

East Coast Research Coordinating Committee

Chairperson's Report to the Presiding Officer 31 May 2006

Tēnā koe e te rangatira

In your memorandum-directions dated 9 March 2006 (Wai 900 #2.5.17) you called for the formation of a research coordinating committee to assist in progressing casebook research for the East Coast inquiry. You attached draft terms of reference for the committee and requested that it meet to agree its terms of reference and consider project briefs for research reports recommended in the casebook research programme. You directed that I should chair the inaugural meeting as Acting Chief Historian, together with a co-chair appointed by the cluster representatives if they wished. I was then to report to you on the results.

This report covers, in outline, the formation, work and agreements of the East Coast Research Coordinating Committee (ECRCC), inclusive of its third meeting on Saturday 27 May 2006. A detailed record of the three meetings can be found in the accompanying meeting minutes, of which the first two have been approved as final by the committee and the third is in draft form only pending review by members of the committee.

The ECRCC has held three meetings to date at the DB Hotel, Kaiti, Gisborne, on 8 April, 13 May and 27 May 2006. At the first meeting representatives of the five claimant clusters agreed to form the committee as proposed. This inaugural meeting discussed the ECRCC's constitution and a number of procedural issues. It adopted the terms of reference subject to the amendments and additions agreed, although positions were reserved on several points and for further consultation with cluster member groups. Revised terms of reference were considered at the second meeting and a final version was adopted. This document is attached.

Two procedural agreements influence the manner in which the chair reports to you on the committee's work. First, my role as chair is to report on the work and decisions of the ECRCC rather than to make recommendations on what has been done and agreed. Secondly, the terms of reference provide that 'if consensus cannot be achieved, the differing positions on the issue will be recorded in the chairperson's report'; and further that 'any matters referred to the presiding officer for decision will be specified'.

It became apparent at the first meeting of the ECRCC that while there was broad agreement on the shape of the casebook research programme approved at the judicial conference on 6 October 2004, the configuration of the programme required a further review. On the one hand, membership of the claimant clusters had evolved in the intervening 18 months. On the other, new claims had been registered whose

representatives stated that they had new issues to be researched. Part of the first and much of the second and third meetings were therefore taken up with a thorough review of the casebook programme.

Discussion concentrated on the overall configuration of principal topics to be researched, on the sub-topics to be included in each project, on the extent and purpose of project scoping assessments, on the balanced representation of issues specific to tribal groups and sub-district experiences, and on concepts and methodologies appropriate to the implementation of particular projects. In the third meeting, requests for additional research were reviewed with the assistance of several papers submitted by the requesting clusters.

The final result is an agreed casebook research programme that incorporates all of the topics specified in Dr Grant Phillipson's *Final recommendations* of September 2004. This document is attached. It is presented under the major issue groups specified in Dr Phillipson's document, then under project titles, which are further described by principal sub-topic under each heading and by additional agreements reached by the ECRCC on the scope or orientation of the research. There has been some reorganisation of the projects and thematic coverage. For example, the socio-economic impact report has been moved to a separate issue group and extended to cover social, cultural and other impacts in addition to the primarily economic focus of the original project description. But the set of project topics remains substantially the same as that agreed in late 2004.

In addition, the ECRCC has unanimously agreed to recommend that scoping reports be prepared on the issues specified by the United Tribal Council (projects 23 and 24) in relation to new East Coast claims registered since October 2004. Several other specific issues were incorporated into the existing project specifications.

The ECRCC was able to reach consensus on all but one of the topics proposed for research. This topic concerns grievances associated with Te Rūnanga o Ngāti Porou Act 1987 that have been raised by a number of claimants. While four of the clusters endorsed the research, one (Te Uru Karaka) was opposed. I would draw attention to the fact that the balance of opinion within the committee has no bearing on the merits of the research request itself.

In referring the proposal from Mr Hirschfeld for your consideration, I note that your direction of 7 July 2005 (Wai 900 #2.3.13) stated strictly limited grounds for the hearing of claims concerning the rūnanga and the Act that related to the provision of social services to East Coast Māori and the alienation of traditional tribal resources and assets. These grounds were that if the claimants wished to pursue their claims they should be reframed firstly 'in such a way as to properly show the onus on the Crown in terms of its Treaty obligations to the descendants of Ruawaipu and Uepohatu, and to avoid allegations which may have the appearance of an attack on the Rūnanga'. Secondly, the claimants were directed 'to clearly indicate the traditional tribal resources and assets that are alleged to have been alienated and the alienation mechanism, whether that be by legislation or other methods'. In summary, if those parts of the claims were 'properly re-framed to focus on the Crown's responsibilities in respect of the deficiencies in the legislation [they] would fall within

the jurisdiction of the Tribunal'. The claimants were directed to amend their claims accordingly.

In the paper that he presented to the ECRCC meeting on 27 May 2006, which is attached, Mr Hirschfeld states that the amendments to the claims have not yet been filed, and that he has been instructed to apply for 'urgency' or 'priority' for a hearing of the claims. No such application has been received by the Tribunal to date.

Part of the research proposal, concerning tribal identities, is already covered by the claimant research projects described in the casebook research programme. The technical research requested on the TRONP Act appears to comply with the terms of your direction in focusing on Crown policy and actions. I would note that the approach adopted for most of the technical research projects in the approved programme is to assist in defining the specifications of the substantive project by preparing scoping reports on the framework and feasibility of the research proposed.

One possible addition to the scope of the East Coast casebook programme is research on historical aspects of the Indigenous Flora and Fauna and Māori Intellectual Property claim arising in the East Coast district that may not now be heard in the Wai 262 generic inquiry. Since the scope of that inquiry is currently subject to submissions and will shortly be considered at a judicial conference, staff consultations with the affected claimants have been informal to date and it would be premature to form a view as to whether the Wai 262 claimants may wish to join the district inquiry or request further research.

In closing I would like to commend all members of the ECRCC, especially the representatives of the five participating claimant clusters but also the staff of the Crown Forestry Rental Trust and the Tribunal, for their conscientious efforts and the good spirit of cooperation in which the work of the committee has been conducted to date. Differences of opinion have sometimes been sharp, but the committee's proceedings have been conducted throughout with mutual respect, with proper regard for due process, with effective representation of the respective constituencies, and with a sustained focus on achieving real progress in preparing the inquiry for hearing. The achievements of the past two months of intensive preparatory work have laid a strong foundation for implementing and coordinating the construction of the evidential base for the hearing of the East Coast claims.

In light of the progress made, the prospects are good for several of the major technical research projects to be contracted during late July and August. I would accordingly recommend that you set a deadline of Friday 14 December 2007 for the filing of all technical reports under the casebook research programme, together with their supporting documentary and other material, on the East Coast record of inquiry.



Richard Moorsom
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Waitangi Tribunal