

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

2 August 2017

1. This memorandum-directions addresses the request to include the Ōpanake 1C South 6B Block covered in the Wai 1521 claim in stage 2 of the Te Paparahi o Te Raki inquiry (Wai 1040) for reporting purposes.

Request for Te Paparahi o Te Raki panel to make findings and recommendations for the Ōpanake 1C South 6B Block Claim (Wai 1521)

2. At week 24 hearing on 20 June 2017, claimant counsel Tavake Afeaki and James Lewis in their oral and written closing submission (#3.3.270, paras 8 to 14) for the Ōpanake 1C South 6B Block Claim (Wai 1521) repeated their earlier submissions that the Wai 1521 claimants are prejudicially affected by the Wai 1040 inquiry boundary revision decision of 17 December 2014 (#2.6.101, #2.6.140). This is because the revised boundary decision excluded claimants' *take* concerning the Ōpanake 1C South 6B land block and thus the ability of this Tribunal to make findings or recommendations concerning it.
3. This claim is currently aggregated into the Wai 1040 inquiry (#2.6.140), and I have indicated that it will not be fully reported on by the Wai 1040 Tribunal (#2.6.101).
4. Counsel has sought re-inclusion of the block for Tribunal reporting purposes since October 2014 in memoranda #3.2.802, #3.2.981 and in the opening submissions for Wai 1521, #3.3.129, and most recently in their closing submission for the claim (#3.3.270).
5. Initially the Wai 1521 claimants sought to retain the original Inquiry boundary which was inclusive of Ōpanake block. On 24 October 2014, counsel submitted on the proposed boundary revision (#3.2.802) saying that although the Ōpanake 1C South 6B block was within the boundaries of the Te Roroa inquiry, Mr Howearth is Ngāpuhi and does not affiliate with Te Roroa, that his claim was not heard in the Te Roroa Tribunal Inquiry and has not been part of the Te Roroa settlement. Counsel requested a boundary change so that the Ōpanake 1C South 6B block would be included, or that the Tribunal provide a special exemption for the block to be included in the jurisdiction of the Wai 1040 inquiry. Counsel noted that other such exceptions had been made earlier such as that for Taita Marae.
6. On 30 March 2015 at my direction, counsel filed a memorandum requesting aggregation into the inquiry (#3.2.981). Counsel stated that Mr Howearth 'acknowledges that his claim as pleaded also concerns other whenua interests within the Northland Inquiry District but that the specific issues arising from the Crown's actions where he resides in Opanake require airing before the Tribunal. Further, Mr Howearth instructs that the Crown actions alleged were inflicted on the claimant and his whanau personally and not to any other whanau, hapū or iwi around them. ... Counsel submit that the Te Paparahi o Te Raki Inquiry is the only inquiry or legal avenue available for our client's whanau claim to be heard for Te Tiriti o Waitangi breaches against them.'
7. In April 2015, in the opening submissions for Wai 1521 (#3.3.129) counsel said Mr Howearth is 'significantly prejudiced by the change in boundary at this late stage, and respectfully asks that the change be reconsidered to include the Ōpanake IC South 6 block and/or the Tribunal agree to accept his aggregation into the Northland Inquiry, receive his evidence, make findings and recommendations as appropriate to remove the continuing prejudice he and his whānau are experiencing... . [A]ccepting this discreet whānau claim as a claim within the Te Paparahi o Te Raki Inquiry is within the Tribunal's jurisdiction and will not prejudice any other parties.'
8. In June 2017, in Wai 1521 closings, counsel say the Memorandum-directions (#2.6.101, #2.6.140) stated that the revised boundary would not prejudicially affect the claimants.

However, counsel point out that the Tribunal also stated that it would not be able to make findings or recommendations in relation to the claimant's evidence. Counsel submit 'the claimant is in no way to blame for the Crown imposing resource restrictions on the Tribunal and a political settlement framework which means that a boundary line prevented them from having their day in court and having the right to access a just outcome'.

9. Counsel also submit that the claimants did not and do not consent to anyone other than themselves settling their 'kaupapa whenua tuku iho'. They are 'aggrieved that their claim should be relegated to exclusion from remedies by Crown-generated restrictions and resources and implied consent from other parties, tribes or bodies'. In view of this, Counsel submit that 'if findings and recommendations are not made and the following submissions are not heard and acted upon, then the claimants will be prejudicially affected'. They add that as 'a consequence of this prejudice the Crown will be in breach of its duty to provide redress to the claimants.'
10. Mr Pua Howearth filed evidence on 1 April 2015 (#Q15), detailing his personal experiences and those of his whānau. Appended to Mr Howearth's brief was a map showing land proposed to be taken from Ōpanake 1C South 6B block to extend the area of the Maropiu Native School (#Q15(a)). I note that the most recent amended statement of claim for Wai 1521 of 1 May 2017 focuses on the takings of land in the Ōpanake 1C South 6B block, including for Maropiu Native School. It also includes allegations concerning the late Mr Pua Howearth's personal experiences at school and in employment.

Next steps

11. Parties will recall that at hearing week 24 on 20 June, I said the Tribunal would hear these Wai 1521 closings and that counsel could make a formal submission seeking reconsideration of whether this Tribunal would report on the Ōpanake 1C South 6B block issues. Crown counsel Andrew Irwin also sought clarification at hearing whether the Maropiu Native School mentioned in #Q15 and #Q15(a) lies in or outside the Wai 1040 inquiry boundary. Mr Afeaki said they would get some 'exacting maps' to show where it is just along the road from Taita Marae.
12. To date no submission seeking my reconsideration of this matter has been received. I understand that counsel are working on these submissions and intend to file soon. Counsel are directed to submit on this matter by **12pm, Friday 11 August 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 Otangaroa this 2nd day of August 2017



Judge C T Coxhead
Presiding Officer

WAITANGI TRIBUNAL