WAITANGI TRIBUNAL

Wai 2200

CONCERNING the Treaty of Waitangi Act 1975

AND the Porirua ki Manawatū District Inquiry

MEMORANDUM-DIRECTIONS (NO. 46) OF DEPUTY CHIEF JUDGE C L FOX, PRESIDING OFFICER, SIR TAMATI REEDY (EMERITUS PROFESSOR), DR GRANT PHILLIPSON AND THE HONORABLE SIR DOUG KIDD

Tēnā koutou katoa

1. In this memorandum-directions we:

   1.1. Set out our understanding of the current status of the Porirua ki Manawatū district inquiry research programme;

   1.2. Propose the idea of holding Ngā Kōrero Tuku Iho hui for the inquiry in advance of the completion of the technical research programme; and,

   1.3. Set the date for the next judicial conference for the inquiry.

Current status of the inquiry research programme

2. In our memorandum directions of 24 December 2012 (Wai 2200, #2.5.58) we set out our decision on the overall shape of the research programme for the inquiry. We indicated that beginning research depended on the agreement of the Crown Forestry Rental Trust (CFRT) to fund the programme and we asked CFRT staff to seek their Trustees' approval to do this.

3. Our understanding is that a proposal has been prepared but that CFRT trustees' consideration of it has been delayed by an outstanding legal issue about the rules governing the trust. We are unable to commence detailed research planning until the question of CFRT funding is resolved and ask CFRT staff to update us on the situation at the upcoming judicial conference (Wai 2200, #6.2.17).

Ngā Kōrero Tuku Iho hui

4. In November 2010, following claimant responses to the Discussion Paper on Inquiry Process: Porirua ki Manawatū District Inquiry (Wai 2200, #6.2.3), Deputy Chief Judge Fox proposed a form of Ngā Kōrero Tuku Iho process in the Porirua ki Manawatū inquiry district (Wai 2200, #2.5.18). While not all claimant groups responded, the majority of claimants who did supported the proposal at the time (see annex 1). We wish to now return to this proposal.

5. The purpose of the proposed Ngā Kōrero Tuku Iho hui is to provide a forum for claimants to present oral and traditional evidence early in the inquiry. Our intention is to develop a process similar to that utilised in the Tribunal's Te Rohe Pōtae district inquiry in 2010 but adapted to the specific needs of the claimant groups for the Porirua ki Manawatū inquiry district. These hui would be recorded Tribunal hearings but conducted quite differently from the standard hearing format.

Purpose of proposed Ngā Kōrero Tuku Iho hui

6. The purposes of the Ngā Kōrero Tuku Iho hui would be:

    6.1. To enable the claimants to present their oral and traditional histories and within the context of a marae setting. Such hearings would focus on the telling of handed-down tribal and marae history rather than lived experience. This might include origins, settlement patterns, traditional and historical boundaries determined by reference to resource use and kāinga, relationships with neighbouring hapū and iwi, the impacts of early colonisation on iwi/hapū formation and social cohesion, any oral traditions about Crown actions, and the current status and identity of these groups;

    6.2. To capture the kōrero of kuia and kaumatua as they know and have learned them. The Tribunal is aware that there are elderly kuia and kaumatua, with a wealth of knowledge relevant to this inquiry, who may no longer be with us by the time the technical research programme is completed and formal hearings begin;

    6.3. To ensure the claimants have the opportunity to share their oral and traditional history with the Tribunal in an appropriate setting;

    6.4. To provide the opportunity for the Tribunal to hear that kōrero in the appropriate context, whilst maintaining the infrastructure and support needed to adequately record the process; and

    6.5. To enable more timely research, mitigate the risk of important issues being overlooked in research, and assist a more efficient hearing process and hearing timetable.

7. As a panel, we would find it valuable to hear more from claimant witnesses about their traditional history, whakapapa, settlement patterns, hapū, and marae. This would provide a framework for the hearing of evidence on the alleged actions and omissions of the Crown in relation to claimant groups later in the inquiry.

Coordination of Ngā Kōrero Tuku Iho hui

8. It is proposed these hui would be marae-based and organised by coordinating claimant committees within the inquiry district. We envisage that the process would be less formal than a conventional Tribunal hearing, allowing the claimants to introduce themselves and their rohe to the Tribunal. As there are several iwi groups participating in this inquiry district, we anticipate there would be a number of coordinating committees, but that would be a matter for the claimant community to determine. We envisage that the coordinating committees would involve representatives from the host marae who would liaise with the Tribunal in relation to matters such as marae arrangements, the order of speakers and any other matters of tikanga.

9. Simultaneous interpretation would be provided at each hui, and a bilingual transcript would be produced. We anticipate that te reo Māori would be used extensively throughout. The evidence would be recorded and transcribed, and the Tribunal would allow parties the opportunity to review the draft transcripts before they were finalised and placed on the Record of Inquiry. The transcript is to be made available to Tribunal members and staff, claimants, counsel, the Crown and inquiry researchers.

Presentations at Ngā Kōrero Tuku Iho hui

10. The hui would be focused on evidence that has been passed down. Claimants would not be required to present anything prepared in writing. If claimants did wish to file information with the Tribunal they could do so by written briefs of evidence or through other forms of document (such as whakapapa charts).

11. The process would be designed to limit the role of legal counsel and to let the claimants control the production of their own evidence. As such, counsel would only be able to undertake limited preparatory roles before and during the hui. Witnesses could expect to be questioned by the Tribunal, but there would be no cross-examination by counsel. In fact, there will be limited need for claimants from other iwi to attend such hui, as they will be provided with a full transcript and all the material that is presented. When other iwi present their evidence in turn, there will be opportunity for them to provide the Tribunal with their understanding of any competing stories.

12. With respect to the Crown, counsel do not normally cross-examine oral and traditional evidence in any case, so we do not think that the Crown will be disadvantaged by the process we are suggesting. Rather, the Crown will benefit,

along with the Tribunal, by developing an early understanding of the oral and traditional histories of the peoples in this inquiry district.

13. Any information filed with the Tribunal during the hui would not replace the need for the later presentation of claimant evidence in other forms such as briefs of evidence, archival tribal research or other historical research at hearings.

Scope and number of Ngā Kōrero Tuku Iho hui

14. These hui would hear evidence that has been passed down on an agreed range of subjects, and as such we would expect five two-day hui would be sufficient for this phase of the inquiry. It is anticipated that the oral traditions hui would run over a period of three to four months.

15. We expect that the specific evidence heard at Ngā Kōrero Tuku Iho hui would not need to be reheard during the hearings that will be held after the completion of the research casebook and the interlocutory phases of the inquiry.

16. We anticipate that we could engage in such a process quite quickly. For example, we consider that Muaūpoko may be ready to proceed with this idea within three to four months if they agree. The reasons for this view are that Muaūpoko are one of the smaller iwi in the inquiry district, they already have available to them a number of claimants who would be ready to tell their stories, and they are facing a degree of urgency given the imminent resolution of the mandating process.

17. The commencement of these hui will be subject to the availability of funding and resources.

Upcoming Judicial Conference

18. We are conscious that the proposed Ngā Kōrero Tuku Iho hui process will need to be developed in consultation with claimants and the Crown. At the upcoming judicial conference we would like to discuss this process, gauge parties' overall support for it, discuss what the thematic focus of the hui should be, and how the process might be best adapted to the groups and issues in this inquiry.

19. All this raises several issues which should be addressed by counsel in written submission to be filed by **midday, Monday 20 May 2013**, including

    19.1. Do parties support the idea of a Ngā Kōrero Tuku Iho process in this inquiry district?

    19.2. If so, what should the process be called?

19.3. How broad should the scope of the hui be? What topics from existing oral traditions would be most appropriate for discussion?

19.4. How should each iwi hui be organised? By geographical location, by theme, or in some other manner?

19.5. How should speaking rights be organised and speakers selected for each hui? Should each speaker be given the opportunity to speak once or should something more akin to a discussion among kaumatua be organised? Are there particular local kawa which could guide us in this respect?

19.6. Who should be given responsibility for organising each hui? Possibilities include marae-based committees, representative iwi bodies, claimant groups or some other form of organisation?

20. The next judicial conference for the Porirua ki Manawatū district inquiry will be held on Tuesday 28 May 2013 at a venue to be advised.

21. The agenda for the judicial conference will be:

21.1. Update on research funding and planning; and,

21.2. Ngā Kōrero Tuku Iho hui proposal.

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 19th day of April 2013.

Deputy Chief Judge C L Fox
Presiding Officer
WAITANGI TRIBUNAL

Annex 1: Responses to Wai 2200, #2.5.18 concerning a proposed Ngā Kōrero Tuku Iho process.

Memo Filed	Wai	Claimants	Counsel	Ngā Kōrero Tuku Iho
3.1.105	Wai 237, 1629, MIR 6031	Ron Taueki (deceased) and William Taueki, Horowhenua Block Claim; Vivienne Taueki, Nga uri o Taueki claim; Alexander Taueki, Clement Taueki and Joseph Taueki Muaūpoko claim	Linda Thornton Tamaki Legal	Claimants are open to the Traditional History Kōrero format but are concerned about the outcome of Te Rohe Pōtae process which may not have lived up to its hoped for results.
3.1.107	Wai 1618	Nga Hapū o Himatangi being Ngāti Rakau, Ngāti Turanga and Ngāti Te Au	M K Mahuika/ K T Albert Kahui Legal	Claimants state that the preparation, presentation and recording of oral and traditional evidence in advance of completion of the interlocutory process and the commencement of hearings would be beneficial in this inquiry.
3.1.108	Wai 972	Edward Penetito and others on behalf of himself and Te Komiti Marae o Kauwhata Trust	B D Gilling, J M Sarich, R M Sandri Rainey Collins	Counsel have identified several potential benefits from Ngā Kōrero Tuku Iho being applied to Porirua ki Manawatū based on Te Rohe Pōtae experience.
3.1.109	Wai 2031	Simon Austin on behalf of himself and the descendants of James Howard Wallace	B D Gilling, J M Sarich, R M Sandri Rainey Collins	Counsel have identified several potential benefits from Ngā Kōrero Tuku Iho being applied to Porirua ki Manawatū based on Te Rohe Pōtae experience.
3.1.110	Wai 784	Rodney Graham and others on behalf of himself and the Kauwhata Treaty Claims Komiti and Nga Uri Tangata o Ngāti Kauwhata ki Te Tonga	B D Gilling, J M Sarich, R M Sandri Rainey Collins	Counsel have identified several potential benefits from Ngā Kōrero Tuku Iho being applied to Porirua ki Manawatū based on Te Rohe Pōtae experience.
3.1.112	Wai 1482	Richard Edward Orzecki, Ropata William Miritana and Patricia Ngatakutai Jacobs on behalf of themselves and Te Kotahitanga o Te Iwi o Ngāti Wehi Wehi	B D Gilling, J M Sarich, R M Sandri Rainey Collins	Counsel have identified several potential benefits from Ngā Kōrero Tuku Iho being applied to Porirua ki Manawatū based on Te Rohe Pōtae experience.

Memo Filed	Wai	Claimants	Counsel	Ngā Kōrero Tuku Iho
3.1.114	Wai 113, 408, 757, 1932	A comprehensive claim on behalf of all descendants of the iwi and hapū o Ngāti Raukawa ki te Tonga; a claim by Ngawini Kuiti and Turao Kiniwe Royal for and on behalf of the landowners of the Waiwiri Block; a claim by Whamaro Mark Kiriona and Wayne John Kiriona for and on behalf of the Ngāti Raukawa ki te Tonga iwi in relation to fisheries issues; a claim by Peter Richardson, Ngawini Kuiti and Te Maharanui Jacob for and on behalf of the Carnarvon 382 and 383 (Koputara) Trust	Richard Boast Kensington Swan	The claimants support the intention behind a process such as Ngā Kōrero Tuku Iho but are concerned that such a process demands significant time and resources.
3.1.117	Wai 443	Peter Manaia and others for and on behalf of themselves and the iwi and uri of Raukawa	Richard Boast Kensington Swan	The Claimants support the intention behind a process.
3.1.123	Wai 1641	Turakina Maori Girls College	B D Gilling J M Sarich H Stephen Rainey Collins	Counsel have identified several potential benefits from Ngā Kōrero Tuku Iho being applied to Porirua ki Manawatū based on Te Rohe Pōtae experience.
3.1.125		The Crown	Damen Ward	Crown favours a Nga Korero Tuku Iho project based on Te Rohe Pōtae

The following parties did not mention Ngā Kōrero Tuku Iho in their submissions:

Memo Filed	Wai	Claimants	Counsel
3.1.106	Wai 648, 1640, 1944	Te Kotua Charitable Trust, Ngāti Whakatere ki te Tonga, Hinemata Hapū	Hemi Te Nahu, Eve Rongo, Paul Cochrane, Te Nahu Lovell and Co
3.1.113	Wai 2056	Henry Williams and others	David Stone Te Mata a Maui Law
3.1.115	Wai 1872	Ngāti Pikiahu	Bernadette Arapere Wackrow Williams and Davies Ltd
3.1.116	Wai 48, 81 and 146	Ngāti Haua	Spencer Webster Jackson Reeves Lawyers
3.1.118	Wai 1064 Wai 366	Ngāti Rangatahi	Maui Solomon Kawatea Chambers
3.1.120	Wai 2139 Wai 2167	Dennis Greenland Te Heke McKinnon	Tavake Afeaki Charl Hirschfeld

Memo Filed	Wai	Claimants	Counsel
3.1.122	Wai 1461 Wai 651 Wai 437 Wai1580 MIR 6056	Kauwhata claim Reureu claim Raukawa claim	Donna Hall Woodward Law
3.1.124	Wai 1913 Wai 2299 Wai 166 Wai 1634	Te Iwi o Ngāti Tukorehe Ngāti Te Kapuarangi Rangitane o Tamaki Nui-a-Rua Rangitane o Tamaki Nui-a-Rua, Ngāti Te Rangiwhakaewa, Ngāti Mututahi and various whanau of Tamaki Nui-a-Rua	A H C Warren R P Hall McCaw Lewis Chapman

- No submissions were received from Te Ati Awa or Te Hono ki Raukawa about the Ngā Kōrero Tuku Iho process