Wai 1040

IN THE WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD

27 May 2013

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1. This memorandum-directions addresses matters following hearing week 2 of stage 2 of the Te Paparahi o Te Raki Inquiry as well as timetabling and site visit matters for hearing week 3.
2. Hearing week 2 of stage 2 began with a site visit by boat and bus and then four days of hearings held at the Copthorne, Waitangi. We thank claimants, Nga Hapu o Takutai Moana, counsel and the Crown for their work and effort with us to ensure another well run week of hearings was completed.

Leave sought to file late tangata whenua briefs of evidence

Brief of evidence of Marsha Davis

3. On 30 April, Ms Sykes sought leave to file the brief of evidence of Marsha Davis by 12pm, 3 May 2013 (#3.2.38) I granted this leave. (#2.6.4).
4. On 8 May 2013, Ms Sykes sought further leave to file the brief of evidence of Marsha Davis (#3.2.59).
5. I grant the leave sought. The amended brief and its appendices are now on the Wai 1040 Record of Inquiry (#F33, #F33(a) and (b)).

Briefs of evidence of Arapeta Hamilton

6. On 6 May 2013, claimant counsel Annette Sykes sought leave to file three amended briefs of evidence for Arapeta Hamilton (#3.2.53).
7. I grant the leave sought. The amended briefs are now on the Wai 1040 Record of Inquiry (#F12(a), #F22(a), #F23(a)).

Brief of evidence of Judith Harawene

8. On 6 May 2013, Ms Sykes sought leave to file a second brief of evidence for Judith Harawene (#3.2.53).
9. On 8 May 2013, Ms Sykes sought leave to file an amended second brief of evidence for Judith Harawene (#3.2.59).
10. I grant the leave sought. The second brief of evidence and its amended version are now on the Wai 1040 Record of Inquiry (#F31 and #F31(a) respectively).

Briefs of evidence of Parehuia Tangira and Evelyn Tobin

11. On 9 May 2013, Ms Sykes sought leave to file the briefs of evidence of Parehuia Tangira and Evelyn Tobin (#3.2.60).
12. I grant the leave sought. These briefs are now on the Wai 1040 Record of Inquiry (#F35 and #F34 respectively).

Amended briefs of evidence or errors to briefs of evidence

13. The following claimants or claimant counsel stated during presentations that there were amendments required to their briefs of evidence or opening submissions.

    a) Joseph Bristowe (#F32)

    b) Patuone Hoskins (#F5)

    c) Moses Witehira (#F4)

    d) Yvette Turner (#F7)

14. On Friday 17 May I directed that amended briefs of evidence or edits to briefs of evidence are to be filed by **5pm, Friday 24 May, 2013**.

Amended brief of evidence filed in hearing week 2

15. Counsel for Wai 354 and 1535, Annette Sykes, sought leave on 15 May 2013 to file late the brief of evidence for Marsha Davis (#F33(c)). Leave is granted.

Ngati Manu opening submissions

16. Counsel Hanna Stephen while delivering her opening submission stated that it was read with 'some minor amendments' (#3.3.52) Amendments to the opening submission are to be filed by **5pm, Friday 31 May 2013**.

17. Ms Stephen also sought leave to supplement the Ngati Manu evidence at a later date should funding be made available for the production of a detailed map book. Leave is granted.

Powerpoint presentations

18. During hearing week 2, a number of Powerpoint presentations accompanied the claimants presentations of their briefs of evidence. Power point presentations for the following claimants noted below are to be filed by **5 pm, Friday 24 May 2013.**

    These presentations are**:**

    a) Joyce Baker (#F16(b))

    b) Marsha Davis (#F33())

    c) Harry Mahanga (#F1(d))

    d) Pae Wynyard (#F2(a))

    e) Kitty Mahanga-Nisbet (#F3(a))

    f) Willow Jean Prime#F25(a), #F26, #F27, #F28)

    g) Karen Herbert (#F26(a))

    h) Edward Cook (#F27(b))

    i) Peter Clarke (#F27(c))

    j) Kara George (#F28(a))

    k) Romana Tarau (F28(b))

Brief of evidence taken as read

19. On Thursday 16 May 2013, claimant counsel Hemaima Raupatu sought leave that Kelvin Davis's brief of evidence which was part of #F9 be taken as read.

20. I grant the leave sought.

Wai 2022 Motu Kokako

21. During the presentation of her evidence, Yvette Turner (#F7) stated that she had applied to the Far North District Council for rates remission over Motu Kokako and this application had been declined. Ms Turner advised that she had written back to the council to ask for reasons why they had been refused rates remission. I grant leave for Ms Turner's counsel Peter Johnston to file the Council's response concerning the matter of the refusal of rates remission should it become available.

Written Questions

22. Due to time constraints, leave was sought by Crown counsel Andrew Irwin to file questions in writing regarding the evidence of the following witnesses:

    a) Harry Mahanga (#F1(d))

    b) Pae Wynyard (#F2(a))

    c) Kitty Mahanga Nisbett (#F3)

23. Leave was granted and written questions to the above claimants are to be filed by 24 May 2013. Crown counsel Mr Irwin filed questions with the Tribunal to be answered by Harry Mahanga on 23 May 2013. Mr Irwin stated that the Crown had no other questions in writing for the other witnesses. Mr Mahanga is to file answers to these questions by **5pm, Monday, 10 June 2013**.

24. During hearing week 2, on Friday 17 May 2013, counsel Robyn Gray asked witness Marsha Davis (#F33(b)) what was the name of Riwa's daughter who married Captain Brind.

25. Claimant counsel, Ms Sykes, sought leave to provide this answer in writing. I granted this leave and the answer is to be filed by **5pm, Friday 31 May 2013**.

Cross examination at hearings

26. During the week counsel for the Crown, Mr Andrew Irwin, raised the issue of the Tribunal limiting cross examination. He relied on section 93 of the Evidence Act, which allows the Tribunal to limit cross examination of a witness who has substantially the same interest in the proceedings as the cross examining party. I provided my direction at the hearing.

27. In the Tribunal context all claimants will share substantially similar interest and substantially similar claim issues. There will be difference, but in the main most claimants have substantially the same interest in the proceedings.

28. As a reminder all claimant counsel – they should look to limit their cross examination of claimant witnesses to asking questions which seek to test and check the witnesses testimony. Cross examination should focus on issues that may conflict with your claimant's interest or where the witnesses evidence is at odds with what your clients will say.

29. Cross examination is not an opportunity to simply reconfirm what witnesses have already stated or to fill in gaps in the evidence, allow restatements of what has already been stated or an opportunity for re-examination with regards to the issues raised by the Crown.

When timetabling allow sufficient time for cross examination and questioning

30. We remind claimants and counsel to allow sufficient time for cross examination and Tribunal questioning when timetabling witnesses for hearing weeks. This was not adequately allowed for in hearing week 2 and contributed to hearings running over time.

Speaking notes for Te Kapotai

31. On 1 May, counsel Aiden Warren, Season-Mary Downs and Hemaima Raupatu (Wai 1464 and 1546) sought leave to file speaking notes for the following witnesses on Thursday 9 May, 2013 (#3.2.47):

    a) Willow-Jean Prime (#F25(a) and #F27(a))

    b) Karen Herbert (F26(a))

    c) Edward Cook (#F27(b))

    d) Peter Clarke, (#F27(c))

32. Leave was granted in my memorandum-directions of 6 May 2013 (#2.6.4) These speaking notes were filed late on Friday 17 May. Counsel are therefore requested to seek leave to file late.

Tangata whenua evidence

33. Some tangata whenua evidence presented in week 2 featured a great amount of technical evidence and relied on a significant amount of documentary evidential sources other than tangata whenua. While we applaud the claimant's research, we ask that tangata whenua briefs of evidence relying on a high quantity of technical research, be filed 3 weeks in advance of hearings. This is to ensure sufficient time for all parties to fully engage with the evidence and the sources relied upon.

Late leave sought prior to hearing week 2

Leave sought to by Mere Mangu to file late response

34. In my memorandum-directions of 3 May 2013 I directed that claimant counsel Mere Mangu respond to submissions of counsel regarding her suggested disbandment of the Counsel Coordinating Committee (CCC) and other issues by 12pm, Tuesday 7 May 2013 (#2.6.3).

35. On 7 May 2013, Ms Mangu sought leave to file these submissions later that day (#3.2.56).

36. I grant the leave sought. Ms Mangu's submissions are now on the Wai 1040 Record of Inquiry (#3.2.57).

37. I will respond to this particular matter in a later memorandum-directions.

Hearing week 3

38. On Monday 27 May, 2013, claimant counsel Byan Gilling and Hanna Stephen filed a memorandum on behalf of Whangaroa taiwhenua regarding hearing week 3 (8-12 July 2013) for stage 2. They seek leave to:

    a) hold a site visit on Sunday 7 July after the powhiri at 2pm

    b) file the detailed hearing week timetable on Friday 31 May.

39. Regarding the site visit, I direct counsel to my memorandum-directions of 20 February 2013 in which I detailed my expectations and guidelines for stage 2 site visits. (#2.5.152) Particularly of note to Dr Gilling and Ms Stephen:

    In seeking leave, areas to be visited are to be listed and any relevant maps are to be filed. Parties must also state why the sites are of significance to their hearing week

    (para 6)

40. In seeking leave for a site visit, counsel are requested to provide a higher level of detail than has been provided to date before I will grant leave for a site visit to take place especially if the request is for it to take place on a Sunday.

41. I grant leave for the detailed week 3 hearing plan to be filed by 5pm, Friday 31 May, 2013.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki inquiry.

DATED at Rotorua this 27th day of May 2013

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL

Appendix A: Stage 2 revised hearing week filing deadlines

Stage 2 revised hearing week filing deadlines		
Filing deadline	**Who**	**When**
All technical evidence summaries (generic and local) and answers to Tribunal Statement of Issues (TSOI)I	Counsel/witness	**6** weeks prior to start of relevant hearing week
Detailed hearing plan	Counsel/claimants	
Request for site visit	Counsel/claimants	
Questions of clarification	Lead claimant and Crown counsel	**5** weeks prior to start of relevant hearing week
Answers to questions of clarification	Counsel/witness	**3** weeks prior to start of relevant hearing week
Tangata whenua briefs of evidence of a technical nature	Counsel/claimants	**3** weeks prior to start of relevant hearing week
Lead and Crown counsel to provide time estimates for their questioning of technical evidence witnesses	Lead claimant and Crown counsel	**2** weeks prior to start of relevant hearing week
Non- lead counsel to advise which evidence they seek leave to cross-examine and why, providing time estimates	Non-lead counsel	**2** weeks prior to start of relevant hearing week
Tangata whenua briefs of evidence	Counsel/claimants	**2** weeks prior to start of relevant hearing week

Appendix B: Stage 2 Week 3 (8-12 July 2013) filing deadlines

Filing deadline	Who	When	Week 2 filing deadline date
All technical evidence summaries (generic and local) and answers to Tribunal Statement of Issues (TSOI)	Counsel/witness	6 weeks prior to start of relevant hearing week	**27 May 2013**
Detailed hearing plan	Counsel/claimants		
Request for site visit	Counsel/claimants		
Questions of clarification	Lead claimant and Crown counsel	5 weeks prior to start of relevant hearing week	**4 June 2013**
Answers to questions of clarification	Counsel/witness	3 weeks prior to start of relevant hearing week	**17 June 2013**
Tangata whenua briefs of evidence of a technical nature	Counsel/claimants		
Lead and Crown counsel to provide time estimates for their questioning of technical evidence witnesses	Lead claimant and Crown counsel	2 weeks prior to start of relevant hearing week	**24 June 2013**
Non- lead counsel to advise which evidence they seek leave to cross-examine and why, providing time estimates	Non-lead counsel		
Tangata whenua briefs of evidence	Counsel/claimants		