IN THE WAITANGI TRIBUNAL

OF NEW ZEALAND

WAI 1040

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Paparahi o Te Raki Inquiry

MEMORANDUM OF COUNSEL ON BEHALF OF TE KOTAHITANGA O NGA HAPU NGAPUHI

Dated this 27th day of July 2012

RECEIVED
Waitangi Tribunal
27 July 2012
Ministry of Justice
WELLINGTON

Instructing Solicitors:
Koning Webster
14 Willow Street
PO Box 13309
Tauranga 3141
Telephone: (07) 578 2120
Facsimile: (07) 571 8506
Solicitor Acting: ST Webster

Counsel Acting:
Moana Tuwhare
PO Box 1015
Kerikeri 0245
Northland
(09) 946 6911

May it please the Tribunal:

1. This Memorandum is filed on behalf of Te Kotahitanga o Nga Hapu Ngapuhi following a hui heald at Moria Marae, Whirinaki on 25 July 2012 ("Te Kotahitanga"). This Memorandum is also a joint Memorandum in that various claimant counsel support the contents herein on behalf of their clients, attached as appendix "A" is a list of claimant counsel in support.

2. This memorandum is filed to make submimissions to the Tribunal on the following issues:

    a. Proposed hearing structure;

    b. Stage 1 report;

Stage 2 hearings

3. In the memorandum-Directions of 27 June 2011 (#2.5.85) the Tribunal outlined a two phase strategy for Te Paparahi o Te Raki Stage 2 hearings whereby a set of generic hearings will be followed by a set of more localised sub-regional hearings. Claimant counsel also proposed that sub regional hearings rotate through each sub-region in order to hear localised evidence.

4. Te Kotahitanga previously supported this approach as the hearing structure supported a Te Paparahi o Te Raki wide approach to the generic themes and Claimant, Tribunal and Crown Technical evidence, whilst ensuring that evidence of a claimant and hapu specific nature would be heard locally in each sub region. At the stage of indicating this support (December 2010), it was also anticipated that stage 2 hearings would commence in 2011 or at the latest early 2012 and that the structure of the hearings would provide individual claimants and sub regions more time to prepare whilst generic hearings were in progress.

5. Due to ongoing and significant delays in the hearing schedule which have transpired and the submission of a draft Deed of Mandate by Tuhoronuku it has now become important for the claimant hapu groups to have their particular evidence and cases

put before the Tribunal at the earliest opportunity. Further to this, there has been further time for claimant groups to prepare.

6. In light of these changes in circumstances, it is now the preferred approach, in principle to have the sub regional hearings held from the outset, on a rotational basis and for the technical generic evidence to either be heard throughout the different sub regional hearings, or be heard towards the end of the hearing schedule. When the technical evidence might get heard is a matter of ongoing discussion amongst claimants and counsel. The primary reason for the suggested change in approach however is to ensure that all evidence for each region is heard at the earliest opportunity whether generic in nature or more specific.

7. It is submitted that the interlocutory steps taken to date regarding a generic statement of issues and then localised statements of issues can still provide for this change in the hearing order. It may be that the only significant procedural step would be to merge the various sets of claimant issues. However, this also may not be necessary as the issues remain the issues regardless of the order of hearing.

8. Counsel can also indicate that two sub regions have indicated a willingness to go first in the hearing order and could be ready to begin on the date set down for hearing in February 2013.

9. The Crown has previously supported an approach that places an emphasis on localised hearings of tangata whenua evidence. Further to this, the Crown concessions make it apparent that any further possible concessions on many issues would require the particular evidence to be considered on a case by case basis.

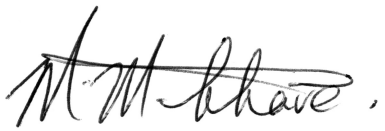
Stage 1 report

10. Te Kotahitanga have previously requested confirmation that the Tribunal will produce a Report on the initial hearings within 6 months of the conclusion of the closing submissions which took place in February 2011. That was now 17 months ago.

11. The stage 1 report has implications for the begninng of stage 2 hearings and again adequate resourcing is sought from the Crown to enable these matters to be constructively concluded in a timely fashion.

12. Te Kotahitanga therefore seek an indication of a realistic date for the release of the full Stage 1 report.

Dated this 27th day of July 2012



Moana Tuwhare
Counsel Acting

Appendix “A”

1. Corban Revell - John Kahukiwa
2. Mike Doogan
3. Morrison Kent - Bryan Gilling
4. Kathy Ertel &Co - Linda Thornton
5. Katherine Taurau
6. Aurere Law - Jason Pou
7. Tamatekapua Law - Kelly Dixon
8. Tamaki Legal - David Towle
9. McCaw Lewis and Chapman - Season-Mary Downs
10. Afeaki Chambers - Tavake Barron Afeaki