OFFICIAL

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 Inquiry

MEMORANDUM OF COUNSEL REGARDING MATTERS RAISED AT THE JUDICIAL CONFERENCE 10 SEPTEMBER 2012 DATED 13 SEPTEMBER 2012

RECEIVED
Waitangi Tribunal
13 Sept 2012
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel is filed on behalf of the following Wai 1040 Te Paparahi o Te Raki Inquiry claimants:

a.	Nonnie Puru	Wai 1518
b.	Pierre Lyndon	Wai 1520
c.	Hineamaru Lyndon	Wai 1524
d.	George Davies	Wai 1544
e.	Eru Lyndon	Wai 1582
f.	Huhana Seve	Wai 1677
g.	Kaya Murphy	Wai 1720
h.	Mataroria Lyndon	Wai 1918
i.	Lissa Davies Lyndon	Wai 1959
j.	Tim Edwards	Wai 2152
k.	Kolaske Lawrence	Wai 2153
l.	Marino Murphy	Wai 2240 ("the claimants").

2. Counsel was unable to attend the judicial conference on Monday 10 September 2012 due to financial constraints but seeks leave to file this memorandum to address the matters raised at the judicial conference.

Co-ordinating Counsel Role

3. Counsel has received instructions that the claimants have concerns with parts of the joint memorandum filed by the counsel coordinating committee ("CCC") dated 29 August 2012 (Wai 1040, #3.1.796).

4. The Crown facilitator, Mr Tukoroirangi Morgan has met with Te Paparahi o Te Raki claimants to explore alternative hearing options. The claimants have made clear their opinion of the proposals to Mr Morgan both at meetings in the North and via counsel at a hui on 22 August 2012. The claimants are committed to Stage 2 hearings and are actively engaged with other Whangarei claimants preparing for those hearings.

5. While acknowledging the progress made to date by the CCC on hearing matters, the claimants do not agree that the CCC has the prerogative to work on alternative hearing structures with the Crown or their representative as suggested by paragraph 8 of their memorandum.

Hearing Plan

6. Claimants appreciate the hard work carried out by the CCC and within regions to develop their draft hearings plans.

7. Claimants support the proposals in principle and counsel will work with the CCC and other counsel to ensure that the regional and hapu voices are heard. In particular to ensure that technical evidence is heard in the most appropriate region and that technical witness examination does not prejudice the ability of claimants to present their grievances.

Te Horo Development Scheme

8. Counsel represents Wai claims 1518, 1520, 1720 2153 and 2240 ("the Te Horo claimants"), who are among those who have claims relating to the Te Horo development scheme ("the scheme").

9. In a memorandum of counsel dated 23 December 2011 the Te Horo claimants requested that the Tribunal hold its hearing of claims in relation to the scheme at Te Horo.[1]

[1] D Stone Memorandum of Counsel (Wai 1040, 3.1.696) 23 December 2011 para 4(b).

10. The Te Horo claimants support and reiterate the proposal that the Tribunal consider that the scheme be treated as a case study for the reasons set out in the memorandum of counsel of Ms Downs and Mr Doogan of 27 April 2012.[2]

Research

Review

11. The Tribunal has previously reviewed the casebook for the purposes of the generic hearings in its memorandum of directions of 14 November 2011[3] ("the directions"). Further, the Presiding Officer at paragraphs 38-40 of the directions proposed a review of evidence for the purposes of local hearings. Accordingly the claimants respectfully request that a rapid appraisal of the Wai 1040 research casebook be undertaken to investigate the need for any further gap filling research, similar to that recently carried out in the Wai 898 Te Rohe Potae Inquiry by Richard Moorsom[4].

Whangarei Reports

12. Whangarei has not had the benefit of a full Oral and Traditional Report reflective of and supporting the needs of all hapu in the Whangarei subregion. This is a significant hurdle for claimants to overcome in their preparation for hearings. The claimants are now fully aware of the need to produce such a report and instruct counsel that there is significant support from claimants to produce the report sought.

[2] SM Downs and MJ Doogan Memorandum of Counsel Concerning the Te Horo claims – Draft Statement of Local Issues (Wai 1040, #3.1.764) 27 April 2012 paras7-8.
[3] Memorandum-Directions of The Presiding Officer Re Further Research On Generic Issues (Wai 1040, #2.5.103).
[4] Wai 898, #6.2.43

13. In the research review for generic hearings, a technical report on issues specific to the Whangarei sub-region was not considered necessary (paragraph 21 of the directions). In counsel's respectful submission, for the purposes of combined local and generic hearings there is need for further research in the Whangarei subregion. The claimants respectfully request that this need be re-appraised.

Te Horo Development Scheme Report

14. In counsel's memorandum dated 23 December 2011[5] the Te Horo claimants stated that further research into the impact of the development scheme on the claimants and their whanau was necessary. The claimants reiterate their position here.

Economic Loss Report

15. The claimant for the Wai 1582 Ngapuhi Nui Tonu claim has noted the need for a quantitative economic impact report. This report would assess not only the value of the loss of lands but also the loss of economic opportunity by Te Paparahi o Te Raki Maori.

Water

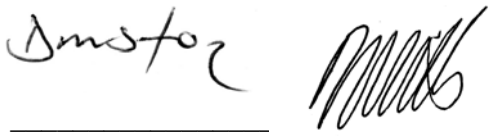
16. In the memorandum directions dated 12 September 2012,[6] following the judicial conference of 10 September 2012 the Presiding Officer invited submissions on the proposal of Ms Hall to withdraw the issue of proprietary rights of water from this inquiry.[7]

[5] D Stone Memorandum of Counsel (Wai 1040, 3.1.696) 23 December 2011 para 4(d).
[6] Memorandum Directions (Wai 1040,#2.5.129) 12 September 2012 paras 3-6.
[7] D Hall Memorandum of Counsel (Wai1040, #3.1.800) 6 September 2012.

17. The claimants support the inclusion of water issues for the reasons stated by Ms Thornton and Mr Lyall in their memorandum.[8]

18. The claimants support the national inquiry and will partake in that dialogue where necessary. Nevertheless the claimants also wish to progress their local claims at a local level in this Inquiry. The impact of the purported ownership of water and waterways on claimants in this inquiry must be heard. In counsel's submission it is impossible to tell the claimants' story without including the water that they have exercised kaitiakitanga and tino rangatiratanga over for generations.

DATED at Auckland this 13th September 2012.



David Martin Stone / Robert Wills

TO: The Registrar, Waitangi Tribunal; Crown Law Office and those on the notification list for Wai 1040 Te Paparahi o Te Raki.

[8] L Thornton, B Lyall Memorandum of Counsel (Wai1040, #3.1.801) 9 September 2012.