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IN THE WAITANGI TRIBUNAL WAI 1040

IN THE MATTER OF THE TREATY OF WAITANGI ACT 1975

AND

IN THE MATTER OF TE PAPARAHI O TE RAKI (NORTHLAND INQUIRY)

CROWN MEMORANDUM RESPONDING TO QUESTIONS OF CLARIFICATION REGARDING DRAFT CROWN STATEMENT OF CONCESSIONS AND POSITION

9 May 2012

RECEIVED
Waitangi Tribunal
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Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

1. The Tribunal granted leave to the claimants to file questions of clarification:[1]

> addressed to the Crown as to the nature and scope of the Crown's concessions and/or the meaning of particular statements or admissions in the [draft Crown statement of position and concessions].

2. The Tribunal directed the Crown to respond to these questions by 3 May 2012[2] and granted extensions for that response to be filed by midday today.

3. The following memoranda were filed in which claimants asked questions of the Crown:

   3.1 #3.1.739, the memorandum from Morrison Kent;

   3.2 #3.1.744, the memorandum of Mr Watkins;

   3.3 #3.1.751, the memorandum from Tamaki Legal;

   3.4 #3.1.753, the memorandum of Ms Taurau;

   3.5 #3.1.755, the memorandum from Te Mata Law;

   3.6 #3.1.756, the memorandum from Kathy Ertel & Co;

   3.7 #3.1.757, the memorandum from Ms Tuwhare; and

   3.8 #3.1.760, the memorandum from Tika Chambers.

4. This memorandum sets out the Crown's response to the questions in the above memoranda.

5. As a general comment, many (indeed most) of the questions are not questions of clarification that are addressed either towards:

   5.1 the nature and scope of the Crown's concessions, which are set out at paragraphs 2.1-2.18 of the Crown's draft statement of position and concessions; or

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1 #2.5.116, at paragraph 7; 2.5.117, at paragraph 2(b).

2 2.5.117, at paragraph 2(c).

5.2 the meaning of particular statements or admissions in the draft Crown statement of position and concessions.

6. The Crown anticipated that questions would be filed to resolve any uncertainty or ambiguity within the Crown's draft statement of position and concessions. Rather, many of the questions:

6.1 ask the Crown to provide further concessions, whether of Treaty breach or otherwise;

6.2 ask the Crown to provide further details (as opposed to clarification) about various issues;

6.3 ask the Crown to set out a final view on matters where the Crown has stated that it considers further research and the hearing of evidence is required for it to reach a final view;

6.4 ask the Crown to re-iterate submissions already made in the Stage One inquiry; or

6.5 are in the nature of cross-examination, for instance, by asking the Crown to explain why it holds a position given other statements that it has made.

7. Few are genuine questions that seek clarification about the meaning of any particular statement and potential ambiguity therein.

8. The Crown notes that:

8.1 the process does not provide the opportunity for the Crown to ask questions of claimant counsel concerning their statements of claim or statement of issues; and

8.2 while claimants have filed statements of claim, claimants have not been directed to file their position on any of the issues.

9. Notwithstanding the above, the Crown has attempted to answer all questions as best it can. The Crown has not, however, undertaken further research in answering the questions.

10. The Crown's answers are **attached** to this memorandum.

11. The Crown has been directed to file its finalised statement of its position and concessions by midday 30 May 2012.[3] When it does so, the Crown intends also to file the database that it prepared to assist it to make the statements and concessions regarding land loss. The Crown will also seek to update its response to reflect the answers given here.

12. Mr Doogan has filed a memorandum (#3.1.758) that sets out various questions concerning the inquiry and the way forward. The Crown will seek to address those questions when it files it finalised statement of position and concessions.

9 May 2012

H M Carrad/A K Irwin
Crown Counsel

TO: The Registrar, Waitangi Tribunal
AND TO: Claimants and their counsel

3 #2.5.118, appendix.