

**WAI 1750 – NORTH-EASTERN BAY OF PLENTY INQUIRY
JUDICIAL CONFERENCE
HELD VIA ZOOM
WEDNESDAY 5 MAY 2021**

Tribunal: Judge Michael Doogan
Dr Grant Phillipson
Dr Robyn Anderson
Basil Morrison
Prue Kapua

Crown Counsel: Craig Linkhorn
Daniel Hunt

Claimant Counsel: Annette Sykes
Kalei Delamere-Ririnui
Karen Feint
Camille Houia
Genevieve Davidson
Coral Linstead-Panoho
Raewyn Clark
Aroha Herewini
Barney Tupara
Siaosi Loa
Chris Beaumont
Dylan Lafaele
Robyn Zwaan
Dr Bryan Gilling
Tony Sinclair
Kuru Ketu
Eve Rongo

Crown Forestry Rental Trust: Evald Subasic

Interpreter: Conrad Noema

TABLE OF CONTENTS

JUDICIAL CONFERENCE COMMENCES ON WEDNESDAY 5 MAY 2021 AT 10:17 AM.....	1
(10:17) JUDGE DOOGAN: (MIHI).....	1
(10:17) TE RUA RAKURAKU: (MIHI).....	1
(10:25) ANNETTE SYKES: (APPEARANCE).....	3
(10:26) KAREN FEINT: (APPEARANCE).....	3
(10:26) CAMILLE HOUIA: (APPEARANCE).....	4
(10:27) GENEVIEVE DAVIDSON: (APPEARANCE).....	4
(10:28) CORAL LINSTAD-PANOHO: (APPEARANCE).....	5
(10:29) AROHA HEREWINI: (APPEARANCE).....	5
(10:31) BARNEY TUPARA: (MIHI, APPEARANCE).....	6
(10:32) SIAOSI LOA: (APPEARANCE).....	7
(10:32) CHRIS BEAUMONT: (APPEARANCE).....	7
(10:33) DYLAN LAFAELE: (APPEARANCE).....	7
(10:35) ROBYN ZWAAN: (APPEARANCE).....	8
(10:36) CRAIG LINKHORN: (APPEARANCE).....	8
(10:37) JUDGE DOOGAN: (AGENDA).....	9
(10:40) ANNETTE SYKES:.....	10
(10:41) KAREN FEINT:.....	10
(10:42) GENEVIEVE DAVIDSON:.....	11
(10:43) RAEWYN CLARK:.....	11
(10:44) AROHA HEREWINI:.....	12
(10:45) DR BRYAN GILLING:.....	12
(10:48) EVE RONGO:.....	13
(10:49) SIAOSI LOA:.....	14
(10:50) CHRIS BEAUMONT:.....	14
(10:50) DYLAN LAFAELE:.....	14

(10:51) TONY SINCLAIR:	15
(10:52) ROBYN ZWAAN:	15
(10:53) CRAIG LINKHORN:	15
(10:55) JUDGE DOOGAN: (AGENDA).....	16
(10:57) ANNETTE SYKES:	17
(11:00) EVALD SUBASIC:	18
(11:06) CORAL PANOHO-LINSTEAD:.....	20
(11:08) JUDGE DOOGAN: (AGENDA).....	21
(11:11) ANNETTE SYKES:	22
(11:15) KAREN FEINT:	23
(11:18) BRYCE LYALL:	25
(11:22) DR BRYAN GILLING:.....	27
(11:27) SIAOSI LOA:	28
(11:27) CHRIS BEAUMONT:	28
(11:29) TONY SINCLAIR:	29
(11:36) CORAL LINSTEAD-PANOHO:.....	31
(11:37) ROBYN ZWAAN:	32
(11:39) CRAIG LINKHORN:.....	32
(11:43) DR ROBYN ANDERSON TO KAREN FEINT:.....	34
(11:45) DR GRANT PHILLIPSON:.....	35
(11:47) JUDGE DOOGAN: (AGENDA).....	36
(11:54) BARNEY TUPARA: (MIHI)	38

**JUDICIAL CONFERENCE COMMENCES ON WEDNESDAY 5 MAY 2021 AT
10:17 AM**

(10:17) JUDGE DOOGAN: (MIHI)

5 *Mōrena koutou, ki a koe, Mr Amoamo, ki a koe, whakatuwheratia tā tātou hui?*
[Interpreter: A warm welcome to all. I can acknowledge you Mr Amoamo. I
can ask you, Sir, to lead us in prayer]

ANNETTE SYKES:

The - *Rua Rakuraku, kia whakatuwhera tō tātou nei hui engari ko te...*
10 **(Mic off 10:17:43)** [Interpreter: I will be asking Rua Rakuraku to open up with
a prayer if that is okay]

(10:17) TE RUA RAKURAKU: (MIHI)

Kia ora tātou, tēnei te mihi a Ngāti Ira ki a koutou, koutou e huihui mai i tēnei
15 *rā. Tēnā koutou, i homai tēnei wahanga ki a ahau, he hari tēnei ō tātou karakia.*
Mea mai, tā Te Riaki i tēnei ata, he tangihanga kei roto i tōna marae, nāna i
tono māku e haria te karakia. [Interpreter: Acknowledging you all and your
presence. It has been given me the honour to lead us in prayer. I will let the
gentleman complete his prayer.]

20

KARAKIA TĪMATANGA (TE RUA RAKURAKU)

WAIATA – TE WAIATA A RAWIRI RĀUA KO HOROMONA

25 *Kia ora tātou, kia ora tātou katoa.* [Interpreter: Thank you and
acknowledgements to all]

JUDGE DOOGAN:

Mr Rakuraku, nāu i tuku atu ngā whakamoemiti ki tō tātou Kaihanga, nō reira,
tēnā koe. [Interpreter: I wish to acknowledge you Mr Rua, for leading us in
30 prayer, thank you very much for that]

JUDGE DOOGAN:

Ms Sykes, I missed the first part of your introduction this morning. Was Mr Te Amoamo wishing to address the Tribunal at the outset?

ANNETTE SYKES:

5 **(Microphone issues - 10:23:22 to 10:23:36)**

JUDGE DOOGAN:

Kia ora, Ms Sykes, can you hear me, it is Judge Doogan speaking?

ANNETTE SYKES:

10 Yes, we've just heard you now, I've missed about a minute we've just heard you now.

JUDGE DOOGAN:

All right, I am just checking whether Mr Te Amoamo was going to speak at the start?

ANNETTE SYKES:

15 Not to my knowledge, Sir, they were just going to the karakia, that was my instructions, Sir.

JUDGE DOOGAN:

All right, thank you.

ANNETTE SYKES:

20 And then we would go into the normal proceedings.

JUDGE DOOGAN:

25 All right thank you. Mōrena koutou, if I could just begin by introducing the Tribunal panel first, apologies, for the slightly late start this morning, we were just getting organised, thank you for your patience. To my left I have Ms Prue Kapua, to my immediate right Dr Robyn Anderson, and to my far right, Mr Basil Morrison. Doctor Grant Phillipson is also on the zoom call, and we have apologies from Ahurangi Tom Rua, who had another commitment

unfortunately today that he could not change. So, if I could take appearances please and if you just bear with me, I will go through a list of counsel in no particular order. Ms Sykes, starting with you, since we have you on the screen in front of us, kia ora.

5

(10:25) ANNETTE SYKES: (APPEARANCE)

I can introduce from our firm, today I am representing with Ms Delamere, Wai 558 for Ngāti Ira. I am going to ask Ms Feint to introduce who she represents and then Mrs Houia from our office who is representing other claimants, Sir.

10

JUDGE DOOGAN:

All right, kia ora.

KAREN FEINT:

Tēnā koutou e ngā Kaiwhakawā o Te Rōpu Whakamana i te Tiriti o Waitangi, i tērā tēnā koutou katoa. [Interpreter: And again to you our presiding officer, and the panel members of the Waitangi Tribunal. Certainly a warm acknowledgement to all.]

15

JUDGE DOOGAN:

Kia ora, Ms Feint, welcome to our inquiry.

20

(10:26) KAREN FEINT: (APPEARANCE)

Ko Karen Feint tōku ingoa. Ka tū au, he māngai mō Ngāti Rua ake. [Interpreter: Karen Feint is my name and I represent Ngāti Rua.] And, Sir, just to explain if it wasn't clear at the beginning the reason why Mr Amoamo is not available today was he is called away to a tangihanga at his marae, so he was unable to be present today.

25

JUDGE DOOGAN:

All right, kia ora Ms Feint, thank you and welcome.

(10:26) CAMILLE HOUIA: (APPEARANCE)

Tēnā koe, Sir, otirā ki te tēpu, ko Mrs Houia tēnei, e whakakanohi ana i ngā kerēme e toru, ko WAI 2728, WAI 864 and WAI 2510, tēnā koutou.

JUDGE DOOGAN:

5 Kia ora, Mrs Houia.

ANNETTE SYKES:

Sir, before we leave, I have an urgent meeting today arising from the report of the Oranga Tamariki Panel, and I need to seek leave to excuse myself at quarter to 11 and hopefully might be back by one, Sir. I apologise for this but
10 my other juniors are well briefed on these matters, Sir.

JUDGE DOOGAN:

All right, thank you, Ms Sykes. Kia ora. Bennion Law, Mr Bennion?

(10:27) GENEVIEVE DAVIDSON: (APPEARANCE)

15 Mōrena koutou, Mr Bennion is at a High Court hearing this week, but we are here for Wai 1775, which is a claim, the Ngāti Patumoana claim, it's for and on behalf of the late Mr John Hata and the Late Mr Russell Hollis and this claim is now carried by Ms Antoinette Hata and Te Rangihuia Hata.

JUDGE DOOGAN:

20 Āe, tēnā koe Ms Davidson, thank you. Wackrow Williams? Is that a connection issue?

CORAL LINSTEAD-PANOHO:

I'm sorry, is that better?

JUDGE DOOGAN:

25 Yes, we can hear you now, thank you.

(10:28) CORAL LINSTEAD-PANOHO: (APPEARANCE)

Thank you, tēnā koe, Sir, Ms Linstead-Panoho appearing together with Ms Clark, on behalf of Wai 1781, a claim by Ngāi Tamahaua hapū, also appearing on behalf of Wai 1795, a claim by Tāwhirimatea Williams on behalf
 5 of himself and his whānau, and for the benefit of the hapū, Ngāti Ruatakenga. We also appear on behalf of Wai 1827, a claim by Tania and Rachel Wolfgramm as descendants of the Rangatira, Rangihaerepō.

JUDGE DOOGAN:

Tēnā kōrua, thank you. Kaupare Law?

10

(10:29) AROHA HEREWINI: (APPEARANCE)

Tēnā koe te Kaiwhakawā, tēnā koutou, Te Rōpu Whakamana i te Tiriti o Waitangi. Kō Aroha Herewini tōku ingoa e whakakanohi ana i te kerēme Wai 1884 [Interpreter: Aroha Herewini is my name, making an appearance
 15 and representing Wai 1884] which is a claim by the Tarati Dorothy Carrington on behalf of Ngāti Ngāhere, tēnā koutou.

JUDGE DOOGAN:

Kia ora, Ms Herewini, thank you. Lyall and Thornton?

(10:29) BRYCE LYALL: (APPEARANCE)

20 Kia ora, Sir, Lyall for WAI 2066, 1787 and 1553.

JUDGE DOOGAN:

Kia ora Mr Lyall. Mahony Horner?

(10:30) DR BRYAN GILLING: (APPEARANCE)

Tēnā koe e te Kaiwhakawā, otirā te tēpu. [Interpreter: To the presiding officer
 25 and of course panel members.] May it please the Tribunal, my name is Gilling and I appear with my learned colleague, Ms Bull, we are here from Mahony Horner for Wai 339, claim by Dean Flavell and others in relation to Hiwarau C, tēnā koutou.

JUDGE DOOGAN:

Tēnā kōrua, Thank you, Dr Gilling, Ms Bull. McCall Lewis?

(10:30) KURU KETU: (APPEARANCE)

5 Tēnā koe, Sir, counsel's name is Ketu, appearing for Wai 203, that's a claim for and on behalf of Te Whānau ā Mokomoko.

JUDGE DOOGAN:

Tēnā koe, Mr Ketu. Oranganui Legal?

(10:31) EVE RONGO: (APPEARANCE)

10 Kia ora, Sir, may it please the Tribunal counsel's name is Rongo and I am here too, on behalf of Wai 78 which is claim for Ngāi Tai.

JUDGE DOOGAN:

Tēnā koe, Ms Rongo. Ranfurly Chambers?

(10:31) BARNEY TUPARA: (MIHI, APPEARANCE)

15 *Otirā, ka nui te mihi tuatahi ki a koe, e te rangatira, Te Rua, Ngāti Ira, aku rangatira me te hapū ka nui te mihi ki a koe, e Pā, nō te mea nau i whakatuwheratia te hui me te nohonga hoki o te (Māori 10:31:34) i tēnei ra. Ki a koe e te Kaiwhakawā, me Te Rōpū Whakamana i te Tiriti o Waitangi, ki raro i te opu o tēnei ka nui te mihi ki a koutou hoki tēnei ata. [Interpreter: Firstly, I*
 20 *want to acknowledge you, to you, firstly to you Te Rua, Ngāti Ira, and the hapū. Certainly want to acknowledge you, to you our father, for your opening of the proceedings for this morning. To our presiding officer, Judge Doogan, and of course your excellent team members there. Yes, I want to acknowledge you this morning as well.]*

25

May it please the Tribunal, I appear this morning in respect of Wai 2006, the claimant being Priscilla Pihitahi Sandys on behalf of the Roimata Marae, Te Whakatōhea and Ūpokorehe. If it could be noted, Sir, I am without instructions in regards to these matters today, therefore on that basis I will be
 30 appearing by way of watching brief, with your leave, Sir.

JUDGE DOOGAN:

Tāmaki Legal?

(10:32) SIAOSI LOA: (APPEARANCE)

5 Tēnā koe, your Honour, counsels name is Loa, I am appearing on behalf of the Wai 2055 claim on behalf of Ngāi Tamahaua, the Wai 892 claim on behalf of Te Whānau-ā-Kai, Wai 2743 claim on behalf of the Wikotu Whānau and Te Upokorehe and the Wai 2462 claim on behalf of the Uri of Cy and Charlotte McLaughlin. Thank you

10 **JUDGE DOOGAN:**

Mr Loa. Taha Legal?

(10:32) CHRIS BEAUMONT: (APPEARANCE)

15 *Tēnā koe*, Sir, Chris Beaumont here appearing for Parahuia Herewini-Kahika, and Victoria Edwards for Wai 2257 and appearing for Wai 2160 Ngāti Muriwai hapū. Thank you.

JUDGE DOOGAN:

Tēnā koe, Mr Beaumont. Te Mata Law?

20 **(10:33) DYLAN LAFAELE: (APPEARANCE)**

Tēnā koe, Sir, counsel's is Lafaele, appearing on behalf of Wai 1789, a claim by Bella Savage, kia ora.

JUDGE DOOGAN:

Tēnā koe, Mr Lafaele. Mr Sinclair?

25 **(10:34) TONY SINCLAIR: (APPEARANCE)**

Thank you for waiting, Sir, I had a few technical issues there. Sir, *he mihi tēnei ki a koutou, te Kaiwhakawā, tēnā koe. Te Taraipiunara tēnā koutou.*

[Interpreter: A warm acknowledgement to you all, to our presiding officer, Judge Doogan, acknowledgements to you, first, Sir, and of course your valued

30 panel members]

Sir, my name is Sinclair and I am appearing today for WAI 87, the claim of Claude Edwards, deceased, Adrianna Edwards and others, on behalf of Whakatōhea hapū, Wai 87. Also appearing, Sir, for Wai 1794 a claim by Will Smith and others, on behalf of Tūrangapikitoi. Sir, that completes my appearance for those particular claims. I have with me today, Sir, in the office where I am located, at the moment, in Ōpōtiki, the claimant, Ms Edwards for Wai 87 and one of the kuia for Wai 87 claimant research committee, Muriel Kell Smith. Thank you, Sir.

10 **JUDGE DOOGAN:**

Thank you, Mr Sinclair. Zwaan Legal?

(10:35) ROBYN ZWAAN: (APPEARANCE)

15 Tēnā koe, counsel's name is Zwaan, and I appear for WAI 1092 and 1758, claims on behalf of Te Ūpokorehe Iwi.

JUDGE DOOGAN:

Tēnā koe, Ms Zwaan. Crown counsel? Just unmute.

(10:36) CRAIG LINKHORN: (APPEARANCE)

20 Tēnā koutou katoa, Ko Craig Linkhorn ahau, kei konei māua ko Daniel Hunt, mō te Karauna. We are unable to hear Your Honour, Judge Doogan, at the moment, in between counsel making appearances and we have a message coming up saying, that the Tribunal's network bandwidth is low, so apologies for missing my call.

25 **JUDGE DOOGAN:**

Thank you Mr Linkhorn, can you hear me now?

CRAIG LINKHORN:

Heard that loud and clear, Sir.

JUDGE DOOGAN:

I have got most counsel on the screen at the moment. Are other counsel having difficulty hearing me between appearances, you just put your hands up? Okay. All right.

5 THE COURT ADDRESSES REGISTRAR – DISCUSSION REGARDING BAND WIDTH (10:37:41)**JUDGE DOOGAN:**

Apologies, counsel and parties we will endeavour to keep an eye on any band width issues and hopefully we can manage it. If it gets too difficult we may have
10 to look at an alternative but I hope it does not come to that.

JUDGE DOOGAN:

Mr Linkhorn, had you finished appearances, sorry?

CRAIG LINKHORN:

Yes Sir, thank you.

15 JUDGE DOOGAN:

Thank you. Parties, just before we start on some of the detail in the agenda, the panel discussed the memoranda received ahead of today's conference and there is one matter I wish to raise first, and that is it seems clear to us from the collective views we are hearing in relation to research planning readiness for
20 commencement of hearings, that there is something of a shift that we see in the approach we have taken to date.

So, as parties will be aware, we had endeavoured to commence this inquiry and the research will focus on raupatu issues on the understanding that we
25 would try to commence hearings later this year, with a focus on the raupatu issues. The assumption behind that approach was largely our attempt to try to move as quickly as we reasonably could, to have our inquiry underway and running as expeditiously as possible, because of the fact of the parallel settlement process.

What we are, at least, inferring from a number of the memoranda filed is that parties are not necessarily supportive of an overly fast approach and are seeking something different, in terms of a possibly different approach towards
5 slowing down and having a more complete research base before we commence hearings, and I just want to test that assumption with the parties before we start talking about some of the details as to what further research is needed and who might be commissioned to undertake that research and in what timeframes.

10 So, if I could check first with claimant counsel, and then come to Crown, is that assumption, or that inference, that we are drawing from the memoranda filed correct or fair. So, Ms Sykes?

ANNETTE SYKES:

Yes, Sir, I think that's a fair assumption. Matters have kind of progressed since
15 we first met last year. We've filed an amended statement of claim for Ngāti Ira o Waioeka and I would say your summary is a fair assumption. We're still anxious for an expeditious process, but all of them just raupatu. And in our amended statement of claim, of course we've, with the assistance of Mr Miller QC, we've sought to make claims pursuant to the
20 Crown Forest Assets Act in Te Mangatū and the High Court proceedings recently and the judicial review outcomes of Pouakani, Wairarapa have required us to again rethink what kind of research is required, given some of the findings there. So, our position would certainly be influenced by those two matters, Sir.

25 **JUDGE DOOGAN:**

All right. Thank you, Ms Sykes, Ms Feint?

KAREN FEINT:

Sir, I'm not fully across all the detail in this inquiry yet, but I do have firm instructions that my clients wish to commence the hearings within a kōrero tuku
30 iho process and that's of some considerable significance to them, because their kaumātua are elderly and they'd like to start that as soon as possible, so they

see that there's a need to move expeditiously with that, but otherwise I support Ms Sykes's submissions.

JUDGE DOOGAN:

Thank you. Mrs Houia?

5 **CAMILLE HOUIA:**

Tēnā koe, Sir, I'm just trying to unmute here. Similar to the submissions given by Ms Sykes at this stage four of the three claims.

JUDGE DOOGAN:

Kia ora. Ms Davidson?

10 **GENEVIEVE DAVIDSON:**

Yes, Sir, we have similar instructions, very supportive of taking the time for comprehensive research, that's not being undertaken, but also to start ngā kōrero tuku iho hearings, this year if possible.

JUDGE DOOGAN:

15 All right, thank you. Ms Clark or Ms Linstead-Panoho?

RAEWYN CLARK:

20 Kia ora, Sir, speaking on behalf of Ngāi Tamahaua and Tāwhirimatea Williams, Ngāti Rua, they will be in favour of commencing with ngā kōrero tuku iho as the upfront hearings, rather than commencing with the raupatu hearings. And on behalf of the WAI 1827 claimants, we're still under discussions over exactly How that ngā kōrero tuku iho process would look like, but certainly there is support there for ngā kōrero tuku iho process up front.

JUDGE DOOGAN:

25 All right and I take it also while that process is underway some additional time will be allowed for completion of further research?

RAEWYN CLARK:

I certainly, Sir, if that was directed at myself, certainly, Sir, yes we would be supportive of taking the time for the research to be completed.

JUDGE DOOGAN:

All right, kia ora Ms Clark. Ms Herewini?

5 **AROHA HEREWINI:**

Tēnā koe, Sir, we didn't file written submissions but our position is that the claimants are happy with the research that is available to them and so in terms of your paragraph 30 and 31 of the directions, we're supportive of that approach and where possible research is undertaken as well as the hearings taking place
10 they were supportive of that. But in saying that they are happy to abide the majority in the Tribunal in terms of how that's to be managed and also in terms of kōrero tuku iho and further research and whether that's a full comprehensive research is undertaken before the hearings commence. Tēnā koe.

JUDGE DOOGAN:

15 Kia ora, Ms Herewini. Mr Lyall?

BRYCE LYALL:

Kia ora, Sir, and kia ora to the panel. My clients, or my instructions across the three claims that I represent are that; time needs to be taken to approach the task and we need a completed casebook on raupatu if we are going to launch
20 into that area of the claim, with the support that the Crown's comment in their submissions that that would be required, likely before the Crown would be in a position to file any statement of position and concessions which my clients view as valuable to this process. So, I think in terms of the proposition that you're testing, where would confirm that.

25 **JUDGE DOOGAN:**

All right, thank you Mr Lyall. Doctor Gilling?

DR BRYAN GILLING:

Tēnā koe, Sir, generally speaking I don't think we've filed submissions on this point particularly about a Kōrero tuku iho but we would be supportive of the submissions already been made by my friends. The witnesses in this inquiry district who can talk to that, tend to in fact be very elderly now and infirmed, and we need to get the benefit of their knowledge as soon as possible.

Raupatu as an issue can wait, because essentially it's a documentary issue and the documents need to be thoroughly traversed, so it doesn't matter in a time sense if it's parked for a few more months. I agree it gives time for research. The other comment that I would just have is that the danger of focussing on raupatu first is that we end up with something like happened in the aborted settlement process in the 1990s where that as the glaring initial issue was focussed on, to the detriment of comprehensivity and that's why that first settlement fell over and we have enough problems with the settlement process now, we don't want to throw the same spoke in the wheel of this process.

So, overall supportive of a kōrero tuku iho process which could be got underway fairly quickly. The additional research as set out in your directions and maybe once we get going on that we can prioritise raupatu within that but, that's not a priority for our particular clients in most respects, Sir. Thank you.

JUDGE DOOGAN:

All right, thank you, Dr Gilling. Mr Ketu?

KURU KETU:

I have nothing to add, Sir, just a note that our clients are not opposed to having a kōrero tuku iho process taking place, and I'm in the Tribunal's hands in that case.

JUDGE DOOGAN:

Kia ora, thank you. Ms Rongo?

EVE RONGO:

Thank you, Sir, we didn't file anything on this particular issue, but can confirm that we're supporting kōrero tuku iho, is actually given the wealth of knowledge that kaumātua Ngāi Tai hold and wanting to get that out to the Tribunal and the records. Other than that, Sir, we have nothing more to add.

5 **JUDGE DOOGAN:**

Kia ora, thank you. Mr Loa?

SIAOSI LOA:

Thank you, your Honour, we would support the submissions made by my fellow counsel, we've always advocated for a ngā kōrero tuku iho process, so it would
10 be – we would appreciate if that would be implemented ASAP, given that there is still some research to be done, it can be taken, underway at the same time, your Honour, thank you.

JUDGE DOOGAN:

All right, thank you. Mr Beaumont?

15 **CHRIS BEAUMONT:**

Tēnā koe, Sir, I don't have any instructions in regards to the kōrero tuku iho process, but most of claimants then, we're appearing for, would certainly support a more comprehensive research programme, rather than a expedited inquiry and in general support the comments already made by my learned
20 friends.

JUDGE DOOGAN:

Thank you. Mr Lafaele?

DYLAN LAFAELE:

Tēnā koe, Sir, we also have not filed submissions on this matter, but I do note
25 that our client would be generally supportive of a ngā kōrero tuku iho hearings, should that go ahead, kia ora.

JUDGE DOOGAN:

Kia ora, thank you. Mr Sinclair?

TONY SINCLAIR:

Tēnā koe, Sir, my clients support, Sir, a Tribal Landscape Report, before the commencement of hearings. Additionally, Sir, on the kōrero tuku iho matter,
5 my clients don't have an opinion, one way or another, they are currently establishing a calendar, taking evidence of elders now, Sir, got to be remembered, Sir, that in the High Court MACA hearings that we had I think we had over four witnesses who were passed their 90 year age bracket and they gave their evidence in person. My clients are starting to take their evidence
10 now and those that are in their 70s and 80s. So, kōrero tuku iho, Sir, they're open minded about having that process, however, as clients of Crown Forest Rental Trusts, they're also looking at putting together an oral and traditional Tribal Report as well, Sir, that's all I have to say on the matter, Sir.

JUDGE DOOGAN:

15 Thank you. Ms Zwaan?

ROBYN ZWAAN:

Thank you, your Honour, pretty similar position to most counsel in terms of not wanting to rush into hearings at this stage, also our clients at this stage don't agree to ngā kōrero tuku iho taking place for the reasons set out in the joint
20 memorandum of counsel, which is 3.1.164, and at this stage we've got nothing further to add.

JUDGE DOOGAN:

All right, thank you Ms Zwaan. Crown counsel? Mr Linkhorn?

CRAIG LINKHORN:

25 Thank you, your Honour, members of the panel. The only matter we raise that I think that relates to this is ensuring that before the hearings start, there's an interlocutory process that can (inaudible 10:53:21) a response from the Crown to the claims, for refining of the live issues, an opportunity to consider concessions and other matters in advance, and then framing the issues for

inquiry accordingly. Mr Loa has pointed out, I think, that if ngā kōrero tuku iho hearings occurred before that process, the other interlocutory style process is to run parallel with it, and if people were comfortable with that, parties and the Tribunal, I think. If people were comfortable with moving ahead like that before
5 the Crown position on some of these things was articulated, then we would be in people's hands about that, the Tribunal's hands about that. So, that was the only contribution I would make on this topic, Sir.

JUDGE DOOGAN:

All right, thank you Mr Linkhorn. I am just going to check with the panel if there
10 are any questions arising from that so far. Doctor Phillipson, do you have any questions you wish to raise?

DR GRANT PHILLIPSON:

No, thank you, Judge.

JUDGE DOOGAN:

15 Kia ora. Counsel, if I can just indicate we will consider, in light of what we have heard, this morning, we will give some thought to the possibility of commencing with a kōrero tuku iho process for those parties who seek it. So, that is a matter we will give some consideration to after this morning's conference.

20 If I could now move to look at the issues around research and first the Tribal Landscape Report. We note the support expressed for the need for this project, but the lack of unanimity as to who would be commissioned to do this. We see that some counsel have indicated that they are going to be making some enquiries about possible authors. I thought it might assist if we just
25 indicated who the Tribunal have already approached. So, apart from Tony Walzl, in the past or since late last year, the Tribunal have approached Dr Robert Joseph, Anthony Patete, Paul Meredith, Hazel Petrie, Peter Mcburney, Tania Roper, the Late Manuka Henare, and Paul Husbands, and we also understand that Bruce Stirling is not available for a significant
30 commission due to his commitments on the MACA proceedings in various places for the next several years.

So, those counsel that indicated, and I think that may have been Wackrow Williams in the joint memorandum, and Ms Sykes, that they may be making enquiries about possible authors. Can I have an indication please, as to
5 whether those enquiries are underway and when they might be complete?

ANETTE SYKES:

(inaudible 10:57:23) imaginatively about this, because we are concerned that we have a Māori speaking process, because of the richness of the whakapapa landscapes that need to be captured. One of the matters that has been recently
10 traversed, and in this regard we have a priority for that if they could assist, it would be Dr Martin Fischer and Mr Bruce Stirling, working with tribal researchers. And the tribal researchers that would be nominated by one from each – **(Mic Switched off – 10:58:04)**

JUDGE DOOGAN:

15 Sorry, Ms Sykes, your audio just cut out there.

ANNETTE SYKES:

I think I got cut off. Now, I think I got cut off, it might be my poor Wi-Fi here, where I am, Sir, so that's what we've been looking at, Sir. It's very difficult the MACA regime has captured a number of significant research capability to meet
20 those timeframes from the High Court. We have some objections to some of the names you've mentioned, mainly because of their roles with Crown matters in previous contexts, and so I don't wish to you know cast any aspersions, in the same way that they had concerns about Mr Walzl, they have concerns about Mr Patete of the names that you've just mentioned, and I don't think my
25 claimants knew many of the other ones on the list, so those are my only comments. These are matters that I understand are going to be traversed with Crown Forest Rental Trust, they had a meeting this week that's been postponed. Ngāti Ira is one of the also approved claimant groups and within our cluster we are trying hard to work with some of the hapū groups as well, Sir,
30 to ensure we get this kind of research commissioned. We have just been notified that Mr David Alexander has now made himself available to do an

environmental report, which is very helpful for our people as well. So, we are trying hard in this area, Sir.

JUDGE DOOGAN:

All right, thank you Ms Sykes. That proposal for effectively a joint commission
5 is something that you will be discussing with CFRT, as I understand it, do you know when you are likely to have an answer about that idea?

ANNETTE SYKES:

I can't respond, we postponed a meeting this week, it's been developed on the
12th of May and then we'll have to go through the normal process. Perhaps
10 Mr – from CFRT could address that matter.

JUDGE DOOGAN:

All right.

MR EVALD SUBASIC:

Kia ora, Sir, this is Evald Subasic from Crown Forest Rental Trust.

15 **JUDGE DOOGAN:**

Kia ora.

EVALD SUBASIC:

Thank you, Ms Sykes, for giving me the opportunity to quickly just up the date
Tribunal on the take's and the enquiry as to what's actually been happening
20 form the CFRT side of things, given that there have been a few developments over the last few months. So, I would just like to start off by saying that the potential commissions that we were going to be discussing with Ms Sykes, Ngāti Ira clients would be sitting separately to the research programme that the Tribunal has approved, in two phases, so it would not be part of the district over
25 view research programme, but it would really be part of, what CFRT to my knowledge his clients specific research. So, those discussions with our clients and the enquiry are ongoing and as Ms Sykes noted unfortunately that hui that was meant to be happening this week has had to be postponed.

In terms of the district overview research that your Honour has approved, in the nine reports, the trustees approved funding for four of those essentially the phase two reports, covering 20th century, land legislation issues, public works, local government and rates and environmental issues. So, we've commenced the processes, fair party processes for commissioning some of the research. We've already started at consultation period, on the project brief for three of those projects, and that consultation period is almost at an end now, and we expect to be able to start the tendering process for those projects in the next week or so, and hopefully having, if everything goes well, having those commissions in place by the end of June.

In terms of the environmental research report, as Ms Sykes also mentioned that, we're in the process of commission David Alexander to do a scoping report, on the environmental issues. He has indicated his willingness to undertake scoping reports. He is not willing to do the substantive report, following it, simply because he's got some other commitments and I also understand he's largely semi-retired these days, so isn't willing to take on large projects the way he used to.

We expect to have an introductory hui for Mr Alexander on that scoping report in the enquiry rohe, within the next four weeks or so, there will be a pānui inviting up to attend that hui hopefully later this week, maybe early next week, we're just trying to confirm the venue for that hui, and that is probably as much as I have to say at this stage, but if there are any questions I'm happy to answer them.

JUDGE DOOGAN:

Kia ora, Mr Subasic, thank you. My apologies I had meant to acknowledge your presence on the call, when I took appearances at the outset and I overlooked that, my apologies. Thank you for that update and if you are still on the call, as we proceed, there may be one or two matters we might come back to you on, if you do not mind.

EVALD SUBASIC:

That's fine, Sir, I'll stay on for as long as I can.

JUDGE DOOGAN:

Thank you very much.

5 **ANNETTE SYKES:**

Can I just, I have to leave shortly, Sir, but what I am seeing is that you will commission a Tribal Landscape and then we may be able to support, if Crown Forest Rental Trust is agreeable, with hapū specific tribal histories, that's what I'm suggesting. We did this in the National Park Enquiry, and in the
10 Whanganui Enquiry, when we were having similar problems getting researchers, so I just use that as the kind of way we're trying to explore matters, so we don't slow ourselves down, Sir, if that's helpful to the Tribunal.

JUDGE DOOGAN:

Thank you, Ms Sykes. We will consider whether there is any additional author
15 who may be available for a Tribal Landscape Report after hearing from the parties this morning, as well, but thank you for that indication we are not ruling anything in or out, we are just trying to assess what is possible given the position of the parties at the moment. Ms Clark or Ms PanoHo, did you have anything to add around this Tribal Landscape Commission?

20 **CORAL PANOHO-LINSTEAD:**

Kia ora, Sir, the only thing I guess to add is that the reference in the joint memo that we filed to the fact that claimant counsel were canvassing possible options, really came from the general discussion that claimant counsel had, so it wasn't something specific that our office was undertaking, but there were indications
25 during a claimant counsel teleconference that other groups may be canvassing options. We were directed to look at the – contact the Tribunal and look at those options, so thank you for outlining who the Tribunal's already made contact with. If it's of assistance we are in a position to perhaps convene again with claimant counsel to see if further discussions and planning can be made

around possible options or alternatives, and report that back to the Tribunal, possibly by the end of May if your Honour's looking for time indications.

JUDGE DOOGAN:

5 All right. It would be helpful if there are further discussions or enquiries taking place amongst claimant counsel, it certainly would be helpful to us to have an update as soon as is reasonably possible. So, before we end today, I will check with the panel, in terms of setting a timetable around that, are there any other claimant counsel who wish to be heard around this issue, of the Tribal Landscape Commission? Perhaps if you can raise your hand and I will 10 ask our administrators to check, okay, thank you. Mr Linkhorn did you have anything to add in light of that discussion?

CRAIG LINKHORN:

Nothing to add to that, thank you, Sir.

JUDGE DOOGAN:

15 All right. Just, I want to come to the question of the raupatu research as a general issue and the gap filling matters that have been addressed in the memoranda. But in conjunction with that, can I also ask counsel, claimant counsel in particular, for an update on what and when evidence that has been filed in the High Court for the MACA proceedings, might be added to our record 20 of enquiry, and if it is still not clear when we can expect some clarity about that. I raise that question because we have been told at various times that there is some detailed evidence filed in those proceedings, which various parties have said are relevant, and would likely assist this enquiry. We are also conscious that some of the objection raised to appointing Mr Walzl to carry out the 25 Raupatu Gap Filling Research, arises out of work that he has done in the MACA proceedings also and at the moment we simply do not have a clear understanding of the nature of Mr Walzl's evidence in those proceedings, the nature of any actual or potential conflict that might arise.

30 So, if there are issues and clearly there are issues from a number of parties in terms of commissioning Mr Walzl for this raupatu work then we would need to

have a slightly better understanding of what the nature of those objections are. At the same time it would also help us to understand when we might expect to receive evidence that has been filed in the High Court on to our record.

- 5 So, I am just going to go through claimant counsel again, starting with you Ms Sykes, conscious that you are about to depart.

ANNETTE SYKES:

- I may leave the MACA issues to Ms Feint to address, she is as familiar as I am on the timing issues and the directions from the High Court in this regard. We
10 are actually barred from enabling that material to be put on the record of enquiry at this time, so I leave that to my friend.

- In terms of your second matters around the raupatu matters, Sir, for Ngāti Ira and I want to be quite Ngā Ira centric, if the position of the
15 Justice (inaudible 11:11:26) is adopted in the High Court, as being one that is important to the establishment of well-founded claims for rights of entitlement to Crown Forest names, then raupatu becomes a central part of our argument, and the consequences of displacement which saw Ngāti Ira being forced off their lands following the battle of Te Tarata and then living within communities
20 of their original whakapapa Ngāti Ira, Puia comes from on the other side of the ranges, Sir, that becomes critical in our discussions before this Tribunal to establish those well founded claims to entitle benefit, beyond any Treaty settlement framework, if I can use that language.

- 25 So, this commission is very important for us. I adopt the submissions that were made by my friend, Dr Gilling, (inaudible 11:12:37) for a much more comprehensive report because of that time. Sir, I've got a connection problem here, it's saying my connection is unstable so forgive me if people lose me from speaking, it's just where I am.

30

So, on that point, Sir, that also I think becomes important for us. Mr Walzl's position I believe does not meet the High Court rules as to whether or not he would be an appropriate – quite clear conflicting positions that he mooted in his

expert opinion evidence in the High Court, and I believe it would be difficult for him to be an independent person to take responsibility for overseeing that evidence at this time.

JUDGE DOOGAN:

- 5 Thank you, Ms Sykes, just one of the earlier comments you made cut out, and you said if the position taken in the High Court remains, so could you just clarify which High Court proceeding you were referring to at the start?

ANNETTE SYKES:

- 10 The Edwards application, which was the priority application it was heard in November and October last year, we are awaiting a judgment from His Honour, and he has made very clear, in a direction, that the reports that were prepared for that proceeding are to not be placed in any other proceeding without his consent, and he has barred that position from particularly with respect to these proceedings. I can provide the minute if required.

15 **JUDGE DOOGAN:**

- Thank you, Ms Sykes, that might be helpful. We did have a minute or an earlier minute I think from, I am not sure if it was that proceeding, but any update would be of assistance. My understanding from the minute that was previously filed was that the direction given was to the effect that, it would not be appropriate
20 for evidence filed in the High Court to be put before any other forum, or any other Tribunal, until it had been given in evidence in the High Court, but I may be mis-recollecting that memorandum.

ANNETTE SYKES:

- 25 I think you're right, Sir, it went further to say, the judgment or the High Court had issued.

JUDGE DOOGAN:

All right, but if that can be clarified that would be helpful. Ms Feint?

KAREN FEINT:

Yes, Sir, I was – yes, I'm not familiar with that particular issue, so I would have to rely on what my learned friend, Ms Sykes, has said. I am wondering the extent to which it would be helpful to add that research to this record of enquiry, because it's not directly on point, although some of it might be helpful
5 background, I would've thought it would be more useful for the researchers who are adding research for this enquiry to have reference to it, as it may assist them in doing their research, and giving them a head start on various issues.

The issue with Mr Walzl in the MACA hearing was that he was asked to give
10 expert opinion evidence on the status of Ngāti Muriwai in terms of their Customary Marine Title application in the High Court, and he did give evidence supporting their position which was strongly contested by Ngāti Rua. So Ngāti Rua, that's why Ngāti Rua strongly objects to his appearance and would say that he's not an independent expert, or at least that, sorry, he is an
15 independent expert but he has a conflict of interest in terms of representing all of Whakatōhea in the research that he does.

JUDGE DOOGAN:

All right, thank you Ms Feint. Mrs Houia?

20 **CAMILLE HOUIA:**

Tēnā koe, Sir, I don't have anything further to add from my claimants in terms of the raupatu, other than what's already been put before the Tribunal in memoranda, so, yes, I don't have anything to add there

JUDGE DOOGAN:

25 All right, thank you, Ms Davidson?

GENEVIEVE DAVIDSON:

Ngāti Patumoana are in a similar position to Ms Feint and Ms Sykes, we support their submissions.

JUDGE DOOGAN:

5 All right thank you. Ms Herewini?

AROHA HEREWINI:

10 Tēnā koe, Sir, nothing further to add other than as I indicated our clients don't have any specific research needs and will abide if, Claimants, majority of claimants wish for further research then abide the decision of the majority and the Tribunal.

JUDGE DOOGAN:

Kia ora. Mr Lyall?

BRYCE LYALL:

15 Kia ora, Sir, the 1553 claim that I represent is Whānau-ā-Apanui claim, so doesn't take a view on the raupatu gap filling evidence. The Wai 2066 claim, the claimants whakapapa Ngāti Rua, but it is a whānau level claim, so they anticipate working with the other Ngāti Rua claimants towards an agreeable position there and support the Ngāti Rua submissions to date. The Wai 1787 claimants that I represent still support the submissions on the raupatu gap filling
20 as set out in the joint memorandum, #3.1.164. Now, those claimants were involved in the priority Whakatōhea High Court application and it became apparent there, due to the nature of evidence being presented, that parties were reliant on what was described in that joint memorandum is a patchwork of evidence which really begins with Dr Gilling's sterling effort, but that effort does
25 have some vintage on it at this stage. So, their strong view is that the Tribunal should begin with a green field approach. Begin with the primary document and use the existing secondary sources as corroborating evidence to build from there. That may take some time but this is the first this has been approached, by a Tribunal for this rohe, there are differences between the surrounding in
30 terms of sites and chronology, and we are concerned for Te Ūpokorehe that

their issues of identity within the raupatu and the manipulation of cultural identity that followed, won't be adequately reflected in the existing sources, in the casebook.

5 I should say, in terms of identity, that for Ngāti Rua for instance the experience was completely different and so on for all of the other hapū, and that's also not something that we see adequately reflected in the research to date although there are some interesting conclusions.

10 I have two other points I'd like to raise here, the first is the evidence of Mr Walzl. I support Ms Feint's submission that it may not be particularly relevant given that it was targeted at showing who held an area in accordance with tikanga from 1840 the present day. I also note that as he was appointed by an applicant party, different to mine, they had no input as to his evidence and for that reason
15 alone, it suffers significant limitations and they certainly see that he has a conflict of interest in preparing an enquiry wide gap filling report, or a Cultural Report for this region. And finally, I don't know if this is the time to raise it, but rather than coming back, we've added in that joint memorandum, that we would respectfully invite the Tribunal to commission its own independent legal opinion
20 on the raupatu later in the enquiry that would be similar to the one prepared by emeritus Professor Brookfield, concerning the Taranaki and Bay of Plenty enquiries.

While we recognise that we don't need to show, and the Tribunal doesn't need
25 to conclude that the raupatu was illegal at colonial law for it to be a breach of Te Tiriti o Waitangi. I think that that would be an important part of the investigation, so, ultimately refer the Tribunal to our submissions on that, at #3.1.164, from paragraph 16 through to paragraph 18. Unless there's any questions, those are my submissions, on those points.

30 **JUDGE DOOGAN:**

Thank you, Mr Lyall. Doctor Gilling?

DR BRYAN GILLING:

Thank you, Sir, general points regarding Mr Walzl made in memorandum of 23 March which was 3.1.158, those were of course largely with regard to the tribal landscape situation. We have no different instructions regarding raupatu particularly, or other possible gap filling reports. So, we can't help the Tribunal any further with that.

Regarding the raupatu gap filling, my friend, Mr Lyall, very gently put – my report has some vintage on it, so sadly does the author, and I would've expected that all these years later, it's 27 years now, since I did that, and I had a timeframe of three months in which to do it, that there would be much more extensive work available, both in terms of the background to raupatu generally, about which there was almost none at the time, and also about a lot of the specific issues that are being raised in your direction, that had been brought up by parties of recent times, and so we would support those issues being raised. Some of them are touched on in that original report, others are not. Also there ought to be far more material available in terms of professional researchers working on primary sources now. I have the raupatu back and what I could find in various library catalogues at the time, but not much more, so again we would support a more detailed gap filling on most of those issues. And finally we would also support Mr Lyall's submissions just made, about a – the independent legal opinion regarding raupatu.

Again we would agree with my friend, about the fact that it doesn't directly bear on whether it's a Treaty breach or not in itself, raupatu that is, but we would say that if it is in fact a breach of colonial law that just makes it all the worse and that should be driven home, we respectfully suggest, in our presentations and then hopefully in the Tribunal's report.

So, we would support that, Professor Brookfield takes us a certain distance down the track, but again that's, is at the best part of 30 years old now too, because it was prepared for the Taranaki Tribunal and so scholarship has come away and probably there are nuances in Professor Brookfield's opinion that

might not hold quite as much water now, as they did back then. I think those are my submissions, Sir, unless you have any questions.

JUDGE DOOGAN:

All right, thank you, Dr Gilling. If I may say so, you are aging very well for your
5 vintage, so thank you for those submissions. Mr Ketu?

KURU KETU:

Nothing to add from me, Sir.

JUDGE DOOGAN:

All right, Ms Rongo?

10 **EVE RONGO:**

Kia ora, Sir, in terms of the matters relating to Mr Walzl's (inaudible 11:27:00) and competing research we have nothing further to add to the submissions, put forward by Ms Sykes and Ms Feint.

JUDGE DOOGAN:

15 Thank you. Mr Loa?

SIAOSI LOA:

Thank you, your Honour, apologies. In terms of the submissions made by Mr Lyall and Dr Gilling, we would support the need for further gap filling research, particularly in light of our claimant Lee Ann Martin for Wai 2107 claim,
20 who seeks to participate in that process and provide some detail that may not be known previously, that would be our submission for today, Sir.

JUDGE DOOGAN:

Thank you. Mr Beaumont?

CHRIS BEAUMONT:

25 Tēnā koe, Sir, you would be aware that our Ngāti Muriwai clients, as has been made clear in our memorandum filed, is strongly supportive of Mr Walzl being engaged to write the Tribal Landscape Report, given his expertise on those

issues. Our clients have instructed that his research will be beneficial for all of Whakatōhea and say that his involvement in the High Court proceedings should not prevent him being engaged by this Tribunal. I may leave it to Mr Sinclair to elaborate more on these issues, if that's okay, Sir, and also I have nothing to add in terms of the raupatu gap filling research.

JUDGE DOOGAN:

Thank you, Mr Beaumont. Mr Lafaele?

DYLAN LAFAELE:

Thank you, Sir, we have nothing to add.

10 **JUDGE DOOGAN:**

Thank you. Mr Sinclair?

TONY SINCLAIR:

Tēnā koe, Sir. First, regarding the raupatu matter, we support the submissions of Dr Gilling and Mr Lyall, Sir, in particular on the matter of the lawfulness or unlawfulness of Crown actions, regarding the matter 1865, '66.

Sir, moving on to the Tony Walzl issue. Ngāti Muriwai counsel has just stated that Tony Walzl is supported as the prime and available candidate for the Whakatōhea Tribal Landscape Report, that is supported by Wai 87 and the Wai 1794, for the reasons being, Sir, that the Whakatōhea Wai 87 claim for many, many years was the only claim Whakatōhea had filed before the Tribunal. The vast majority of other claims were filed in the – close to the cut-off date of 2008, prior to that, Sir, there were no such divisions of competing hapū or competing boundaries, or competing whakapapa in regard to claims, Sir.

25

The WAI 87 claim represented all hapū and blood kin groupings, Sir, of Whakatōhea. That's a distinct difference to many of the other specifically hapū centric claims. There is no claim apart from WAI 87 that deals with the Whakatōhea tribal landscape, the way that the WAI 87 does, Sir.

30

As you will be aware, Sir, there is many Whakatōhea uri who are not represented in – under any hapū or any claims. They were – they've called in this district, blood kin groupings, another word for that, Sir, is displaced peoples, and they are in Tūrangapikitoi, Hiwarau, Ōpape, and they're simply not catered for under hapū centric claims, which seem to have left out the fact, Sir, that

5 Whakatōhea is in alliance of several hapū.

Now my point with the Tony Walzl commission is that whilst counsel, with all due respect, are seeking alternative options we have Mr Walzl who is available right now, and Mr Walzl's evidence filed to the High Court, Sir, and I will get onto the fact of why it hasn't been filed, at present Ms Sykes and Ms Feint have given reasons for that, but I'll give other reasons as well, Sir, but Mr Walzl's WAI 87 Report, Sir, covered groupings in Whakatōhea that no other claim would cover, Pakohai for instance, Sir. The hapū of Ūpokorehe and the marae within

10 Ūpokorehe, Ūpokorehe was represented, Sir, in those reports as a hapū of Whakatōhea.

So, Sir, Tony Walzl we, my clients support the commissioning of Tony Walzl for the Whakatōhea Tribal Landscape Report. That support has been canvassed rather widely, through Whakatōhea, their historical research committee have supported that, Sir, and –

20

JUDGE DOOGAN:

Mr Sinclair?

TONY SINCLAIR:

25 Yes, Sir?

JUDGE DOOGAN:

Sorry, I understand those submissions and that they are clear, but the issue that arises for us is the one that we reflected in the last directions which is as a matter of practicality the Tribal Landscape commissionee needs to be able to build and maintain relationships across all of the claimant groups and in light of

30 the reasonably significant opposition expressed by a range of claimants, just

did not seem to us to be a practicable or a sensible thing to do to commission Mr Walzl for that particular commission. So, are there any further submissions you want to make on this issue, or the raupatu gap filling?

TONY SINCLAIR:

5 Thank you, Sir, in regard to the reports that Mr Walzl submitted before the High Court, Sir, I will be contacting the High Court again today, regarding the matter that Ms Sykes raised. Sir, I was under the impression that those reports could be filed to this Tribunal after they had been through examination, Sir, and cross-examination. I will check that today. However, Sir, that wasn't the reason
10 why those reports have yet to be filed, Sir it was a matter regarding Mr Tony Walzl himself and discussions between counsel and Mr Walzl regarding when the appropriate time to file those reports would be. Sir, I will get back to the Tribunal in regarding a report on the appropriate time to file these reports, Sir, and my clients do intend filing all their reports, Mr Walzl and
15 Dr Des Kahotea filed in the High Court, Sir, they are appropriate for this enquiry. Thank you, Sir.

JUDGE DOOGAN:

Thank you, Mr Sinclair. Ms Clark or Ms Panoho?

CORAL LINSTEAD-PANOHO:

20 Kia ora, Sir, just to note that on behalf of our claimants, we had a similar understanding to that of Ms Sykes, in terms of the ability to admit the evidence from the High Court proceedings into this enquiry, that that wouldn't be possible under the judgment had been delivered, but I will follow up on that and provide an update to the Tribunal following judicial conference.

25

In terms of the gap filling brief, Sir, which I think Mr Lyall has covered off the position set out in the joint memorandum, which our clients support in terms of the detailed content of what that gap filling research should include. In terms of the author, Mr Walzl, while our clients were opposed to Mr Walzl being the
30 author of the Tribal Landscape Report for the reasons you've outlined, in terms of the relationships that need to be built in order to complete that type of

research, those reasons don't translate over to him dealing with the specific raupatu issues in our claimants views, so we're in a position to abide the Tribunal as to whether or not to appoint Mr Walzl for that specific research.

JUDGE DOOGAN:

5 Kia ora, thank you. Ms Zwaan?

ROBYN ZWAAN:

Thank you, your Honour, it will come as no surprise to the Tribunal and the other counsel, on this line, that as Te Ūpokorehe don't see themselves as part of Whakatōhea that's really important to make sure that whoever does the Tribal
10 Landscape Report is aware of those inter-relationships between the two neighbouring iwi and given – I do not think it needs to be said, but I just want to make sure that it's all covered off, given Mr Walzl's report was done for a Whakatōhea grouping, that he's an inappropriate person to be doing that and I understand the Tribunal was also of that mind in terms of the relationships
15 between the iwi and the opposition to him.

Further, the submissions filed by the Ūpokorehe clients that I represent along with the one that Mr Lyall represents, have concerns about the way that the research has been undertaken to date, and are concerned that they are being
20 relegated to part of Whakatōhea rather than an iwi in their own right, and we just want to be clear that any research or Tribal Landscape Report or reports that are done, should be encompassing of all the iwi in the region, not just Whakatōhea, and that needs to be clear to whoever is commissioned with this report.

25

Other than that, your Honour, I support the submissions made by Mr Lyall in terms of the research progress. Thank you.

JUDGE DOOGAN:

Thank you, Ms Zwaan. Mr Linkhorn?

30

CRAIG LINKHORN:

Thank you, your Honour, members of the Tribunal, I'll just start with trying to unpick somewhat the discussion to date about Mr Walzl's position. The Tribunal's already accepted, and made a decision, that he is not in a position of conflict but that he won't, as a matter of practicality, undertake the Tribal Landscape Report, and I think what – think where the confusion may have arisen, is because perhaps parties are reading the first half of the Tribunal's decision, at paragraph 24, where the Tribunal mentions that if there are significant concerns from a number of hapū interests that are registered, then the person might not frankly be the right person to do it. But it's really the second half of that paragraph that gives just the detail of the reason why because those are matters that are peculiar, discussed in the second half of paragraph, peculiar to Tribal Landscape Reporting and the same considerations do not arise when it comes to thinking of Mr Walzl as a potential commissionee for the raupatu research, gap filling or otherwise, and I just submit to the Tribunal that this distinction should be made really clear because otherwise I think you're going to be on the receiving end of submissions of the kind you've just had for the last 10 minutes, which to my ears, sound like an attempt at exerting a veto over it, over a potential expert witness when the grounds for what is actually a conflict, for an expert witness, have not arisen.

20

Now, if the High Court in the MACA proceeding is to find in due course that Mr Walzl didn't obey his duties as an independent expert and therefore his evidence was compromised in some way, then we'll all review the position obviously. But, as things stand right now, I think your decision, at paragraph 23 stands, 23 and 24 stands, and Mr Walzl remains a person who could be considered for the raupatu research. I say that against some practical trepidation, because I'd love a report from someone who's writing style is less dense and who can answer a question in 30 seconds or less. But that's not my call.

30

Moving onto Dr Gilling's position, Mātua Brian tēnā koe, I'm surprised to hear you and your report, describe as if its Mainland cheese, but we have said that this work will need to be made the subject of other people's views now that Dr Gilling is counsel here, and so we think that there is a practical way through

that, and the Crown to date has said that a gap filling approach ought to do it for the research, but we're in the parties and the Tribunal's hands as to just whether this can still be described as gap filing, or whether something more fundamental is chosen by the Tribunal for the research programme for the raupatu issues.

Just finally on this topic; about potentially commissioning a legal opinion, we think it's far too early to make decisions on that. I think our, yes, I'll submit, that our basic stance on this at the present would be that the legal counsel appearing in this enquiry are more than competent to go through the legal issues arising, and make submissions on those, and have those tested by the Tribunal, as part of the Tribunal's work to determine whether the raupatu issues led to breaches of Treaty principle that caused prejudice. So, those are my submissions on those topics, thank you members of the panel.

15 JUDGE DOOGAN:

Thank you, Mr Linkhorn, kia ora. I will just check with the panel, if there are any questions they want to raise.

(11:43) DR ROBYN ANDERSON TO KAREN FEINT:

Q. Kia ora, Ms Feint. You were cutting in and out so I am not quite sure I understood what the objections to Mr Walzl are in terms of him conducting the raupatu section of research because I think you said that the evidence that was given in the High Court was more in the nature of background, so it's not clear to me whether he actually discussed raupatu issues within the High Court hearings, and if he did not is it merely that he was employed by a different hapū that is causing your clients concern?

A. My apologies if that was unclear. We're not objecting to Mr Walzl undertaking the raupatu research, only undertaking the Tribal Landscape research.

Q. All right then, yes.

30 A. And the reason for that opposition was because he was commissioned to do a report for Ngāti Muriwai on the status of Ngāti Muriwai, and his

conclusions were strongly contested by Ngāti Rua and that was the subject of extensive cross-examination, during the High Court hearing.

Q. Yes. Thank you.

CRAIG LINKHORN:

5 Just paragraph 6 of your submissions, Karen, sorry to interrupt everyone.

KAREN FEINT:

What does paragraph 6 say, sorry, I don't have it front of me?

CRAIG LINKHORN:

10 It will be submission is, 3.1.166, do not support Mr Walzl conducting the gap filling research on raupatu.

KAREN FEINT:

15 Might need to clarify my instructions on that, because I am not entirely clear about Ms Sykes's assistance whether that is the case. My apologies, I've only been instructed on this matter for a week, so I'm just still getting up to speed with where things are at. If I may, Judge, I'll try and confirm my instructions before the end of the conference, if we could come back to this matter.

JUDGE DOOGAN:

Thank you, Ms Feint. Doctor Phillipson, did you have any questions?

DR GRANT PHILLIPSON:

20 Yes, yes I did, Judge, it's mainly arising from what the Crown said in terms of whether we still see gap filling as appropriate or something more fundamental. It seems to me from the submissions we've had so far, that all the issues that would actually still need further research on the war and raupatu issues, is included in the issues that the Crown and claimants have agreed on as
25 necessary, and the other three issues that we sought submissions about, which whether – some matters to do with the war and the missionary Roman Catholic Church issue, so if there are other matters as well that would need to go into the raupatu gap filling it's not apparent to me on the basis of having read

Dr Gilling's report and Mr McLeland's so, I think whether we call it gap filling or not I think we've captured all the issues that need to be covered through documentary research, and if that's not the case, if there's more wanted, then we need to know about that. Thank you.

5 **JUDGE DOOGAN:**

Thank you and parties if I could just indicate following on from Dr Anderson's question of clarification, from what we've heard this morning and from the submissions filed, we are not clear as to why it would not be open to us to commission Mr Walzl to undertake further research on the raupatu or whether
10 we call it gap filing, or something different, we – I understand there are some matters that counsel will clarify, in terms of what the High Court has directed, in terms of what can be put before us at the moment.

So, we may seek some clarification, but I guess our preliminary view, if I can
15 put it that way, is along the lines expressed in our last directions that while we accept that it would not be practicable to commission Mr Walzl for the Tribal Landscape Report, I think we would still need convincing that there are good grounds to rule him out completely, if he is available to undertake work on the raupatu issues.

20

So, what we may do rather than seek further oral submissions, is in terms of some leave we will give to the parties after today, if there are further submissions, the parties want to make specifically in relation to the proposal to commission Mr Walzl for raupatu gap filling work, or raupatu research, we will
25 give leave for some further submissions to be made along with the other matters that have arisen this morning, in terms of possible additional authors who may be able to undertake the Tribal Landscape commission. So, we may, just in terms of timing, what we propose is allowing to the 28th of May for further submissions on any of the matters arising out of today's teleconference. Just
30 one moment parties. Doctor Phillipson is there anything further you want to raise?

DR GRANT PHILLIPSON:

We can't keep Mr Walzl hanging forever, but if we are going to commission him then we need to know sooner rather than later I think, that's my only comment.

JUDGE DOOGAN:

Yes.

5 **BRYCE LYALL:**

Sir, if it's helpful I know that Te Ūpokorehe could receive instructions and reply on that matter, by next Wednesday and then if we can have leave until the 28th for the other matters, that would be appreciated.

JUDGE DOOGAN:

10 Thank you, Mr Lyall, I was just thinking of something along those lines that is helpful. All right, what is the date next Wednesday? All right, parties if you could please follow Mr Lyall's lead and if you have any further submissions to make on Mr Walzl's appointment, in relation to the raupatu issues, then you have leave to do so on or before close of play on 12 May. All other matters,
15 parties have leave to make further submissions on or before the 28th of May. Are there any other matters, any counsel needs to raise today? If not, just on behalf of the panel, can I thank you all very much for your attendance today and we look forward to your further submissions shortly.

20 Mr Rakuraku if you are still on our call, *ki a koe hei whakakapi tā tatau nohoanga*. [Interpreter: If I can ask you, Sir, to close our proceedings, I would much appreciate that.]

Mr Tupara, I had not been calling on you because you were there on the
25 watching brief, but *ki a koe he whakakapi ta tātou nohoanga* [Interpreter: I can ask you, Sir, to close our proceedings]

KARAKIA WHAKAMUTUNGA (BARNEY TUPARA)

JUDICIAL CONFERENCE ADJOURNS: 11.55 AM