

OFFICIAL

WAITANGI TRIBUNAL

Wai 2556
Wai 2576

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Aotea and Hauturu (Bayne
and Stephens) Claim

AND

the Ngāti Rehua & Ngātiwai ki
Aotea Trust Board Mandate
(Beazley) Claim

DECISION
ON APPLICATIONS FOR AN URGENT HEARING

17 July 2019

RECEIVED

Waitangi Tribunal

17 July 2019

Ministry of Justice
WELLINGTON

Introduction

1. This decision concerns two applications for urgent hearing in relation to the Crown's settlement negotiations with the Ngāti Rehua-Ngātiwai ki Aotea Trust Board, namely:
 - (a) Wai 2556, the Aotea and Hauturu (Bayne and Stephens) Claim, brought by Elizabeth Bayne (Reweti) and Marilyn Stephens on behalf of themselves; and
 - (b) Wai 2576, the Ngāti Rehua & Ngātiwai ki Aotea Trust Board Mandate (Beazley) Claim, brought by Michael Beazley.

Procedural History

2. On 1 February 2016, the Tribunal received a statement of claim and an application for an urgent hearing from Elizabeth Bayne (Reweti) and Marilyn Stephens (Wai 2556, #1.1.1). The applicants alleged that the Crown has breached the principles of the Treaty of Waitangi by entering into:
 - (a) the Ngāti Manuhiri Deed of Settlement;
 - (b) the Ngāti Rehua-Ngāti Wai ki Aotea Agreement in Principle; and
 - (c) the Ngāti Marutūāhu Iwi Record of Agreement.Further, the applicants alleged that the Crown has breached the Treaty of Waitangi by acknowledging Ngāti Rehua as the mandated body to represent all tangata whenua of Great Barrier Island.
3. On 26 April 2016, the Tribunal received submissions and evidence from the Crown (Wai 2556, #3.1.1; #A1; #A1(a)) and a memorandum from Ngāti Rehua Ngāti Wai ki Aotea Trust opposing the application (Wai 2556, #3.1.2).
4. Following extension requests, the applicants filed their submissions and evidence in reply to the Crown and the Trust (Wai 2556, #3.1.4; #A2; #A2(a); #A3; #A3(a); #A4), with further documents filed on 9 June 2016. I expressed my concern with the tone and content of some of the documents filed and the new matters raised in the three affidavits filed. As a result, I directed the Crown and the Trust Board to file in response to the applicants' reply submissions and evidence (Wai 2556, #2.5.3).
5. The Crown and the Trust Board filed further submissions and evidence on 5 July 2016 (Wai 2556, #3.1.9 & #3.1.10). The Trust then filed additional evidence on 6 July 2016 (Wai 2556, #3.1.11). On 13 July 2016, the applicants were granted leave to file submissions in reply to the Crown and the Trust Board's additional submissions (Wai 2556, #2.5.4). The Tribunal received these submissions the following day on 14 July 2016 (Wai 2556, #3.1.14).
6. On 17 November 2016 counsel for the applicants filed a memorandum of counsel asking me to determine the application for urgency without delay, considering the imminent Crown settlement negotiations (Wai 2556, #3.1.15).
7. The Tribunal received a second claim and application for urgent hearing in relation to the Ngāti Rēhua/Ngātiwai ki Aotea Trust Board's mandate and settlement negotiations from Michael Beazley on 19 December 2016 (Wai 2576, #1.1.1 & #3.1.1). This claim was registered as Wai 2576.
8. The Crown filed submissions and evidence opposing the Wai 2576 application on 3 February 2017 (Wai 2576, #3.1.5 & #A2). The Wai 2576 applicants file submissions in reply to those of the Crown on 13 February 2017 (Wai 2576, #3.1.7).

9. I issued directions on 29 March 2017 requesting that the Crown update the Tribunal on the ratification process for the Ngāti Rēhua-Ngātiwai ki Aotea Deed of Settlement (Wai 2556, #2.5.5 & Wai 2576, #2.5.2). The Crown responded on 4 April 2017 informing the Tribunal that the deed of settlement had been ratified, that proceedings had been filed in the High Court seeking orders to remove the current Ngāti Rēhua-Ngātiwai ki Aotea Trust Board trustees, and that an annual general meeting (AGM) of the Trust had been scheduled to elect new trustees (Wai 2576, #3.1.8 & #3.1.8(a)).
10. On 6 April 2017, counsel for the Wai 2576 applicants filed submissions challenging the result of the ratification vote and arguing that although the High Court proceedings might resolve issues with the management of the Trust, it would not address the Crown's conduct (Wai 2576, #3.1.10).
11. On 4 May 2017 I released directions advising all parties that in light of the ratification of the Ngāti Rēhua-Ngātiwai ki Aotea Deed of Settlement and the Crown's indication that it would not finalise the settlement until the Ngāti Rēhua-Ngātiwai ki Aotea Trust Board held its AGM to elect new trustees, I would adjourn consideration of this application for urgent hearing (Wai 2556, #2.5.6 & Wai 2576, #2.5.3). The applicants were directed to file an update with the Tribunal on the outcome of the AGM and any implications for these proceedings.
12. The Crown filed a further update on 17 May 2017, informing the Tribunal that although an AGM had been held, the hired facilities had to be vacated before the election of trustees could be conducted (Wai 2576, #3.1.11). The AGM was to be reconvened in June 2017. No update was received from the applicants. I issued directions confirming that I would await the result of the trustee elections (Wai 2576, #2.5.4).
13. Counsel for the Wai 2576 applicant filed a memorandum on 28 November 2017 advising that no AGM had been held but seeking to revive those parts of the application that related to Marutūāhu redress (Wai 2576, #3.1.12 & #3.1.12(a)). I directed the Crown to respond to this renewed application by 8 February 2018 (Wai 2576, #2.5.5).
14. The Crown filed submissions opposing the renewed application on 8 February 2018 (Wai 2576, #3.1.13). On 27 February 2018, the Crown filed a memorandum informing the Tribunal that the High Court proceedings had been in part resolved by way of consent orders (Wai 2576, #3.1.14; #3.1.14(a)). The trustees of the Trust had all either had their terms expired or stepped down, and the Māori Trustee had been appointed as an independent interim trustee until 18 July 2018 or until new trustees could be appointed, whichever was sooner. The Crown confirmed that it did not intend to progress the Ngāti Rēhua-Ngātiwai ki Aotea settlement until new trustees were appointed.
15. The Wai 2576 applicants filed submissions in reply to those of the Crown on 28 February 2018, arguing that the Crown failed to comply with its own policy for negotiating the settlement of overlapping claims and that in negotiating the Marutūāhu settlement redress, the Crown consulted with the Ngātiwai Trust Board, rather than with Ngāti Rēhua-Ngātiwai ki Aotea despite the redress in question falling within the rohe of Ngāti Rēhua-Ngātiwai ki Aotea (Wai #3.1.15).

Urgency Criteria

16. 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.

Discussion

17. The first of these applications for urgency was filed some 3 and a half years ago.
18. There is no indication of any development in the matter over the last 6 months. There is no indication that any step by the Crown is imminent.

Decision

19. In these circumstances the applications cannot meet the criteria for urgency and are dismissed.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel and those on the notification lists for Wai 2556, the Aotea and Hauturu (Bayne and Stephens) Claim, and Wai 2576, the Ngāti Rehua & Ngātiwai ki Aotea Trust Board Mandate (Beazley) Claim.

DATED at Wellington this 17th day of July 2019



Judge P. J. Savage
Deputy Chairperson

WAITANGI TRIBUNAL