

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 (Wai 1040)

**JOINT MEMORANDUM OF THE COUNSEL COORDINATING COMMITTEE REGARDING
TAIWHENUA OPENING STATEMENTS AND FINAL HEARING WEEK 1 TIMETABLE**

Dated this 25TH Day of January 2013

RECEIVED
Waitangi Tribunal
25 Jan 2012
Ministry of Justice WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. This Joint Memorandum of the Counsel Coordinating Committee (“CCC”) responds to the Memorandum-Directions of the Presiding Officer dated 21 December 2012 (Wai 1040, #2.5.145) which directed that on Friday 25 January 2013 the CCC file:
 - (a) further information on the nature of Taiwhenua ‘opening statements’; and
 - (a) a final Hearing Week 1 timetable.

Taiwhenua Opening Statements

2. The Tribunal seeks information about whether the Taiwhenua opening statements are opening submissions, tangata whenua evidence, or a combination thereof.¹
3. Earlier Joint Memorandum of the CCC have indicated that Taiwhenua opening statements will consist of tangata whenua representatives and counsel, who will provide an initial high-level overview of nga hapu whanau o Te Paparahi o Te Raki, the key issues the Taiwhenua hearings will address, and the types of findings and recommendations that may be sought from the Tribunal. The intention is to provide the Tribunal with a road map for the hearing of claims in this Inquiry and an outline and focus for expeditious and efficient report writing.
4. The claimants and counsel in each Taiwhenua will prepare and file collective opening statements for that Taiwhenua. This requires a coordinated approach within each Taiwhenua to ensure that hapu and claimants, as far as practicable, have the opportunity to have input into the development of the collective opening statement for that Taiwhenua.
5. The CCC will maintain coordination to facilitate that the Taiwhenua opening statements are filed by **4 March 2013** as directed by the

¹ Wai 1040, Memorandum-Directions # 2.5.145, 21 December 2012, para 10.

Tribunal.² Members of the CCC will continue to assist with the coordination of the opening statements in each Taiwhenua.

6. Preliminary indications from each Taiwhenua as to the nature of their opening statements are provided below.

Nga Hapu o Te Takutai Moana

7. Nga Hapu o Te Takutai Moana has been allocated 3 hours to present its opening statement on Monday 18 March 2013.
8. The Nga Hapu o Te Takutai Moana opening statement will be a combination of opening submissions and tangata whenua evidence.
9. Nga Hapu o Te Takutai Moana met on 22 January 2013 and confirmed that their opening statement will consist of an overview of Nga Hapu o Te Takutai Moana including:
 - (a) traditional korero, geographic location, hapu and claimants;
 - (b) key themes and priority issues;
 - (c) evidence the Tribunal will hear, both technical and tangata whenua during the 4 weeks of hearing that have been proposed in the 21 week long term hearing plan for Nga Hapu o Te Takutai Moana; and
 - (d) the outcomes and findings that Nga Hapu o Te Takutai Moana seeks from the Waitangi Tribunal and Te Tiriti o Waitangi claims process.
10. At the Nga Hapu o Te Takutai Moana hui on 12 September 2012 the hui supported the consideration of Erima Henare, Nora Rameka, Pita Tipene, and Willow-Jean Prime to assist with the presentation of the opening statements in the first hearing week. Counsel may also be requested to assist with the presentation of the opening statement.

² Wai 1040, Memorandum-Directions # 2.5.145, 21 December 2012, Appendix C.

Whangaroa

11. Nga whanau hapu o Whangaroa have been allocated 3 hours to present their whariki statement on Tuesday 19 March 2013.
12. The Whangaroa Papa Hapu and other claimants have met a number of times to develop their statement and presentation, and this is an ongoing process. The next such hui will take place on Tuesday 29 January 2013 and a Taiwhenua-wide hearing planning hui is scheduled for Friday 15 February 2013.
13. The whariki statement will include:
 - (a) The identity, rohe and traditional society of nga whanau hapu o Whangaroa;
 - (b) The key themes and main issues for the claims within the Whangaroa rohe. These issues are being aligned to the existing Joint Statement of Local Issues; and
 - (c) An outline of what nga whanau hapu o Whangaroa seek from the Tribunal in terms of its processes and the findings to be made in respect of the Whangaroa-related claims.
14. At this stage, the Whangaroa whariki statement will be presented by a selection of claimant kaikorero who are yet to be confirmed.

Waimate Taiamai / Kaikohe

15. Te Waimate Taiamai me Kaikohe Taiwhenua claimants met on Monday 21 January 2013 and have agreed that the opening statements shall consist of the following:
 - (a) Description of the geographic location, the hapu/claimants participating in the Taiwhenua and some traditional korero regarding origins and connections;
 - (b) An overview of the key themes and priority issues and the theory of the case for each of those issues;

- (c) Where available reference will be made to overview mapping material and other visual aids to assist in orientation of the areas, hapu and peoples affected and show key themes and issues in relation to land loss and affected water bodies;
 - (d) An overview of the evidence the Tribunal will hear, both technical and tangata whenua in support of the Taiwhenua claims;
 - (e) A Preliminary list of witnesses and reference to which hearing week they will be presenting in and what they are covering in their evidence;
 - (f) What type of report and Tribunal findings the Taiwhenua claimants seek including any interim findings and recommendations being sought for particular issues such as the Puketotara Block, the Kaikohe Aerodrome and Railway lands;
16. Te Waimate Taiamai me Kaikohe Taiwhenua claimants have been allocated 3 hours for this presentation and it is likely that the opening statements shall be presented by a number of supported tangata whenua kaikorero with assistance from legal counsel where necessary.
17. A process and timeframes for draft openings has been agreed by the Taiwhenua claimants in attendance at the last hui and the kaikorero/presenters shall be selected once the drafts are available.

Whangarei

18. Counsel notes that the Whangarei Taiwhenua did not provide the CCC with information to be included in this memorandum. Counsel refers the Tribunal to the separate memorandum filed by Ruiha Collier on 24 January 2012 which sets out the intentions of the Whangarei Resource Centre Management and Planning Committee for the opening week.
19. Counsel notes that a request has been made from the Whangarei Resource Centre Management & Planning Komiti that 5 hours be made available for Whangarei to present its opening statement; however, their request could not be accommodated within the current timetable.

Mangakahia

20. It is anticipated that the opening statement from Mangakahia will follow similar lines to those outlined by other Taiwhenua, however Mangakahia will not be in a position to finalise the contents of its opening statement until the scheduled hui of 2 February 2013.

Mahurangi

21. The Mahurangi claimants have yet to meet as a full group. Some Counsel, however, have conferred in general about the Taiwhenua opening remarks.
22. The Mahurangi Taiwhenua includes claims from groups of disparate origins, and one claim that is not based on a traditional identity but involves the Crown duty to Maori based on legislation and conduct.
23. For purposes of the Taiwhenua opening, the claims will be grouped into Ngapuhi claims, and claims of other groups.
24. These groups will divide the time amongst themselves with brief opening presentations made by claimants and/or supported by their counsel. It is anticipated that the Ngapuhi presentation will be made collectively and the remaining claims will be presented in natural groupings, whether on a traditional or claim basis. The Wai 1385 Nga Tauira Tawhito o Hato Petera Claim and Wai 1896 will present alone.

Hokianga

25. Hokianga reiterate their preference to have their opening statements delivered at the beginning of the first Hearing Week to take place within the Hokianga Taiwhenua for the following reasons:
- (a) There is little merit in delivering an opening statement when the evidence to which it relates will not be heard for over a year; and
 - (b) It is anticipated that the Waitangi Tribunal will have released its report into Stage One issues prior to the Hokianga hearings. This

will allow its findings to contextualise the Hokianga presentations and openings when they are delivered.

26. Hokianga will therefore only require 5 minutes to address the Tribunal during the opening hearing week.
27. We advise that the intention of Hokianga is to deliver opening statements on the Sunday preceding the first Hokianga Taiwhenua hearing within the formal powhiri that takes place on that day.

Hearing Week 1 Final Timetable

28. On 21 December 2012 the CCC filed a Joint Memorandum of Counsel including a Draft Hearing Week 1 timetable that was based on the submissions made at the Judicial Conference on 17 December 2012. Taiwhenua, claimants and counsel have therefore had an opportunity to consider and discuss the draft timetable.
29. Furthermore, the Joint Memorandum has been considered by Te Kotahitanga o Nga Hapu Ngapuhi at a hui on 23 January 2013 at Pikiparia Marae, Kohukohu. Some Taiwhenua have also held hui to consider and discuss the draft timetable.
30. The CCC has tried to accommodate the numerous requests as best as possible. Attached at **Appendix A** is the proposed final Hearing Week 1 Timetable for 17 – 22 March 2013.
31. Counsel notes that since the draft timetable of 21 December 2012 adjustments have been made to the allocation of time for Taiwhenua opening statements. The order of the Taiwhenua opening statements has also been changed to accommodate requests that the presentations not be split across days.

32. The following allocations for lead counsel and counsel to lead the cross examination of the Week 1 technical witnesses have also been made:

Stage Two Hearing Week 1: 18-22 Mar 2013			
Technical witness	Report	Lead Counsel	Lead Counsel for XXM
Dr Vincent O'Malley	#A11: 'The Nature and Extent of Contact and Adaptation in Northland, c.1769-1840', April 2007	Morrison Kent	Aurere
David Armstrong/Evald Subasic	#A12: 'Northern Land and Politics: 1860-1910', June 2007	Koning Webster	Moana Tuwhare Aurere Law

Dated this 25th Day of January 2013




Moana Tuwhare / Season-Mary Downs
On behalf of the Counsel Coordinating Committee