgency' here. I note counsel say they have not yet been provided with any proceedings or documents to respond to regarding Wai 1040 and offer to 'provide further or more detailed submissions once the position is clearer'. I will take up counsel's offer.

14. I direct the Registrar to provide counsel for Wai 187 with the index to the Wai 1040 record of inquiry and the Tribunal's *Guide to Practice and Procedure*. I also encourage counsel to consult the Waitangi Tribunal's 'Strategic Direction 2014-2025' document which outlines the current and future Tribunal inquiry programme.
15. Wai 187 counsel are directed to file further submissions on this matter by **Monday 18 December 2017**.

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 22nd day of November 2017



Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL