IN THE WAITANGI TRIBUNAL

Wai 2700

CONCERNING the Treaty of Waitangi Act 1975

AND the Mana Wāhine Kaupapa Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER REGARDING FORWARD PLANNING FOR THE TŪĀPAPA HEARINGS AND AN UPDATE ON THE JOINT RESEARCH COMMITTEE

26 April 2022

Purpose

1. This memorandum-directions addresses:

   a) Matters concerning the forward planning for the remaining tūāpapa hearings.

   b) An extension to file the Joint Research Committees finalised project briefs and commissioning guidelines.

Background

2. On 1 February 2022, and following the deferral of tūāpapa hearings four, five and six, I issued a memorandum-directions providing alternative dates to hear the remaining tūāpapa evidence in 2022 and granted leave for coordinating counsel to provide an update on forward planning for the tūāpapa hearings by 4 February 2022 (Wai 2700, #2.5.67).

3. On 4 February 2022, coordinating counsel filed an update confirming there was overall consensus amongst claimant counsel that the tūāpapa hearings should proceed without delay (Wai 2700 #3.1.565). Counsel advised that they were seeking further instructions from their clients as to whether the claimants could prepare and present their evidence remotely if COVID-19 restrictions continued. Proposals for claimants who can present via AVL, and alternatives for those who cannot, were also provided (Wai 2700, #3.1.565 at [12a] & [12b]). Counsel sought leave to file another update following further consultation regarding hearing dates, locations and AVL capabilities.

4. On 24 February 2022, coordinating counsel filed a further update on tūāpapa hearing forward planning (Wai 2700, #3.1.570). Counsel submitted a proposal for hearing dates and locations and filed witness lists for the remaining hearings and for those who wish to participate by filing written evidence (Wai 2700, #3.1.570, #3.1.570(a), #3.1.570(b), #3.1.570(c), #3.1.570(d), #3.1.570(e) & #3.1.570(f)). Counsel advised that further consultation undertaken had determined that holding tūāpapa hearing four during the proposed week of 30 May 2022 was 'unworkable' for many claimants (Wai 2700, #3.1.570).

5. On 18 March 2022, I issued a memorandum-directions confirming the Tribunal would proceed with coordinating counsel's proposal for hearing dates and the filing and presentation of evidence in order to complete the tūāpapa phase in 2022 (Wai 2700, #2.5.070).

6. Dates for tūāpapa hearing four and five were confirmed as follows (Wai 2700, #2.5.070):

   a) Tūāpapa hearing four will be held at **Te Mānuka Tūtahi Marae, 105 Muriwai Drive, Whakatāne from Monday 11 July to Friday 15 July 2022**.

   b) Tūāpapa hearing five will be held in the **lower North Island from Monday 22 August to Friday 26 August 2022**.

7. I also directed counsel to refile final lists of witness preferences and capabilities, and submissions on preferred locations for the lower North Island hearing by 5 April 2022 (Wai 2700, #2.5.070).

Tūāpapa hearings

8. On 5 April 2022, coordinating counsel filed an update on location preferences for tūāpapa hearing five and finalised lists for witnesses as well as claimants' capabilities and preferred methods for presenting evidence (Wai 2700, #3.1.577, #3.1.577(a), #3.1.577(b), #3.1.577(c), #3.1.577(d), #3.1.577(e) & #3.1.577(f)).

9. Counsel advised that the tūāpapa hearing four (Whakatāne) and tūāpapa hearing six (South Island) witness lists are confirmed. Nine out of 62 witnesses are yet to be confirmed for tūāpapa hearing five (lower North Island), however, counsel expect all witnesses to be confirmed by the time the draft timetable is due on 14 July 2022 (Wai 2700, #3.1.577). For those not presenting during the tūāpapa hearing stage, counsel state (Wai 2700, #3.1.577(d), #3.1.577(e) and #3.1.577(f)):

    a) 18 witnesses indicated they will file evidence by 26 August 2022 and present in the subsequent hearing phase;

    b) one witness indicated they will file their evidence, and have it taken as read with questions in writing; and

    c) nine witnesses indicated they will file and present their tūāpapa evidence during the subsequent hearing phase.

10. Counsel provided estimated hearing times based on the confirmed witness lists. These estimates, counsel noted, come with the caveat that should hearings need to take place via AVL then less time would be required since pōwhiri and poroporoaki would not take place. If hearings are conducted in person, however, counsel estimate that the following number of days are required (Wai 2700, #3.1.577):

    a) Tūāpapa hearing four: 4 days

    b) Tūāpapa hearing five: 5.5 days

    c) Tūāpapa hearing six: 1.6 days.

11. Counsel submit that, based on these estimates, a further half day is required for tūāpapa hearing five. In order to fit in the additional half day, counsel proposed the Tribunal (Wai 2700, #3.1.577):

    a) convene for one additional day in the week following tūāpapa hearing five; or

    b) sit until 6pm from Monday to Thursday so that the additional evidence can be accommodated.

12. As directed, counsel advised that they engaged with claimant counsel on the matter of the preferred location for tūāpapa hearing five. Counsel noted that 73 percent of witnesses are yet to respond with their preferred location for the lower North Island hearing. Of those who responded:

    a) 15 percent prefer Te Wānanga o Raukawa in Ōtaki;

b) 5 percent prefer Te Wānanga o Raukawa in Ōtaki or Te Awahou Neiuwe Stroom (TANS) cultural centre in Foxton; and

c) 8 percent prefer a neutral Wellington based venue.

13. Given the number of witnesses yet to provide their preference, counsel sought leave to provide a further update on the location for tūāpapa hearing five by 29 April 2022 (Wai 2700, #3.1.577).

Joint Research Committee

14. On 15 December 2021, I granted an extension to file the finalised project briefs and the commissioning guidelines by 4 April 2022 (Wai 2700, #2.5.65 at [8]). On 4 April 2022, coordinating counsel filed an update seeking a further extension on behalf of the Joint Research Committee (Wai 2700, #3.1.576).

15. Counsel note that the finalisation of the project briefs has been delayed by additional work being required following moderation. They advise that the project briefs are currently being reviewed by claimant and Crown counsel, and the Joint Rōpū and Joint Research Committee members not involved in the drafting of the briefs (Wai 2700, #3.1.576). Counsel anticipates more time will be required to make additional amendments following the feedback process. To allow sufficient time for this process to take place, the Joint Research Committee seek a further extension until 29 July 2022 to file the finalised project briefs (Wai 2700, #3.1.576).

16. Counsel also note that the guidelines are yet to be finalised due to the project briefs being prioritised. Counsel submit that further time is required to develop the guidelines, discuss them within the Joint Research Committee, and engage with claimants. The Joint Research Committee seek an open extension to file the guidelines as soon as possible (Wai 2700, #3.1.576).

Decision

17. I have considered the proposals put forth by counsel in relation to the additional half day of hearing time required for tūāpapa hearing five.

18. This Tribunal is unable to sit for an additional day in the week following (29 August – 2 September 2022) as a hearing is scheduled that week for the Health Services and Outcomes Kaupapa Inquiry (Wai 2575). Parties will be aware that Linda Tuhiwai Smith is also a member of that panel. In addition, and as noted by coordinating counsel, it is not preferable to sit until 6pm during a hearing week. While I recognise that counsel seek clarity on how to approach this issue, I propose that a solution be found following counsel's engagement with the remaining claimants on their preferred location for tūāpapa hearing five.

19. In relation to tūāpapa hearing six, I note that as it stands, only 1.6 days of hearing time is required. The Tribunal reserves the position to hold this hearing in Wellington if the number of witnesses remains low.

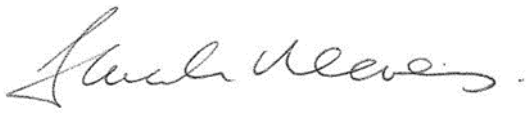
20. In relation to hearing venue in the lower North Island, I note that there is currently extensive construction being carried out on Te Wānanga o Raukawa site, and also that the dates for that hearing week fall during term. For these reasons, the Wānanga may now be a less suitable hearing venue. I invite claimants and counsel to consider whether a location in Hawkes Bay is supported and if so, whether a suitable venue can be identified. Therefore,

coordinating counsel are to submit a further update on the preferred venue for tūāpapa hearing five by **12pm, Monday 2 May 2022.**

21. The Joint Research Committee are to file both the finalised project briefs and the commissioning guidelines on or by **12pm, Friday 29 July 2022.** It should be noted that the Joint Research Committee will not be able to commission research before the guidelines are finalised.

The Registrar is to send this direction to all those on the notification list for Wai 2700, the Mana Wāhine Kaupapa Inquiry.

DATED at Wellington on this 26th day of April 2022.



Judge S F Reeves
Presiding Officer
WAITANGI TRIBUNAL