

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

20 November 2017

1. This memorandum-directions concerns the request for a preliminary finding on a discrete remedy for the Opuia Reserve matter sought by Ngāti Manu, Ngāti Hine and Te Kapotai hapū (Wai 2424) claimants in stage 2 of the Te Paparahi o Te Raki inquiry (Wai 1040) inquiry.

Request for preliminary finding on a discrete remedy for the Opuia Reserve matter sought by Ngāti Manu, Ngāti Hine and Te Kapotai hapū (Wai 2424) claimants

Counsel Bryan Gilling/C E Bulow submission for discrete remedy finding for Opuia Reserve (Wai 2424)

2. On 30 October 2017, counsel Dr Bryan Gilling and C E Bulow filed a memorandum on behalf of Maiki Marks and others for the Ngāti Manu, Ngāti Hine and Te Kapotai hapū (Wai 2424) claim concerning the Opuia Reserve matter. Counsel say Wai 2424 is a discrete, specific and targeted claim. Counsel advise that Wai 2424 claimants seek a preliminary finding via a direction from the Tribunal that would assist them in approaching the Crown for a 'discrete and unique settlement negotiation and agreement'. This direction would outline:
 - a) Whether the Wai 2424 claim fulfils the discrete remedy criteria as per Judge Wainwright's process in the Whanganui Lands inquiry (Wai 903) hearing phase, and taking into account the stage 1 finding that sovereignty was not ceded in 1840, and the Tribunal's discretion to make recommendations to the Crown under s6(2) of the Treaty of Waitangi Act 1975; and
 - b) Any recommendations the Tribunal may have for a discrete remedy for the Wai 2424 claim.
3. Counsel say the Wai 2424 claim relates to the largest coastal esplanade reserve remaining in Opuia, a 1,292m² strip of land adjacent to the Opuia Harbour, known as the Walls Bay Esplanade Reserve. The claim was registered in January 2014 and consolidated into the Wai 1040 inquiry in April 2014 (#2.6.67). Counsel submit that this is a contemporary claim focussing on issues from 1994 onwards and this claim is 'distinct and unique' and requires 'independent consideration' by the Tribunal.
4. Counsel refer to the Wai 2424 claim specific closings (#3.3.353), in which paragraphs 126-150 outline their case and call for a discrete remedy process and for the Crown to engage with claimants in a specific negotiation on this particular matter. In these closings, Wai 2424 claimants submit that there are two particular steps that would help resolve the current problems:
 - i. a Memorandum of Understanding being an appropriate initial step in negotiating the change of delegation of decision-making authority in respect of the Reserve to the claimants. This would need to be prescriptive of all of the relevant issues relating to easements and resource consents (paragraph 147).
 - ii. an alternative management option that gives decision-making authority to local iwi/hapū on matters relating to the granting of resource consents of which the FNDC and NRC have authority over. They refer to the precedent set in the Abel Tasman Foreshore Scenic Reserve Management Plan (paragraph 148).
5. Counsel point to the Crown's statement in October (#3.2.2626) that it would not be responding to claimant specific closing submissions due to the pressure of time and note

that the Crown closings filed to date do not specifically respond to the Wai 2424 claim issue. The Wai 2424 claimants, therefore, ask for a preliminary finding to be made separately and ahead of the stage 2 report and of claimant replies to Crown closings.

6. Counsel recognise that this is an unusual request, however, say given the unique nature of the Wai 2424 claim, they submit that this is the only way forward to ensure that the issues relevant to the claimants are 'adequately addressed by the Crown in a timely manner to address the current issues facing the claimants daily in respect of the Reserve'.

Wai 2424 claim and the Te Paparahi o Te Raki inquiry (Wai 1040)

7. The Tribunal received memoranda, submissions and evidence concerning the Wai 2424 matter between July 2014 and March 2015, in particular concerning the FNDC and DOC minister involvement in decisions on consents and easements for the boat yard to operate on the reserve and the associated High Court action. Some of this action concerned section 48 of the Reserves Act 1977
8. Wai 2424 claimant Maiki Marks presented evidence (#M3, #M3(a), (#M3(b)) at the Takutai Moana Taiwhenua hearing week 9 at Tau Henare Marae (4 to 8 August 2014) and several memoranda were filed when the boat yard easement was up for renewal (#3.2.805(a), #3.2.1007, #3.2.1065, #3.2.2045). At my request (#3.2.843(a) & 3.2.982(a)), Crown counsel filed updates on the court action in January and March 2015
9. Since my last direction on this particular matter in April 2015 (#2.6.121), the Tribunal has received several evidential and legal submission updates from the Wai 2424 claimant and counsel in October 2016 (#AA55, #AA55(a), February 2017 #AA55(b)) leading up to their claim specific closings in June 2017 (#3.3.353), and answers to post-hearing week 25 panel questions filed in August 2017 (#3.2.2573(a)).

Next steps

10. To assist my decision on this matter, I would like to hear the Crown's position on this request by the Wai 2424 claimants concerning the Opuia Reserve matter.
11. Crown counsel are to advise the Crown's position on this matter by **12pm, Monday 4 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 20th day of November 2017



Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL