OFFICIAL

Wai 1750, #3.1.225
Wai 2961, #3.1.27
Wai 2985, #3.1.6

IN THE WAITANGI TRIBUNAL

WAI 2961
WAI 2985

IN THE MATTER OF — **The Treaty of Waitangi Act 1975**

AND

IN THE MATTER OF — Whakatōhea Settlement Negotiations Claim

AND
IN THE MATTER OF — a claim filed by the late **Hone Kameta, Te Rua Rakuraku, John Terehita Pio, Paeone Goonan** and **Te Ringahuia Hata** for and on behalf of Ngāti Ira o Waiōweka (Wai 2985)

APPLICATION SEEKING RECONSIDERED URGENCY

Dated this 12th day of March 2021

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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

1. This application is filed on behalf of Wai 2985, a claim filed by the late Hone Kameta, Te Rua Rakuraku, John Terehita Pio, Paeone Goonan and Te Ringahuia Hata for and on behalf of Ngāti Ira o Waiōweka ("the applicants").

2. The applicants seek reconsideration of the Wai 2961 urgency application which was originally filed on 8 July 2020, in accordance with the decision dated 20 October 2020, made under urgency[1]. This application is also made in light of the recent confirmation and agreement that the Crown and the WPSCT have agreed to a Settlement package which is intended to be signed in late March 2021.[2]

3. The applicants oppose the decision of the WPSCT and the Crown to proceed to initialling phase and seek a reconsideration of their urgency application. The applicants have read and support the application for an urgent inquiry dated 8 March 2021 brought by Hon, Tuariki Delamere and Ms Te Ringahuia Hata for and on behalf of Ngāti Patumoana.

4. The following documents and evidence have been filed for and on behalf of Ngāti Ira o Waiōweka (Wai 2985):

    a. Statement of Claim dated 30 June 2020;[3]

    b. Original application for an urgent hearing dated 30 June 2020;[4]

    c. Affidavit and appendices of Te Rua Rakuraku dated 30 June 2020;[5]

    d. Affidavit and appendices of Amber Rakuraku-Rosieur dated 30 June 2020;[6]

[1] Wai 2961, #2.5.4.
[2] Attached to Affidavit of Mereaira Hata dated 8 March 2021, Appendix "**A**".
[3] Wai 2985, #1.1.1.
[4] Wai 2985, #3.1.1.
[5] Wai 2985, #A1 and #A1(a).
[6] Wai 2985, #A2 and #A2(a).

e. Affidavit of Te Rua Rakuraku dated 6 August 2020;[7]

f. Affidavit and appendices of Amber Rakuraku-Rosieur dated 6 August 2020;[8] and

g. Submissions in reply to Crown submissions dated 7 August 2020.[9]

5. This application for reconsideration relies on these documents previously filed together and should be read in conjunction with the following evidence:

a. The Affidavit and Exhibits of Carlo Gage;

b. The Affidavit of Donny Kurei;

c. The Affidavit of Paeone Goonan;

d. The Affidavit and Exhibits of Amber Rakuraku-Rosieur; and

e. The Affidavit and Exhibit of Robyn Hata-Gage.

6. The Claimants seek full participation in this urgency.

Grounds for an Urgency Hearing

7. Pursuant to cl. 2.5 of the Waitangi Tribunal's Guide to Practice and Procedure, the requirements for the granting of an urgent inquiry are as follows:

a. that the Claimants are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

b. that there is no alternative remedy, which in the circumstances, would be reasonable for the Claimants to exercise; and

c. that the applicants are ready to proceed urgently to a hearing.

[7] Wai 2985, #A4.
[8] Wai 2985, #A3 and #A3(a).
[9] Wai 2985, #3.1.4.

8. Other relevant factors the Waitangi Tribunal may consider include whether the claim for urgency challenges an important current or pending Crown action or policy and/or any other grounds justifying urgency.

Decision on application for urgency in 2020

9. Following the decision by Savage J on the 20 October 2020 decision to adjourned the Wai 2961, Wai 2983, Wai 2984, Wai 2985, and Wai 2986, [10] the applicants say that the Crown has failed to adequately engage with the applicants to settle issues in good faith. It is on this basis, that the application for reconsidered urgency is being made.

Crown has failed to adequately engage with the urgency applicants to settle the issues in good faith

Significant or irreversible damage as a result of current or pending action of the Crown

10. This urgency application focuses on current and pending actions and omissions of the Crown that have occurred since the decision to decline the urgency application on 20 October 2020.

11. The engagement by the Crown and WPSCT with the applicants following the October 2020 decision has been inadequate. The Crown has effectively ignored the significant opposition of the applicants to the WPSCT mandate.

12. The applicants have repeatedly said they want to proceed with the Waitangi Tribunal process as they want to have their historical stories and knowledge recorded as part of their settlement package. Further to this, the support demonstrated by the Wai 558 claimant group for a historical inquiry also relates to their aspirations for a well-informed settlement process – guided by the findings and recommendations of the Waitangi Tribunal. The applicants argue that the historical inquiry must be concluded and settlement built upon

[10] Wai 2961, #2.5.4 at [162]-[163].

its foundations. Nevertheless, the Crown have consistently urged the WPSCT to covertly get hapū to agree.

13. Nevertheless, the Crown sought to pursue engagements with the WPSCT despite the strong opposition of Ngāti Ira and other claimants.

14. On 31 August 2020, Mr Donald Ati Kurei, the Chairman of the Opeke Marae Committee, received a letter from Te Arawhiti inviting a meeting between Whakatōhea marae and hapū chairs and the Crown.[11] This invitation was not extended to Mr Carlo Hemoana Gage, as the Chairman of Opeke Marae Trustees, or Mr Te Rua Rakuraku, the lead claimant for Wai 558. Despite this, the applicants decided to meet with members of Te Arawhiti at Opeke Marae, Waioweka.

15. On 7 November 2020, the applicants had a meeting with the Crown. At this meeting, the applicants informed the Crown that the WPSCT did not have a mandate to represent Ngāti Ira. Furthermore, the applicants stipulated very clearly that they would like to advance their claims via the Waitangi Tribunal process.[12]

16. The applicants left this meeting satisfied that a mutual understanding between the Crown and Ngāti Ira had been met which was that the WPSCT did not have the mandate to represent them and that any settlement negotiations would be deferred until the Waitangi Tribunal process had concluded.

17. Following this hui, a letter from Te Arawhiti dated 15 December 2020 was received by the applicants.[13] The Crown expressed their understanding following that hui around the concerns raised by the applicants. These concerns are stipulated above at para [15].

18. The Crown went on to outline their preference, and established approach to the settlement of historical claims, is to negotiate the settlement of individual claims. In the case of Whakatōhea, the Crown considers it appropriate to settle

[11] Attached to the Affidavit of Carlo Hemoana Gage, at Appendix "**A**"**.**
[12] Attached to the Affidavit of Robyn Hata-Gage, at Appendix "**A**"**.**
[13] Attached to the Affidavit of Amber Rakuraku-Rosieur, at Appendix "**E**"**.**

with the iwi as a whole and does not intend to negotiate separate settlements with Whakatōhea hapū.

19. The Crown stated that there is allegedly, clear support amongst Whakatōhea to continue negotiations with the WPSCT, and support for a Waitangi Tribunal district Inquiry, as pathways to address Whakatōhea historical claims against the Crown.

20. An approach was proposed by the Crown. When negotiations were to conclude, and if the ratification process shows Whakatōhea support the settlement, the Waitangi Tribunal will retain jurisdiction to inquire into Whakatōhea historical claims. It will be able to make findings but not recommendations on those claims once the settlement is given legal effect and is operative. As only historical claims have been settled, the Waitangi Tribunal will retain full jurisdiction to inquire into contemporary claims.

21. The applicants express their concerns with this approach in the evidence which is filed in conjunction with this application. They say that the proposal is an adversarial type of approach whereby they have presented an option to Ngāti Ira that will be polarising for hapū of Whakatōhea because the Crown is asking for ngā hapū o Whakatohea to vote to proceed with the ratification process even though we of Ngāti Ira and other hapū have been given insufficient time to distribute communications to our hapū and whānau to convey our perspectives on the Crowns proposal and the WPSCT.

22. Notwithstanding this position, the Crown continued to pursue a settlement package with the WPSCT to finalise the Deed of Settlement for ratification for Te Whakatōhea.

23. On 26 February 2021, the applicants were made aware by Te Arawhiti that the Crown along with the WPSCT continued to push their agenda in finalising a settlement package.[14]

24. The actions of the Crown and the WPSCT have been hugely egregious for the applicants and is the basis for this application. The applicants say that the

[14] Attached to the Affidavit of Carlo Hemoana Gage, at Appendix "**B**".

engagement process has failed to take account of the wishes of Ngāti Ira and other hapū of Te Whakatōhea.

25. The ultimate dissatisfaction of the applicants and other hapū in Whakatōhea is the incessant advancement of finalising the settlement package despite constant opposition from the applicants.

26. The Crown and WPSCT have resumed its negotiations to a full and final settlement, the amendments to the withdrawal mechanism remain unclear and unworkable with the effect that the claimants are locked into a process of negotiation being undertaken by a third party that does not have their support.

27. The way the Crown continues to conduct this process, only reinforces that our view is a proper one and relies on this urgency application to appropriately honour Te Whakatōhea Tikanga.

28. If urgency is not granted, the consequences of failing to consider the grievances suffered by each hapū independently and to allow for these grievances to be appropriately recognised and recorded, will cause irreversible harm and prejudice.

No alternative remedy

29. The applicants submit that there is no alternative remedy available to them.

30. The Crown has been relentless in pushing their own agenda which is merely to settle the claims of Te Whakatōhea as fast as possible, rather than fairly settling the grievances of Te Whakatōhea.

31. The Crown have continued to push an imbalanced and unfair approach towards the WPSCT which causes significantly prejudice to those who do not support the WPSCT.

32. The timing of this process to initial a Settlement package and the signing of a Deed of Settlement means that the Crown cannot adequately engage with claimants about alternative pathways available. Any engagement would not be genuine or in good faith.

33. The applicants still argue that there remains to be significant issues with the withdrawal mechanism.

34. The applicants are effectively being locked into a process that does not have sufficient support from all of Te Whakatōhea.

Withdrawal mechanism

35. The withdrawal mechanism was a key issue for the Wai 2662 Tribunal, which found that the Crown failed to act reasonably when it approved a mandate that contained a withdrawal mechanism that the Crown recognised was unfair.

36. The withdrawal mechanism was amended at a WPSCT trustees meeting on 3 February 2020.[15] The applicants submit that because the Crown specifically rejected a number of key Wai 2662 recommendations in relation to amendments required to the mechanism, the mechanism remains unclear and unworkable with the effect that the applicants are locked into a process of negotiation being undertaken by a third party that does not have their support.

37. The applicants argue that the 3 February 2020 amendment to the withdrawal mechanism actually made the process of withdrawal more onerous. This is because it remains unclear what the 5% number of "adult members of Whakatōhea" in fact relates to.

38. Census figures provide a total iwi population of 12,177 people, but do not provide a breakdown of those aged 18 years and older and there is no iwi registration or verification process associated with census data.

39. This was also highlighted in the October 2020 decision by Savage J at paragraph [165]:[16]

> 165. Having reached that point, I would normally make no further comment. In the circumstances of this case I think I should however, signal to the parties that there may be real problems which require urgency. Examples of these could be the "5% of what?" issue, and also the importance of the answer to question 1 of the vote of October 2018. This vote appears to show that there are three hapū for and against and one deadlocked.

[15] Wai 2983, #A1(a).
[16] Wai 2961, #2.5.4 at [165].

40. The applicants submit that the Crown submissions and evidence have failed to provide any clarity on this point.

41. The applicants submit that the Crown cannot then point to the non-use of an unworkable withdrawal mechanism, which remains in breach of the Treaty, as a viable alternative remedy.

42. The applicants have not used the amended mechanism because of the significant uncertainty that remains with the amended withdrawal clause.

43. Therefore, there is no alternative remedy that, in the circumstances, will be reasonable for the Claimants to exercise.

Continued engagement with the Crown and WPSCT

44. Given that negotiations have ended, and a settlement package has been agreed to, any further engagement in relation to Wai 1782 urgency claim matters will not be considered genuine and meaningful. Furthermore, the Deed of Settlement is due to be signed at the conclusion of March 2021 which means any engagement with the Crown and/or WPSCT will not be given the proper time that is required.

45. The relationship between the Crown and Claimants is in a state of disrepair because of the repeated actions of the Crown. This has caused disdain and distrust by the Claimants towards any processes or options that the Crown might try to suggest or direct.

Readiness to proceed to hearing

46. The Claimants are ready to proceed to an urgent hearing.

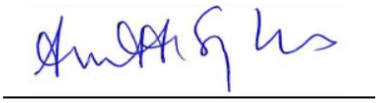
Directions sought

47. The Claimants respectfully seek the following directions:

    a. grant urgency in relation to the hearing of this claim; and

    b. issue timetable directions to enable the claim to proceed.

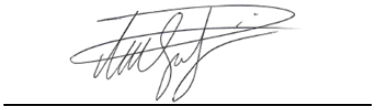
DATED at Rotorua this 12th day of March 2021



Annette Sykes

Camille Houia

Kalei Delamere-Ririnui



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