Wai 1040

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry, Stage Two

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER

1. This memorandum-direction addresses matters arising from the 24 November 2011 Te Paparahi o Te Raki Judicial Conference. The Judicial Conference focused primarily on the Joint Claimant Statement of Generic Issues (JCSGI). Counsel and claimants also commented on sub-regions, claimant statements of local issues, research, stage 1 report, the interlocutory process, and other matters.

2. The Tribunal maintains that Te Paparahi o Raki is a unique inquiry requiring an innovative and flexible approach. While we have set a programme for the Stage 2 Inquiry that required full consideration of the claims and claimants needs, the Tribunal remains open to suggestions from claimants and counsel on how to improve the process we have set as a way forward to the stage two hearings.

3. It is obviously difficult to make significant changes to how things are to progress, but sometimes modifications are necessary. If there is merit in a suggestion or proposal then we as a Tribunal must certainly give it consideration.

Joint Claimant Statement of Generic Issues (JCSGI)

4. Sixteen counsel subscribed to the JCSGI (Wai 1040, #3.1.687) filed with the Tribunal on 11 November 2011. The Tribunal sought to hear further submissions on the JCSGI at the recent Judicial Conference, particularly from counsel and claimants who did not contribute to the filed document.

5. Several counsel presented submissions regarding amendments to the current JCSGI. Mr Pou indicated that he wished to file an alternative version of the JCSGI. Ms Taurau and Ms Tuwhare proposed that counsel file a single joint amended version of the original JCSGI. Other counsel requested involvement in any future redrafting of the JCSGI.

6. Counsel and claimants expressed a strong interest in maintaining the link between the issues of sovereignty, He Whakaputanga and Te Tiriti that were raised in Stage 1 and the generic issues for Stage 2.

7. Taking into consideration the submissions from claimants, claimant counsel, and Crown counsel at the recent Judicial Conference, the Tribunal prefers a single amended Joint Claimant Statement of Generic issues.

8. We therefore propose that an amended and final Joint Claimant Statement of Generic Issues should be filed no later than **midday**, Wednesday **21 December 2011**. This timeframe is intended to allow counsel not previously involved to contribute and for all to reconsider the document in light of any issues raised at the Judicial Conference. It will also allow Crown counsel to respond to a single document.

Sub-regions

9. The Tribunal outlined in its 4 November 2011 memorandum-directions (Wai 1040, #2.5.102) that the purpose of proposed sub-regions is to enable logical groupings of claimants to organise, prepare for, and host, the sub-regional hearings.

10. It is clear that discussion has started among various Te Paparahi o Raki groups on this issue. Natural centres of gravity appear to be emerging in Te Paparahi o Te Raki as claimants continue organising themselves. The Tribunal sees this as pivotal to the success of local hearings in this inquiry.

11. While we received submissions from counsel and claimants proposing possible sub-regional areas at the recent Judicial Conference it is too early for any decisions to be made with regard to this issue. As we have previously stated (Wai 1040, #2.5.102) the Tribunal will be looking to set a process to deal with the setting of sub-regions in a proper and timely manner. We will allow claimants to continue their discussions, before setting any formal process to receive submissions.

Severance of Mahurangi from the Te Paparahi o Te Raki inquiry

12. Mr McDonald, Mr Sharrock, Ms Mason and Ms Thornton proposed the severance of Mahurangi from the Te Paparahi o Te Raki inquiry. Mr Sharrock previously called for the aggregation of Mahurangi claims into the Te Raki inquiry.

13. While the Tribunal has previously decided this issue (Wai 1040, #2.5.24) we understand that there has been a change in circumstances giving rise to this new application. The Tribunal requests that Mr Sharrock clarify his position on the severance or aggregation matter by **midday,** Wednesday **14 December 2011.**

Claimant Statement of Local Issues

14. In our 16 September 2011 memorandum-directions (Wai 1040, #2.5.94) we encouraged claimants to combine with other claimants in creating a joint Claimant Statement of Local Issues where a shared experience of Crown actions warranted it.

15. Claimants and their counsel should decide where and how local statements of issues may be grouped together. Since local groups of claimants with common issues and land areas continue to emerge, these same groups could work effectively together to create a joint Claimant Statement of Local Issues for their respective areas.

16. At the recent Judicial Conference Ms Tuwhare requested an extension to the filing of the Claimant Statements of Local Issues. Given our decision with regard to the JCSGI it is sensible to defer the filing date for the draft Claimant Statements of Local Issues until **midday**, Thursday **29 March 2011.**

17. Ms Tuwhare proposed a parallel interlocutory process for local hearings to run alongside Stage 2 generic hearings. The full details of how such a process were unclear. Given the slight shift in timeframes the parallel interlocutory process may be a way to ensure minimal slippage in terms of further timeframes. The Tribunal requests that Ms Tuwhare provide further clarification on the nature and detail of her proposed parallel process by **midday,** Wednesday **14 December.**

Research

Expansion of current reports

18. Mr Pou proposed at the Judicial Conference that current research reports such as Alexander's 'Land-Based Resources, Waterways and Environmental Impacts' (Wai 1040, #A7) be expanded upon by the original authors instead of commissioning a new report.

19. The Tribunal outlined its intended witness preparation for Stage 2 generic hearings in its 14 November 2011 directions (Wai 1040, #2.5.103). In this we outlined the need for technical witnesses to refocus their research on generic issues through:

    a) a succinct summary of their evidence; and

    b) their response to relevant issue questions as set out in the Tribunal's final statement of issues

20. The Tribunal further suggested a pre-hearing phase in which parties would be able to present questions of clarification to technical witnesses who would respond in writing. These questions could be organised as follows:

    a) substantive questions focusing on the sufficiency of supporting evidence, research method and interpretation; and

    b) questions of clarification on specific points and matters of detail

21. Although the Tribunal will not prescribe how counsel prepare technical witnesses, we think it important that counsel begin to plan this process. Proper witness preparation should ensure sufficient attention to issues such as the waterways one raised by Mr Pou. One possible way of preparing technical witnesses for hearing is to allocate the different headings or thematic divisions of the Tribunal generic statement of issues to particular counsel, who can then brief and lead the relevant technical witness.

22. The Tribunal is shortly to develop hearings design and planning material for parties to submit on. Part of this will be to indicate further how technical witnesses may be prepared for hearing.

Traditional Reports

23. The Tribunal understands that outstanding traditional oral reports which have been commissioned by the Crown Forestry Trust are yet to be completed. The Tribunal seeks an update from the CFRT as to the current status of work with regards to these reports.

Resourcing

24. Mr Doogan raised the issue of Waitangi Tribunal resourcing. In particular his concerns were with regard to the limited funding of the Waitangi Tribunal. I intend to respond to this issue following discussions with the Chairperson of the Waitangi Tribunal. In the meantime I have referred Mr Doogan's concerns to the Director of the Tribunal for discussion with her counterparts at the CFRT, and at the Office of Treaty Settlements.

Stage 1 Report

25. Claimants at the Judicial Conference requested an update on the progress of the Stage 1 report. We can advise that the Stage 1 Te Paparahi o Te Raki report is progressing to schedule.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki Inquiry.

DATED at Rotorua this 7th day of December 2011

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL