OFFICIAL

Wai 575, #2.14
Wai 37, #2.24
Wai 933, #2.20
Wai 1196, #2.12
Wai 833, #2.16
Wai 965, #2.15
Wai 1044, #2.16
Wai 151, #2.21
Wai 954, #2.21
Wai 1072, #2.12
Wai 1073, #2.11
Wai 1189, #2.7
Wai 1197, #2.3
Wai 1261, #2.9
Wai 1192, #2.7
Wai 1029, #2.9
Wai 1408, #2.8.1
Wai 48, #2.36
Wai 81, #2.6
Wai 146, #2.38
Wai 277, #2.20
Wai 554, #2.14
Wai 569, #2.13
Wai 1250, #2.4

In the Waitangi Tribunal

Concerning	the Treaty of Waitangi Act 1975
and	applications for urgency filed in respect of a proposed settlement involving the Tauwera Forest

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Memorandum and directions of the Deputy Chairperson adjourning applications for urgency filed in respect of a proposed settlement involving the Taurewa Forest

(22 May 2008)

Tēnā rā tātou katoa

Introduction

1. Yesterday at Te Puke Marae, Raetihi, I sat as Deputy Chairperson of the Tribunal to conduct a judicial conference of applicants for an urgent inquiry of the Tribunal. I had the assistance at the conference of Tribunal member Dr Angela Ballara, who has made a study of the whakapapa of the peoples of the central North Island and the Whanganui district.
2. The issue lying behind the applications before me is the alleged failure of the Crown to engage fully with groups in the Whanganui region about the inclusion of the Taurewa Forest in the proposed CNI Forests Settlement. The Taurewa Forest is located in an area known as the Taurewa Block.
3. It is my understanding, from the advice of Dr Ballara, that those with traditional interests in this block descend in many cases from Tamakana, who first occupied this area after his migration from Hautū, south of Taupō. During his people's occupation of the Taurewa district, they fought Ngāti Hotu. They were later joined by Hikairo, a tupuna of mixed origins who married a grandchild of Tamakana. The two peoples developed together across the Taurewa district and into Waimarino.
4. Tamakana and his cousin Pouroto and the related peoples who followed them and settled Taurewa, descend from Tūwharetoa. But on his mother's side, Tamakana descended from Whanganui ancestors, including Uenuku Tūwhatu. His wives were also from Whanganui. In ongoing battles with Ngāti Pouroto and other Tūwharetoa groups, there was gradually a shift of identity. As a result, the many hapū that developed from Tamakana and his wives related strongly to their Whanganui whanaunga. This affiliation was perhaps stronger than their affiliation to Tūwharetoa. This shift of identity was strengthened after Ngāti Tamakana defeated Ngāti Pouroto, and many Tamakana hapū moved to Manganui-o-te-Ao, intermarrying with their Uenuku and other Whanganui whanaunga. Ngāti Hikairo continued on in Taurewa, sharing the rohe with Ngāti Pouroto, Ngāti Waewae, Ngāti Hinewai and other groups. The primary identity of most of these groups was with Tūwharetoa.

Applications

5. In response to my direction dated 14 May 2008 (Wai 1130, #2.5.8), the following parties have filed applications for an urgent hearing:
    - Tamakana (Josey Lang representing claimants of Wai 954, and Mark McGhie representing claimants of Wai 1072, 1073, 1189, 1197);
    - Ngāti Māringi, Ngāti Kahukurapango, Ngāti Tara, Ngāti Hotu, Ngāti Hinewai (Jason Pou representing claimants of Wai 1261, 1192, 1029, 1408);
    - Ngāti Hāua (Spencer Webster representing claimants of Wai 48, 81, 146).
6. These parties filed notices of opposition to the applications for urgency:
    - Ngāti Tūwharetoa (Karen Feint and Kelly Fox representing claimants of Wai 575).

7. I note that some of these applicants filed papers very close to the commencement of the judicial conference. I therefore called on parties attending the conference to summarise their clients' positions when they announced their appearance. Having heard those summaries, I now set out below in brief my understanding of those positions.

Claimants' positions set out at the judicial conference

8. The positions of the claimant parties that appeared before me fell into four categories:

(a) Whanganui iwi and hapū seeking an urgent hearing:

These groups

- Tamakana (Josey Lang representing claimants of Wai 954, and Mark McGhie representing claimants of Wai 1072, 1073, 1189, 1197);
- Ngāti Māringi, Ngāti Kahukurapango, Ngāti Tara, Ngāti Hotu, Ngāti Hinewai (Jason Pou representing claimants of Wai 1261, 1192, 1029, 1408);
- Ngāti Hāua (Spencer Webster representing claimants of Wai 48, 81, 146)

say:

- The Crown has long been aware – through pleadings, evidence and submissions filed in the National Park and Whanganui district inquiries of the Waitangi Tribunal – of the claims of Whanganui iwi in respect of the Taurewa Block;
- Whanganui groups have registered claims to the Taurewa Forest, but the Crown did not speak to them about the inclusion of this forest in the CNI Forests Settlement;
- They are not part of the CNI Collective, and they have not been given an opportunity to be so;
- The Taurewa Forest comprises 0.35% of the forests within the CNI Forests Settlement. It is the only forest included in the proposed settlement that is the subject of urgent applications to the Tribunal. As it comprises such a small proportion of the assets in the settlement, could it not be excised so that the question of entitlement to interests there can be properly considered?;
- Those groups that have interests in forests in the CNI Forests Settlement, but are not part of the Collective, are to have their interests reflected in a 10% proportion that has been set aside from the main settlement. People with Whanganui interests do not know how the 10% was calculated, nor whose interests are intended to be met from within it. This means that there is too much uncertainty for Whanganui people in these proposals for them to be able to consent to them;
- The Crown is dealing with Whanganui interests as those of "overlapping" claimants. Coming to them belatedly, after decisions have already been made that affect them, follows a pattern that is negative for Crown/Māori relationships in this district;

- Whanganui groups have not been funded to engage in a process to gain recognition for, and secure an appropriate response to, their interests in Taurewa Forest.

(b) Ngāti Hikairo applicants seeking an urgent hearing:

Ngāti Hikairo (Jolene Patuawa and Alex Hope for Wai 37, Wai 933, Wai 1196, Wai 833, Wai 965, and Wai 1044) say:

- Although Ngāti Tūwharetoa (Wai 575) are party to the CNI Forests Settlement, this group does not represent the interests of these Ngāti Hikairo claimants;
- The Crown has long known about this situation, but as yet these groups do not know how the Crown proposes to address their interests in Taurewa Forest;
- They have had difficulty accessing documents;
- The Crown may intend that the interests of these Ngāti Hikairo claimants are met from within the 10% proportion kept aside from the main settlement, or alternatively may see them as part of the CNI Collective, on the basis of the purported (but denied) mandate of Ngāti Tūwharetoa. Based on their current understanding, neither of these options is acceptable to them.

(c) Parties concerned that the Crown's intentions for how Crown forests will be handled in Treaty settlements may adversely affect claimants in the Whanganui district inquiry of the Tribunal:

- Ngāti Rangi (Liana Poutu representing claimants of Wai 151, 277, 554, 569, 1250) attended the conference in the capacity of an observer. Ngāti Rangi seeks reassurance that the inclusion of Taurewa Forest in the CNI Forests Settlement will not have the effect of increasing the number of Whanganui claimants who will seek to derive part of their Treaty settlement assets from other Crown forests in the rohe. While Ngāti Rangi claim no interests in Taurewa Forest, they do claim interests in Karioi, Lismore and Erua Forests.
- Ngā Wairiki (George Matthews attended to speak on behalf of Wai 655) pointed out to whanaunga that, in the proposed settlement between Ngāti Apa and the Crown, there is provision in the Agreement in Principle for up to 50% of the Lismore Hills and Lismore Sands Forests to be included. This would reduce the Crown forests assets available to claimants within the Whanganui district inquiry.

(d) Parties opposing the applications for an urgent hearing:

- Ngāti Tūwharetoa (Kelly Fox, representing Wai 575) and Ngāti Manunui (Campbell Duncan, representing Wai 998) are satisfied that their interests in the Taurewa Forest are adequately met within the CNI Forests Settlement, of which they are part. They do not want the Tribunal to grant an urgent hearing, believing that this would unnecessarily delay the settlement.

What the Crown said

9. Crown Counsel Virginia Hardy and David Soper appeared to submit to the Tribunal that for it to grant an urgent hearing would be precipitate. Rather, the Crown wishes to engage further in discussions with the parties that have applied, and is making arrangements to that end.

10. Ms Hardy said:

- There have been meetings between Crown officials and various of the claimant groups now applying, and also correspondence informing parties of what has been happening;
- The Crown has insisted upon the setting aside of 10% of the forest assets from the main settlement to ensure that those not now part of the collective can be provided for;
- The Crown is confident that the 10% put aside is sufficient for the purposes of the applicants;
- The Crown accepts and acknowledges the potential interests of the Whanganui iwi and hapū (the Crown distinguishes these from Ngāti Hikairo's interests) in Taurewa Forest, and these have been specifically taken into account in calculating the 10%;
- The Crown is looking at the possibility of the Waitangi Tribunal's jurisdiction being preserved in relation to the forests comprised in the 10%;
- There is a strong linkage of Ngāti Hikairo with Ngāti Tūwharetoa. There is significant economic advantage to beneficiaries of the forest settlement if the assets are allocated to larger groupings rather than dispersed among smaller groupings. Ms Hardy drew an analogy with Te Oho Kaimoana and the administration of the fisheries settlement;
- All of the iwi participants are running their own processes to confirm their involvement in the CNI Forests Settlement, and Ngāti Tūwharetoa will address the issues between the iwi and parts of Ngāti Hikairo then. The hui concerning the Taurewa Forest is scheduled for 8 June 2008 at Otukou Marae.

The path forward

11. Having heard the parties, I consider that the important next step is for the Crown's officials to meet with the applicants before me. After some discussion, it was agreed that the following hui will now proceed:

    Thursday 22 May 2008, 5pm at Mangamingi Marae, Raetihi

    Wednesday 28 May 2008, *time and venue to be confirmed*

12. Although this engagement comes at a late juncture, I am hopeful that it will bear fruit.

13. I now adjourn *sine die* the applications for urgency that have been filed, reserving leave for parties to renew their applications should the need arise.

The Registrar is directed to send a copy of this direction to all those on the notification list for Wai 1130, the combined record of inquiry for the National Park claims; Wai 903 the combined record of inquiry for Whanganui claims; and Wai 1200, the combined record of inquiry for Central North Island claims.

DATED at Raetihi this 22nd day of May 2008

Judge C M Wainwright
Deputy Chairperson
WAITANGI TRIBUNAL