TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3218

E PĀ ANA KI *CONCERNING*	te ture o te Tiriti o Waitangi 1975 *the Treaty of Waitangi Act 1975*
Ā, *AND*	te tono pakirehua nonoi nā Matthew Te Pou māngai mō ngā whānau o Te Waimana *an application for urgent inquiry by Matthew Te Pou on behalf of himself and Te Waimana whānau*

TE WHAKATAUNGA Ā TIAMANA TUARUA KAIWHAKAWĀ SARAH REEVES

DECISION OF THE DEPUTY CHAIR JUDGE SARAH REEVES

8 Poutū-te-rangi 2024

Hei tīmatanga kōrero / Introduction

1. This decision concerns an application for urgent hearing by Matthew Te Pou (the applicant) on behalf of himself and Te Waimana whānau alleging that the Crown is failing to provide housing support and services to Te Waimana whānau and hapū in breach of its Treaty obligations and seeking an urgent hearing of this claim.

Ko te hātepe ture o te tono nei / Procedural history

2. On 22 September 2022, the Tribunal received a statement of claim and application for an urgent hearing on behalf of Matthew Te Pou, accompanied by evidence in support (Wai 3218, #1.1.1, #3.1.1 & #A1–#A10). The Crown filed its response opposing the application along with supporting evidence on 10 March 2023 (Wai 3218, #3.1.16, #A11 & #A11(a)).

3. On 10 March 2023, the Tribunal received submissions and evidence in response to the application from the Ngāi Tūhoe post settlement governance entity Te Uru Taumatua (TUT) as an interested party, which is granted (Wai 3218, #3.1.17 & #A12).

4. On 15 March 2023, the applicant sought a referral to mediation (Wai 3218, #3.1.15). On 24 March 2023, the Tribunal received the applicant's reply submissions, and memoranda from the Crown and TUT opposing the proposal for mediation (Wai 3218, #3.1.18, #3.1.19, #3.1.19(a)–#3.1.19(c) & #3.1.20).

5. On 22 July 2023, the Tribunal received a request from the applicant to convene a judicial conference (Wai 3218, #3.1.22). On 19 October 2023, I issued memorandum-directions confirming that I was seized of the application following the retirement of former Chief Judge Isaac and giving the applicant an opportunity to file an update of the application.

6. On 1 November 2023, the applicant filed a memorandum of counsel (Wai 3218, #3.1.24) submitting that should urgency not be granted, given the passage of time, that the application be included in Stage Two of the Housing Policy and Services Kaupapa inquiry and given the claimants' circumstances be given priority, where practicable.

Ko te kaupapa o te tono nei / Background

7. The applicant brings their claim on behalf of te whānau o Te Waimana, a rural community south of Whakatāne. It is one of four tribal whārua that make up the Tūhoe rohe. In 2008, Te Waimana Kaaku Trust (the Trust) was established with the purpose to nurture and serve the people of Te Waimana (Wai 3218, #1.1.1 at [5]–[9] & #A2). In 2019, the Trust undertook 100 whānau housing assessments. Discussions were entered into with Te Puni Kokiri, Ministry of Māori Development (TPK) and funding was secured to develop a Te Waimana Housing Plan (Wai 3218, #A2 at [31]–[36]).

8. In July 2021, He Tapuae was signed to form part of the mana motuhake redress in the Tūhoe Deed of Settlement. He Taupae is the primary mechanism for engagement between the Crown agencies and Tūhoe, which includes housing (Wai 3218, #A1 at [1.3] and [3.1]–[3.2]). In November 2021 TPK advised that discussions about further funding would need to be deferred and ensure that He Tapuae is implemented effectively (Wai 3218, #A11 at [9] & #A11(a) at 'MSE-7').

9. The Trust followed up with TPK on several occasions and received no response regarding the development of the process. The Ministry of Social Development informed the Trust's Chair that it could no longer deal with the Trust without express consent from the post settlement governance entity TUT (Wai 3218, #A2 at [38] and [39]). The Trust also prepared a proposal to TPK to fix another eight houses after successfully doing so on the first round. TPK had indicated that it wanted to roll out another housing repairs contract,

but it could not do so until written approval was received from TUT (Wai 3218, #A2 at [40]–[41]).

10. There is a summary of the submissions by the applicant, the Crown, and the interested party, contained in **Appendix 1** to this decision.

Ngā paearu pakirehua nonoi / Urgency criteria

11. The Tribunal's *Guide to Practice and Procedure* outlines the following non-exhaustive factors in determining an urgency application:

    - The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
    - There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise;
    - The claimants can demonstrate that they are ready to proceed urgently to a hearing;
    - The claim or claims challenge an important current or pending Crown action or policy;
    - An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
    - Any other grounds justifying urgency have been made out.

Kōrerorero / Discussion

12. This claim raises an important issue concerning the Crown's treaty obligations to whānau and hapū in a post settlement environment, specifically in this claim concerning housing support and services for the Te Waimana community. The applicant says that they should be able to access fair and equitable housing support and services through He Tapuae, or from the Crown directly pursuant to their Article 3 rights.

13. The Crown opposes saying it is engaging with the applicants and denies that it is restricting the rangatiratanga of Te Waimana hapū. The Crown also submits that there are alternative remedies available, specifically participation in the Housing Services and Policy Kaupapa inquiry. TUT, the interested party also opposes the application and says that the heart of the issue is the relationship between TUT as Tūhoe's chosen representative entity and the Crown.

14. An application for urgency will only be granted in exceptional circumstances, where the applicant can demonstrate that the Tribunal should prioritise an urgent inquiry and divert limited staff and resources from its programme of current inquiries to do so. The threshold is high, and the application for urgency will fail if the criteria set out above have not been established.

15. The Wai 3218 application does not currently meet the criteria for an urgent inquiry. There are two reasons. First, with the passage of time since the applicant filed their last update, the Tribunal has received many urgency applications relating to new and developing policy initiatives by the new Government which must be prioritised because of the likelihood of pending law reform. Second, there is an alternative remedy being the hearing of this claim by the Housing Policy and Services Kaupapa Inquiry. That inquiry is currently in the interlocutory phase for Stage Two which will hear all remaining claim issues within a single comprehensive inquiry. That is now the most appropriate pathway for this claim to be heard by the Tribunal.

Kupu whakatau / Decision

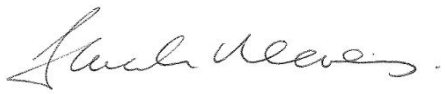
16. The application for an urgent inquiry is dismissed.

17. The substantive application is now referred to the Housing Policy and Services Kaupapa Inquiry Panel for their consideration. Any decision as to priority is to be determined by that Tribunal.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3218, Te Waimana Housing kerēme.

The Registrar is to send a copy of this direction to all those on the notification list for Wai 3218, the Te Waimana Housing claim.

WHAKAPŪMAUTIA ki Te Whanganui-a-tara i te 8 o te Poutū-te-rangi 2024



Kaiwhakawā Sarah Reeves
Tiamana Tuarua
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