WAITANGI TRIBUNAL

Wai 2200

CONCERNING	the Treaty of Waitangi Act 1975
AND	the Porirua ki Manawatū District Inquiry

MEMORANDUM-DIRECTIONS (NO.27) OF DEPUTY CHIEF JUDGE C L FOX, PRESIDING OFFICER, SIR TAMATI REEDY (EMERITUS PROFESSOR) AND DR GRANT PHILLIPSON

Tēnā koutou katoa

Introduction

1. This memorandum-directions addresses the proposed research programme for the Porirua ki Manawatū inquiry. After receipt of Dr Terry Hearn's scoping of research and issues (Wai 2200, #6.2.2), the Tribunal released a discussion paper outlining a possible research programme for the inquiry (Wai 2200, #6.2.4). Prepared for the Tribunal by its staff, this paper outlined all the matters which it was felt would need to be covered in a comprehensive inquiry into the claims in our district. While we were not wedded to any particular programme or project configuration, we put the parties on notice of the matters which we, as a tribunal with the powers of a commission of inquiry, expected to be covered in a research programme for a full district inquiry, however it may be configured or conducted.

2. After receiving written submissions and after hearing from parties at our December 2010 judicial conference, we asked Te Hono ki Raukawa Historic Claims Management and Settlement Trust (Te Hono) to respond to certain questions of clarification about their proposed research programme (Wai 2200, #2.5.23).

3. As directed, we received a substantive submission from Te Hono on 1 April 2011 (Wai 2200, #3.1.205), accompanied by a draft strategic plan (#3.1.205(a)). In mid-April, other claimants and the Crown filed their submissions about Te Hono's research proposals (Wai 2200, #3.1.209,

#3.1.210, #3.1.211, #3.1.212, #3.1.213, #3.1.216, and #3.1.218). We received a submission in reply from Te Hono on 26 April 2011 (Wai 2200, #3.1.219). While some claimants broadly agreed with the Waitangi Tribunal Unit's proposed programme (including some of the claimants later to form the Tūmatanui cluster), Te Hono (and claimants acting in association with Te Hono) preferred its own programme, which is outlined below (para 16).

4. Subsequently, the Tribunal proposed a facilitation hui for all those claimants who affiliated in some way with Ngāti Raukawa, to assist with a cooperative approach to researching and presenting their claims (Wai 2200, #2.5.28, #2.5.29 and #2.5.30). On 27 May 2011, a number of claimant groups advised the Tribunal that they had formed the Tūmatanui cluster for the purpose of progressing their claims (Wai 2200, #3.1.239). The facilitation hui was held on 14 June 2011, involving Tūmatanui, Te Hono ki Raukawa, and non-aligned Raukawa claimants. The facilitator's report indicated that progress was made (Wai 2200, #6.2.10), and the claimants advised of Ngāti Raukawa's intention to continue discussions and hold a hui-a-iwi in August 2011, reporting back to the Tribunal in September (see Wai 2200, #2.5.31).

5. In the meantime, the Tribunal held a judicial conference at Kawiu Marae in Levin on 13 July 2011 for those claimants who do not affiliate to Ngāti Raukawa. At that conference, we received an update from the Crown as to the state of negotiations relevant to the inquiry district. We also received written submissions from the Muaūpoko Claimant Cluster, outlining a proposed research programme for all Muaūpoko claimants (Wai 2200, #3.1.257). The Muaūpoko Tribal Authority indicated at the conference that it was seeking a mandate for direct negotiations with the Crown, but that it was committed to a 'hybrid' process so that Muaūpoko's story would be the subject of public hearings as well as negotiations. The Authority subsequently advised that this hybrid process could take the form of a modified process in the Waitangi Tribunal, or some other form, depending on discussions yet to be had among the Muaūpoko claimant community (Wai 2200, #3.1.263).

6. On 15 September 2011, counsel for the claimants represented by Te Hono indicated that progress had been made in discussions with Tūmatanui and non-aligned Raukawa groups, and that an agreement had been made to work together. A 'unification working party' had been established but the process of reaching agreement over a single structure for prosecuting the claims might take some time to complete. In the meantime, the working party had agreed that research should not be delayed, and that the working party would put an agreed research proposal to the Tribunal by 9 October (Wai 2200, #3.1.269). On 16 September, however, we received a submission from counsel representing most of the Tūmatanui cluster, which stated that a process for working together 'may develop in time', but that in the meantime they had a different view from Te Hono as to the way forward. The working party, they advised, was not developing an agreed research proposal. Instead, Tūmatanui requested that the Tribunal move the inquiry forward, while a research programme was worked out with all claimants and the Crown Forestry Rental Trust (Wai 2200, #3.1.270).

7. Then, on 23 September 2011, Te Hono made an additional submission, stating that the working party met on 20 September 2011 and agreed that it would formulate a joint research proposal by 14 October 2011. The working party would also hold broader 'unification discussions' (Wai 2200, #3.1.275). We granted the leave sought by counsel for Te Hono to file a joint research proposal, prepared by the unification party, by 14 October 2011 (Wai 2200, #2.5.33). On 3 October 2011, counsel for the Tūmatanui claimants filed a memorandum (Wai 2200, #3.1.277) advising the Tribunal that Tūmatanui 'has been working towards the goal of unification. However, the working party has not yet been able to agree on unification'. In their view, an agreed research proposal was unlikely by 14 October. In response, on 3 October 2011, counsel for Te Hono asked the Tribunal to await the outcome of a further meeting of the Tūmatanui and Te Hono unification working party, to be held on 4 October (Wai 2200, #3.1.278). We granted this request, on condition that a joint report on the outcome of that meeting be filed by respective counsel (Wai 2200, #2.5.35). Counsel filed their joint report on 6 October 2011, advising that Tūmatanui and Te Hono would make their best endeavours to prepare a joint research proposal by the end of October (Wai 2200, #3.1.279). We welcomed this joint submission, which appeared to show real progress in the discussions between Te Hono and Tūmatanui and in the work of the unification working party, and granted further time until 31 October 2011 to file either a joint research proposal or a joint statement about research, identifying matters of agreement or dissent (Wai 2200, #2.5.36).

8. On 31 October 2011, counsel for Te Hono advised the Tribunal that a joint research proposal had not been achieved, and that Te Hono remained committed to continuing unification discussions (Wai 2200, #3.1.285). Counsel further requested that an opportunity be given for final submissions on research, before moving to a judicial conference on research matters. Also on 31 October, counsel for the Tūmatanui claimants advised the Tribunal that Tūmatanui and Te Hono had not been able to agree on either a research proposal or a statement about research, identifying matters of agreement or dissent (Wai 2200, #3.1.286). Counsel included a submission refining and expanding on their earlier submissions with regard to research, and proposing an outline of a research programme (see para 20).

9. The Tribunal subsequently invited all parties within the Porirua ki Manawatū inquiry district to make any further submissions on research matters by 30 November 2011 (Wai 2200, #2.5.38).

10. Te Hono responded by reiterating their previously expressed concerns regarding the apparent omission of local research from the Tribunal Unit discussion paper on research, and more generally expanding on their concerns about how research is done and communicated, in particular requesting engagement between Tribunal staff and Raukawa pūkenga.

11. Te Hono also submit that rulings are required on two outstanding issues, otherwise 'it is not possible to reach a fair conclusion on how the research process should be managed' (Wai 2200, #3.1.290), namely:

    - 'Who has the primary interest in the claims – the named claimants or the whānau, hapū or iwi on whose behalf the claim is made?', and
    - 'Should the role of lawyers be constrained and if so how?'.

    We expect to hear further from all parties on these 'outstanding' issues at the forthcoming conference on research issues, before addressing them.

12. Counsel for the Wai 648 claimants (Wai 2200, #3.1.291), the Wai 1640 claimants (Wai 2200, #3.1.293), and for the Wai 1944 claimants (Wai 2200, #3.1.292) submitted further research issues for consideration, and would like to reserve the right to make further submissions should it become apparent that additional issues might need researching.

13. The Crown responded that it had no further submissions to make on research matters (Wai 2200, #3.1.89) and that it relied on the submissions it had previously made (Wai 2200, #3.1.125 and #3.1.213).

14. Having considered the various submissions and proposals put to us since late 2010, we now propose a way forward for research planning. It is important that a casebook programme be agreed as soon as possible, so that research projects may begin and the inquiry can progress. (In doing so, we do not address details about the timing of research vis-a-vis hearings (see, for example, Wai 2200, #3.1.205(a), pp 13-14, 15-16).)

The Waitangi Tribunal Unit's proposed research programme (2010)

15. In October 2010, the Waitangi Tribunal unit proposed that, in addition to claimant oral and traditional research, there be nine district-wide research projects for the assistance of all claimants (Wai 2200, #6.2.4):

    - Historical narratives of customary rights and relationships in the Porirua ki Manawatū inquiry district;
    - Economic and social experience;
    - Land alienation in the pre-Native Land Court period;
    - Land alienation in the Native Land Court period;
    - Reserves: alienation;
    - Political relationships and autonomy from 1870-1950;
    - Rates, public works, and other compulsory takings;
    - Environment/natural resources, 1830-2010; and
    - Urupā, taonga and cultural property, 1840-2010 (a scoping report)

Te Hono's proposed research programme

16. On behalf of Ngāti Raukawa, Te Hono has proposed a comprehensive technical research programme, combining documentary and oral research. In brief, the programme consists of the following projects (Wai 2200, #3.1.205(a), pp 9-13):

    - Traditional history and relationships within the iwi;
    - Māori dealings with Europeans and the Crown prior to the Native Land Court, particularly affecting lands;
    - Impact of the New Zealand wars;
    - Post-war Crown purchases and the Native Land Court;
    - Land management and alienation through Native Land Board, Native Land Court, and other statutory bodies;
    - The creation, management, and alienation of reserves;
    - Political relationships and self-determination;
    - The effect of Crown policies concerning land, rating, valuation, town planning, health, housing, education, and crime, with particular reference to urbanisation;
    - Environmental issues, including an overview of resource loss and the policies leading to environmental degradation, river degradation, local issues, and the protection of wāhi tapu and mahinga kai;
    - Local (hapū and whānau) issues, including particular losses in terms of land, resources, reserves, mana, and culture, to be ascertained and set up by a consultative committee process; and
    - The effects of land loss and cultural losses, concentrating on twentieth-century issues, and a comparative assessment of losses by reference to other districts (and, we presume, by reference to economic development within the district).

17. In Te Hono's submissions, it was specified that this programme would need to meet certain standards (Wai 2200, #3.3.205, pp 4-5), including that the research must be:

    - 'relevant (e.g. that the case to be supported by the research is relevant to the purposes of s6 of the Treaty of Waitangi Act 1975)';
    - 'adequate (e.g. is likely to cover all those things that the Tribunal is likely to want to inquire into in order to dispose of the claims before it)';
    - 'proportionate (e.g. that the funding sought is not unreasonable having regard to the duty to protect the interests of other beneficiaries in the Trust Fund and the Crown as residuary beneficiary)';
    - 'inclusive (e.g. respect and provide fairly for all hapū, whānau and individuals with claims)'; and
    - 'economical (e.g. that the persons to do the research are competent so that the cost of undertaking the task is not wasted)'.

18. We note here our agreement with these standards for research, with the exception of 'proportionality', which is specific to the business of the Crown Forestry Rental Trust and is not a matter on which we need to express a view.

19. We do not, however, accept Te Hono's submission that (broadly speaking) they are the appropriate body to control all research in the inquiry. It is clear to us that a number of claimants do not agree with such a proposal, and Ngāti Raukawa is not the only iwi in this district inquiry. Indeed, Te Hono and Ngāti Raukawa respect the right of other iwi to conduct their own tribal research. Thus we accept that iwi-specific research as far as possible should be pursued in this district, for the reasons and in the manner we elaborate upon below.

Tūmatanui's proposed research programme

20. Tūmatanui have also proposed a technical research programme, modelled on the Tribunal's standard district inquiry approach to research. In brief, the programme consists of the following suggested projects (Wai 2200, #3.1.286):
    - Land titles/block narratives research;
    - Tribal landscape;
    - Political engagement;
    - Pre-emptive purchasing in the region;
    - The Native Land Court;
    - Post-1865 Crown purchasing;
    - Environmental issues;
    - Public works takings;
    - Local government and rating;
    - Native townships; and
    - Socio-economic issues

21. Tūmatanui note the research programme should be generic in nature and capable of assisting all claimant groups within the inquiry district to present their cases to the Tribunal. Generally, Tūmatanui are 'very supportive of the standard new approach and the research paper as prepared by the Tribunal'. Their proposal 'covers those points that are most important to Tūmatanui, but should be read more generally in light of that support for the Tribunal's document'.

The Muaūpoko Claimant Collective's proposed research programme

22. On behalf of Muaūpoko, the claimant collective proposed a mix of Muaūpoko-specific projects and general research projects (Wai 2200, #3.1.257, pp 4-11).

23. The Muaūpoko-specific projects are as follows:
    - Muaūpoko mana whenua report;
    - Muaūpoko oral and traditional history report;
    - Muaūpoko lakes and mana moana report (including Lake Horowhenua and surrounds); and
    - Muaūpoko wāhi tapu, waterways, natural features, and environmental report

24. The Muaūpoko claimant cluster also propose the following general, district-wide reports:

    - Local government report;
    - Social and economic impacts report;
    - Native Land Court report;
    - Māori mental health report;
    - Mana wahine report;
    - Rating report; and
    - Native townships report

Wai 648, 1640 and 1944 Proposals on Research

25. In their recent submissions to the Tribunal, the Wai 648, Wai 1640 and Wai 1944 claimants have proposed research tailored to their specific claims, on issues such as the succession laws, the Spain commission, particular waterways and local environmental matters, particular impacts of the Native Land Court, and so forth.

The Waitangi Tribunal's view of what is required for its Porirua ki Manawatū inquiry

26. In our memorandum-directions of 3 December 2010 (Wai 2200, 2.5.18), we explained that the Porirua ki Manawatū inquiry would be led by the iwi claimants, and that all claims would be advanced simultaneously so as to allow everyone a fair hearing. We identified the main tribal groups in the district as:

    - Rangitaane;
    - Muaūpoko;
    - Ngāti Raukawa;
    - Ngāti Kauwhata;
    - Ngāti Apa; and
    - Ngāti Toa

27. In light of recent submissions, we now add a seventh tribal group, Te Atiawa/ Ngāti Awa, who we understand to have claims arising in this inquiry district (especially in the Waikanae district) which were not the subject of negotiation and settlement in the Port Nicholson (Te Whanganui a Tara) Treaty settlement. We note, however, that much relevant research must have been compiled during the Tribunal's inquiry into Wai 145, the Wellington Tenths Claims, resulting in the *Te Whanganui a Tara me ona Takiwa Report*.

28. We have now received a definitive statement from the Crown as to the status of negotiations in our inquiry district, and of the research on which the Crown has relied or will rely in those negotiations (Wai 2200, #3.1.262). The Crown's advice is that, of the main tribal groups in this district:

    - Ngāti Apa's claims have been researched, negotiated, and settled;
    - Ngāti Toa's claims have been researched, negotiated, and are almost settled;

- Rangitaane o Manawatū's claims have been researched and are in negotiation; and
- The Crown has approved the Muaūpoko Tribal Authority's strategy to seek a mandate for negotiations.

29. From submissions made to us in writing and at our judicial conference in Levin, it is apparent that:
    - There are two groups of Rangitaane claimants (Wai 2299 and Wai 1627) who consider themselves to be outside the current negotiations, but their wish is to be included in those negotiations rather than take part in the Tribunal's inquiry;
    - The Muaūpoko Claimant Collective opposes the seeking of a mandate for negotiations at this point and wishes to participate in the Tribunal's inquiry; and
    - Ngāti Raukawa and Ngāti Kauwhata wish to participate in the Tribunal's inquiry.

30. In light of this information, it is now clear that the Waitangi Tribunal cannot carry out a district-wide inquiry in the usual manner. Three of the seven tribal groups have already had their claims researched on an iwi-specific basis (funded by the Crown Forestry Rental Trust) and are not participating in the inquiry. As a result, for example, the Tribunal will not need to know the history of land after it was awarded to Ngāti Apa or Ngāti Toa or Rangitaane. Due to the overlapping nature of tribal claims in this district, however, it is not possible to propose a neat subdivision so that a more particularised district inquiry can be formed. From the information available to us so far, excluding iwi does not exclude any of the land under claim.

31. Given that this is an inquiry for four of the seven tribal groups, and given that we cannot carve up the district even so, the sensible approach is for the Tribunal's inquiry to receive evidence that is specific to the claims, lands, and issues of the participating iwi where possible.

32. It is the nature of historical documentary research, however, that some topics do not lend themselves easily to this approach. For twentieth-century social and economic issues, for example, it would be difficult to conduct iwi-specific research (see Wai 2200, #A1), other than the oral research that will be a necessary component of any programme. As a matter of practicality, social and economic issues will need to be the subject of district-wide research.

33. Also, there are some specific claims that raise issues outside of the core tribal claim issues, and there are groups with interests in the inquiry that are not affiliated with the seven tribal groups. The Tribunal needs to be satisfied that the research needs of these claimants will be met in any research programme that is established.

34. We expect that iwi-specific research reports will be required for Ngāti Raukawa, Ngāti Kauwhata, Muaūpoko, and Te Atiawa/Ngāti Awa on the following matters:

- Oral and traditional history; oral evidence about issues relevant to the claims (including social and economic history);
- Land and politics, covering both the land histories of the tribal groups and their political relationships with the Crown – these will need to be extensive, and to include (for example) all relevant land alienations and title issues, native townships where those are relevant to a particular tribal group, rating etc; and
- Natural resources, covering the particular resources and natural features claimed by the groups concerned, and their grievances against the Crown in terms of those resources.

35. In addition to these iwi-specific research projects, we would expect to receive evidence about some subjects, such as social and economic issues, certain environmental issues, local government, and similar matters on a district-wide basis (though excluding issues confined to non-participating iwi where that is possible).

36. Thus, while we cannot accept Te Hono's proposed research programme in its entirety, we expect that Ngāti Raukawa-specific research will be commissioned and the needs of the claimants represented by Te Hono, as well as other Raukawa and Raukawa-affiliated claimants, will still be met. Similarly, we trust that the research needs of Muaūpoko, who have also proposed a specific research programme, can be accommodated, as well as the needs of Te Atiawa/Ngāti Awa and others.

37. Finally, we agree with Te Hono that a local issues programme is vital for the researching of the specific claims of importance to hapū and whānau. We think that this should be organised through a process of the kind suggested by Te Hono (see Wai 2200, #3.1.205 and #3.1.205(a)), facilitated by a claimant research committee or committees. There would inevitably be some overlap with the iwi-specific and generic, district-wide research. If identified in time, local issues may be researched as case studies or examples in the iwi-specific or district-wide projects.

38. Under a local issues programme, we would expect to receive evidence (where necessary) on the discrete claims of Ngāti Hāua, the Uenuku Tribal Authority, Ngāti Rangatahi, and any others who allege grievances against the Crown in parts of our inquiry district.

39. There may also be single-issue claims requiring specific technical research, which would not clearly or easily fit into a 'local issues' research programme of the kind proposed by Te Hono. An example of this may be Wai 2261, the Ngāti Kauwhata ki te Tonga Soldier Resettlement Issues Claim, which has district-specific content but also involves major national policies and issues, for which it may be necessary to commission a separate research report. We expect that the full range of such claims or issues in need of specific, separate research will fall out of a process for identifying hapū and whānau issues for the local issues research.

40. The programme that we have outlined in broad terms should meet the standards outlined in para 17 above, once it has been fleshed out by specific project proposals and project briefs, developed through a consultative process involving claimants.

The position of the Muaūpoko claimants

41. In our view, it is not necessary to delay a research programme because there is a dispute between the Muaūpoko Tribal Authority and the Muaūpoko Claimant Collective. A research base will be needed for their claims, regardless of whether those claims are pursued through direct negotiations, a hybrid process of simultaneous Tribunal hearings and negotiations, or a Tribunal process followed by negotiations. We would hope that the Authority and the Collective can find common ground for the development of the Muaūpoko-specific research projects that we have suggested, and would be willing to offer facilitation if that would assist.

The position of the Ngāti Kauwhata and other claimants clustering with Tūmatanui

42. From the various submissions that we have received, both in writing and at judicial conferences, some Ngāti Kauwhata claimants are aligned with Te Hono and wish to have their claims researched and presented in association with Ngāti Raukawa, while others of Ngāti Kauwhata wish to stand alone or as part of the Tūmatanui cluster. Most recently, there has been an exchange of memoranda on this point (see Wai 2200, #3.1.264 and #3.1.266). It is too early in our inquiry for the Tribunal to reach a view on tribal history, which we expect will be the subject of evidence and submissions during hearings. We note, however, that the iwi-specific research proposed in para 34 should enable claim issues to be researched according to whatever kin relationships and alignments the Ngāti Kauwhata claimants choose.

43. We hope that Tūmatanui and Te Hono will develop a cooperative approach through their working party, which should assist all Ngāti Kauwhata and Ngāti Raukawa claimants to participate in, and benefit from, the compilation of research for this district inquiry.

The position of the Wai 2299 and Wai 1627 Rangitaane claimants

44. In their submissions to the Tribunal, the Wai 2299 (Ngāti Te Kapuarangi) claimants have emphasised that they seek to be involved in the negotiations between the Crown and Rangitaane o Manawatū. The Crown advises that Ngāti Te Kapuarangi are not currently included in the hapū represented by Tanenuiarangi Manawatū Incorporated (TMI). They are, however, included among the hapū seeking a mandate for direct negotiations to settle claims in the Wairarapa and Tamaki-nui-a-rua district. The Crown submits that the Office of Treaty Settlements will be seeking further information as to the position of Ngāti Te Kapuarangi (Wai 2200, #3.1.262). The Wai 2299

claimants and the Crown should report back to the Tribunal as soon as possible.

45. At our judicial conference in Levin, counsel for Wai 2299, Ms Ward, indicated in oral submissions that the claimants had not given further thought to research for this district inquiry, as they hope to participate in negotiations.

46. For the purposes of research planning, we presume that the claims of Ngāti Te Kapuarangi, in so far as they relate to Rangitaane claims in our inquiry district, have already been researched for the negotiations process. We also presume that the claims of Ngāti Te Kapuarangi, as they related to Rangitaane claims in the Wairarapa ki Tararua inquiry district, were researched and heard in that district. If the Wai 2299 claimants ultimately choose to continue to participate in the Porirua ki Manawatū inquiry, the question of their research needs can be dealt with at that point.

47. The Rangitaane claimants of Te Rangimarie Marae, who have filed the Wai 1627 claim for Te Rangitepaea and Hineaute, advised at our Levin conference that they are challenging the mandate of TMI to negotiate on behalf of all Rangitaane o Manawatū. Counsel for Wai 1627, Ms Sinclair, indicated in oral submissions that the claimants are not in a position to consider research matters until issues of representation and mandate have been resolved. Their concerns are with the negotiation process, and they may seek an urgent hearing from the Waitangi Tribunal on that matter.

48. In the Crown's submission, the Office of Treaty Settlements is in correspondence with an entity called Te Marangatahi o Rangitaane (TMR), which appears to represent these claimants. A facilitated hui between TMI and TMR has taken place, but no progress has yet been made in resolving issues between these bodies (Wai 2200, #3.1.262).

49. If the Wai 1627 claimants ultimately choose to continue to participate in the Porirua ki Manawatū inquiry, the question of their research needs can be dealt with at that point.

The position of the Te Atiawa/ Ngāti Awa claimants

50. After our judicial conference at Levin, we received a memorandum explaining that Te Atiawa/ Ngāti Awa ki Waikanae were holding discussions and a hui on 13 September, seeking to cluster and to work out a cooperative approach to their various claims (Wai 2200, #3.1.265). So far, some 14 registered claims are involved in this clustering exercise, but there may be more once all claimants have been identified and outstanding claims have been registered. The claimants hope to approach the Crown Forestry Rental Trust for funding of a Ngāti Awa/Te Atiawa cluster, and to reach agreement on the appropriate iwi name for that cluster in due course (Wai 2200 #3.1.171)

51. Based on the information so far received, the scope of the issues raised by these claimants, and the geographical coverage of their claims, is not entirely clear. From what we were told at Te Kawiu Marae in Levin, their claims are focused on the Waikanae district.

52. It may be that a single research project, based on both oral and written sources, would be sufficient to cover the Waikanae lands and issues of these claimants. Such a project would, of course, need to include the Paraparaumu airport public works taking, which is the subject of the Wai 609 claim.

The position of Ngāti Rangatahi

53. Counsel should file submissions to update the Tribunal on the position of the Ngāti Rangatahi Whānaunga Association and Ngāti Rangatahi kei Rangitīkei, following their discussions in April 2011.

The position of the Crown

54. At our judicial conference at Kawiu Marae, Ms Sykes, counsel for Wai 2197, suggested that the Crown was in a position to reduce the scope of research necessary for this inquiry by making concessions, citing the Crown's concessions on Native Land Court issues for the Whanganui inquiry (see Wai 903, #3.3.129 and #3.3.130)

55. It is certainly the case that the Crown has now accepted that all tribal groups in New Zealand have at least some valid Treaty claims, which it wishes to settle by the provision of an apology for Treaty breaches, an account of historical matters, and the provision of commercial and cultural redress. In the Waitangi Tribunal's inquiries, it is open for the Crown to concede matters of historical fact and Treaty breach at any time. It is also the case, however, that this can be done most usefully at specific times so as to reduce the scope of the work required of claimants and the Tribunal, to assist the integrity of the Tribunal's inquiry, and to assist in the 'truth and reconciliation' functions of the Tribunal's hearings and reports.

56. In that respect, the Crown can helpfully make concessions at the beginning of the research process, so as to narrow the issues in contention and the amount of detail required in research. It can also make informed concessions after the completion of research, so as to reduce the scope and length of the Tribunal's hearings. Finally, it can make concessions at the closing of its case, after hearing the tangata whenua evidence, testing the technical evidence, and considering the claimants' submissions, so as to further the process of reconciliation between the Treaty partners and also to reduce the number of issues requiring detailed treatment in the Tribunal's reports.

57. In response to a direction from the Taihape Tribunal (Wai 2180, #2.5.54), the Crown filed a memorandum covering both inquiry districts, as it deals with issues arising in both districts (Wai 2200, #3.1.284 and Wai 2180, #3.1.162).

In particular, the Crown noted that, 'How, and to what extent, previous Crown concessions apply in the Taihape or the Porirua ki Manawatū inquiry needs to be considered by the Crown when reviewing the research produced for each inquiry' and that 'the Crown needs to have a satisfactory basis of evidence to support any concession, whether the concession is general or specific'. Furthermore, 'the Crown is conscious that early concessions may help clarify the issues for the Tribunal inquiry. The Crown is willing to explore whether concessions can be made at an earlier point in these inquiries than has often occurred in previous inquiries. Prior to making any concessions, the Crown may seek directions from the Tribunal on the effect of concessions on the evidence to be heard from claimants'. Counsel added: 'To avoid doubt, the Crown advises that it is not in a position to make concessions at this stage in either inquiry and it would only be in a position to do so once adequate research has been completed and considered'.

58. While we expect that this position will be explored in some detail at our forthcoming judicial conference, we note that the Crown is in a privileged position in the Porirua ki Manawatū inquiry. It is already in possession of research for the Ngāti Apa, Ngāti Toa, and Rangitaane claims in this inquiry district. It has already made concessions in respect of the historical claims of Ngāti Apa and Ngāti Toa in this district, and is presumably contemplating concessions as part of its negotiations with Rangitaane. We expect, therefore, that the Crown may be sufficiently informed to make concessions about the related claims of other iwi in this particular inquiry district, whatever may be the situation at start-up in other districts.

59. Finally, we note that the Crown should consider its own research requirements for this district and advise the Tribunal as to its intentions, so that the Crown's research can be ready and filed in time for the completion of the research casebook.

The position of the Crown Forestry Rental Trust

60. The Crown Forestry Rental Trust advises (Wai 2200, #6.2.12) that their preferred position on determining the extent and coverage of a research programme is that parties be invited to make submissions to the Tribunal, and that the Tribunal produce a detailed discussion document built on previous Tribunal work for this inquiry, Terry Hearn's Technical Research Scoping report, and submissions from claimants. The Trust prefers to wait until the Tribunal calls a judicial conference with a research focus, before entering into formal discussions on the nature and scope of any proposed generic research programme. The Trust considers that any proposed research programme should be affordable, sensible and achievable within the presently understood timeframes for settlements. It should also be formally confirmed by the Tribunal, and should be generic in nature and capable of assisting all claimant groups within the inquiry district to present their cases to the Tribunal.

61. In previous Waitangi Tribunal inquiries, including Te Urewera, Hauraki, and Te Tau Ihu o Te Waka a Maui, the Trust has funded research in the manner

outlined above, with a mix of iwi-specific and district-wide projects as needed. This has also been the Trust's approach in the Porirua ki Manawatū district to date, having funded iwi-specific research for Ngāti Apa, Ngāti Toa, and Rangitaane, and some district-wide research for everyone (including the recent documentary assistance projects and Raeburn Lange's report 'The Social Impact of Colonisation and Land Loss on the Iwi of the Rangitikei, Manawatū, and Horowhenua Region, 1840-1960' (Wai 2200, #A1). We consider, therefore, that there is no reason in principle why the Trust could not accommodate a mixed programme of iwi-specific and generic research for the remaining claimant groups in the Porirua ki Manawatū inquiry district.

62. The extent to which there is compatibility between the view expressed by the Trust above in para 60, and other approaches adopted by the Trust as noted in para 61, will have an important bearing on what funding is available to pursue particular research programme proposals. Research should be capable of assisting all claimant groups within the inquiry district to present their cases to the Tribunal. However, research that is perhaps too generic, not focussed clearly enough on the relevant groups and issues therefore, may lead to unnecessary complication, delay and cost. The Tribunal's suggested approach, as outlined above, seeks to find a coherent and feasible path for targeted research that takes into account as far as possible the preferences of parties, and is sensitive to Trust funding requirements, while also addressing the Tribunal's own needs for an effective inquiry.

63. We also note that, in order to fund research for the remaining iwi in the inquiry district, the Trust needs to have recognised clients. The Trust advised (Wai 2200, #6.2.12) that Te Hono ki Raukawa has successfully completed the Trust's eligibility and capability assessment and is now an approved client for the Waitangi Tribunal process. However, we also note that the Trust's Board 'rejected the research planning and funding proposals advanced by Te Hono'. We invite the Trust and claimants to suggest ways to avoid delaying the research programme where not all iwi are clients or part of a recognised cluster, or where the research proposals of a Trust client cannot be supported at this point. We ask that pre-conference submissions on this point be filed by the parties and we also invite the Crown Forestry Rental Trust to make submissions.

Judicial conference

64. We have sketched a possible research programme at a high level, covering three broad areas of research: iwi-specific research for Muaūpoko, Ngāti Raukawa, Ngāti Kauwhata, and Te Atiawa/Ngāti Awa; district-wide research for all claimants on topics that do not lend themselves to iwi-specific research; and a process to identify and research local issues, including discrete claims where those are in need of specific research. If, however, the broad strategy is not acceptable to claimants or the Crown, the parties will need to suggest a viable alternative that will not result in duplication, or in exacerbating tensions within and between claimant communities.

65. We will hear submissions on this and any other matter related to a proposed research programme at a judicial conference to be held on **Wednesday and Thursday, 22 and 23 February 2012.** We expect that the conference will take two days, given the number of parties and the complexity of the issues to be addressed. Our last conference was conducted with the non-Raukawa claimants, so this conference will commence with submissions from Ngāti Raukawa. The venue will be confirmed at a later date.

66. Pre-conference submissions should be filed by **2.00 pm on Monday 30 January 2012**, giving the views of parties and of the Crown Forestry Rental Trust on the proposals contained in this memorandum-directions.

Summary

67. In sum, we note that the mode of researching claims in this district has already been set on an iwi-specific pattern. The claims of Ngāti Apa, Ngāti Toa, and Rangitaane o Manawatū have already been researched, funded by the Crown Forestry Rental Trust. Those claims are either settled or in negotiation, and will not form part of our district inquiry.

68. The consequence of this approach seems to us to be inescapable. The remaining iwi claims (Ngāti Raukawa, Ngāti Kauwhata, Muaūpoko, and Te Atiawa/ Ngāti Awa) must also be researched, avoiding the history of lands and resources after their award to (or alienation from) Ngāti Apa, Ngāti Toa, and Rangitaane o Manawatū. A research programme, designed in conjunction with these iwi and working to them, would cover oral history, traditional history, land histories, political relationships with the Crown, and natural resources. Some matters, however, will also need to be researched in a more generic, district-wide manner, because of the nature of the documentary sources. In addition, there needs to be a process to identify local issues of burning importance to hapū and whānau, which can serve as case studies or examples in the iwi or district research projects, or – where necessary – be the subject of specific reports. We would expect the discrete claims of Ngāti Rangatahi, the hapū of Te Reureu, and others to be identified and researched by this method.

69. Ways need to be found to get the research programme started as soon as possible, so that the inquiry – and the settlement of these important Treaty grievances – is not unduly delayed. We have suggested that the dispute between the MTA and MCC should not preclude the commissioning of Muaūpoko research, which will be needed whatever process the iwi decides to follow. We have also noted that the two Rangitaane claimant groups in our inquiry are in fact seeking inclusion in negotiations – if they end up remaining in our inquiry, their research needs could be considered at a later date and need not hold up the development of a research programme now. We have further suggested that the Crown Forestry Rental Trust and the parties should seek ways to get research started so that the process of clustering and client-recognition does not become a drag on the inquiry. Finally, the Crown should consider what concessions it can usefully make at this point in the inquiry, given the progress in negotiations of overlapping claims in this district to date,

so as to reduce the level of detail (and possibly the scope of issues) required for research.

70. Our research proposals are necessarily at the level of a broad outline at this point. We invite submissions on the contents of this direction, and proposals for how to flesh out and start the research programme, for consideration at the judicial conference.

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 District Inquiry.

DATED at Gisborne this 14th day of December 2011.

Deputy Chief Judge C L Fox
Presiding Officer
WAITANGI TRIBUNAL