OFFICIAL

WAITANGI TRIBUNAL

Wai 2200

CONCERNING the Treaty of Waitangi Act 1975

AND the Porirua ki Manawatū District Inquiry

MEMORANDUM-DIRECTIONS (No. 18) OF DEPUTY CHIEF JUDGE C L FOX, PRESIDING OFFICER AND EMERITUS PROFESSOR SIR TAMATI REEDY AND DR GRANT PHILLIPSON

Tēnā koutou katoa

Introduction

1. This memorandum-directions provides further information about the upcoming facilitation process amongst the Raukawa-affiliated claimant community.

2. In our directions of 17 May 2011 (Wai 2200, #2.5.28) parties were invited to attend the facilitation, to inform the Tribunal of their preferred venue and to provide an indication of numbers likely to attend.

3. The Tribunal received memoranda from the following parties:

    a) Ms Moana Sinclair for Wai 1623 (Wai 2200, #3.1.226);

    b) Mr Hemi Te Nahu and Ms Eve Rongo for Wai 1640 (Wai 2200, #3.1.227);

    c) Ms Margaret Morgan-Allen for Wai 977 (Wai 2200, #3.1.228);

    d) Mr Hemi Te Nahu and Mr Paul Cochrane for Wai 648 (Wai 2200, #3.1.230);

    e) Mr Hemi Te Nahu for Wai 1944 (Wai 2200, #3.1.231);

    f) Ms Bernadette Arapere for Wai 1872 (Wai 2200, #3.1.232);

    g) Professor Richard Boast for Wai 443, 1472, and 2019 (Wai 2200, #3.1.233);

    h) Ms Donna Hall for Wai 113, 1461, 651, 437, 1580, and 6056 (Wai 2200, #3.1.234);

    i) Ms Terena Wara for Wai 2197 (Wai 2200, #3.1.235);

j) Dr Bryan Gilling, Ms Jo-Ella Sarich and Ms Rebecca Sandri for Wai 784, 972, 1482 and 2031 (Wai 2200 #3.1.236);

k) Ms Rachel Hall for Wai 1913 (Wai 2200, #3.1.237);

l) Mr Baden Vertogen for Wai 113, 408, 757 and 1932 (Wai 2200, #3.1.238);

m) Dr Bryan Gilling, Ms Jo-Ella Sarich, Ms Rebecca Sandri, Mr Baden Vertongen, Ms Laura Carter, Mr Anthony Ruakere for Wai 784, 972, 1482, 2031, 113, 408, 757, 1932, and 977 (Wai 2200, #3.1.239);

n) Mr Michael Taia and Mr Tipene Potter for Wai 1764 (Wai 2200, #3.1.240);

o) Ms Donna Hall for Wai 113, 1461, 651, 437, 1580 and 6056 (Wai 2200, #3.1.241);

p) Ms Moana Sinclair for Wai 1623 (Wai 2200, #3.1.242);

q) Ms Donna Hall for Wai 113, 1461, 651, 437, 1580 and 6056 (Wai 2200, #3.1.243); and

r) Professor Richard Boast for Wai 443, 1472, 2019 (Wai 2200, #3.1.244).

4. The Tribunal acknowledges the memoranda from Raukawa-affiliated claimants who were not included in the previous direction (Wai 2200, #2.5.29) and who intend to participate in this exercise. We encourage them to do so.

Purpose of the Facilitation

5. Claimants represented by Rainey Collins have sought clarification of the following issues with regards to the purpose of the facilitation (Wai 2200, #3.1.236):

a) *Exactly what issues will be covered, or what issues the Tribunal would like the participating claimants to discuss;*

b) *How these issues related to the claimants; and*

c) *Whether the Tribunal intends that "the various" Raukawa-affiliated groups will have to present their claims and evidence to the Tribunal "as a united group", and what this will mean for the Tribunal's hearing plan.*

6. In our memorandum-directions of 29 April 2011 we said the following:

> *We want to encourage all of Ngāti Raukawa to find some common ground on these issues so that a combined and united approach will be found as to how Ngāti Raukawa will present their claims and evidence to the Tribunal. The issue of the representation of Wai 113 could be included in this process. The Tribunal has decided to that end, that a facilitation process may be useful* (Wai 2200, #2.5.28).

7. In addition, our memorandum-directions of 17 May 2011 stated:

> *The purpose of the facilitation was to encourage Raukawa-affiliated claimants to find some common ground between the various groups so*

that they may present their claims and evidence to the Tribunal as a united group (Wai 2200, #2.5.29).

8. It is not the intention of the Tribunal to prescribe the content and issues to be addressed in the facilitation. We have identified that there is a problem with tribal cohesion and we expect the claimants to define their own issues, working with the facilitator to uncover and – if possible – resolve any differences between them.

Participation in Facilitation

9. The facilitation is for Raukawa-affiliated claimants. Those who do not consider themselves to come under that rubric need not participate if that is their wish. But we think that common ground can be found between close kin regardless of how they self-identify. We did not intend to put up artificial barriers between kin in using the term 'Raukawa-affiliated', nor would we wish people to stay away on that basis. The whakapapa by which the claimants relate to one another, and how they intend to participate and work together in this inquiry, will likely be a primary focus of the facilitation, if all parties enter it with an open mind and in a spirit of cooperation.

Raukawa in the North

10. The Tribunal acknowledges the memoranda of counsel received from Raukawa in the North claimants (Wai 2200, #3.1.233 and #3.1.244) who are intending to participate in the facilitation.

11. Te Hono have raised an objection (Wai 2200, #3.1.243) to the participation of Raukawa in the North, stating that Raukawa of the North are not of this district and are not a hapū in this district.

12. It is the Tribunal's understanding that Raukawa in the North have land interests in this inquiry district.

13. The Tribunal would like the claimants to take the opportunity provided by the facilitation to discuss the participation of Raukawa in the North in this inquiry district, therefore Raukawa in the North may attend if they so wish.

Ngāti Kauwhata, Ngāti Wehi Wehi and the Wallace Whānau

14. The Ngāti Kauwhata group (Wai 784 and Wai 972) represented by Rainey Collins have close connections and whakapapa with Raukawa but wish to attend the facilitation on behalf of Ngāti Kauwhata (Wai 2200, #2.1.236).

15. The Ngāti Wehi Wehi claimants (Wai 1482) state that if they attend the facilitation it will be on behalf of and as Ngāti Wehi Wehi under the korowai of Ngāti Raukawa (Wai 2200, #2.1.236).

16. The Wallace Whānau (Wai 2031) say that they do not wish to be included as Ngāti Raukawa (Wai 2200, #2.1.236) and if they attend the facilitation hui they will be doing so on behalf of themselves.

17. In their memorandum Te Hono have stated that there is no cultural impediment to Kauwhata, Wehiwehi or the Wallace whānau attending the facilitation (Wai 2200, #3.1.241). We agree. The Tribunal encourages all such groups to attend and discuss their differences, to see if common ground can be found. As we noted above, however,

they need not attend if they do not wish to, since facilitation cannot succeed if parties are reluctant to participate and do not see any value in resolving differences.

Legal Representation at Facilitation

18. In their submission claimants represented by Rainey Collins express their concerns about participation in the facilitation without their legal counsel present. The claimants submit that they have a right to be represented by counsel of their choosing. The claimants are concerned that by prohibiting their counsel from attending the facilitation, the Tribunal is denying them this right (Wai 2200, #3.1.236).

19. In their submission of 27 May 2011 (Wai 2200, #3.1.241) Te Hono submit that the appearance of counsel is not a legal right and refer to Clause 7, Second Schedule, Treaty of Waitangi Act 1975 says it is not. Counsel submits that Tribunal is acting within its rights and within the purpose of the statutory limitation on the role of counsel.

20. The Tribunal believes that exclusion of legal counsel from facilitation between parties is common. But the facilitation is precisely that – a facilitated discussion between parties to see if they can resolve differences and find common ground. It is not a formal mediation and it is not a legal process that will bind parties to outcomes. For that reason, and to allow the claimants to work through their differences in the culturally appropriate manner, we would prefer that counsel not attend and do not consider that anyone will be prejudiced if they cannot have their lawyer present. We repeat our decision, therefore, that counsel are not to attend the facilitation.

Report following the Facilitation

21. Rainey Collins has sought direction on what the facilitator's report will cover and the weight that the Tribunal will place on it (Wai 2200, #3.1.236)

22. The follow-up report will be prepared by Mr Kevin Prime. It is intended to provide feedback to the participants and the wider claimant community on the facilitation and any resolutions that were passed. The report will be added to the Record of Inquiry.

Venue for Facilitation

23. The facilitation will be held on **Tuesday, 14 June 2011** commencing at 9.30 am at:

    Otaki Maori Racecourse
    Te Roto Road
    Otaki

24. There was no strong agreement in the received memoranda of counsel about a suitable venue (Wai 2200, #2.5.29).

25. A site visit to Otaki provided the opportunity for Tribunal staff to assess the Otaki Racecourse as a venue. The race course has facilities which are well suited to the requirement of the facilitation, including a number of break-out rooms that can be used by different groups during the day.

26. The Tribunal considers the practicality of the venue and its neutrality will assist all claimants during the facilitation process.

Conclusion

27. The Tribunal has reached a final decision on the above points and are not inviting responses from parties.

The Registrar is to send a copy of this direction to all those on the notification list for Wai 2200, the combined record of inquiry for the Porirua ki Manawatū Inquiry.

DATED at Gisborne this 7th day of June 2011.

Deputy Chief Judge Caren Fox
Presiding Officer
WAITANGI TRIBUNAL