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 June 2013

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1. This memorandum-directions addresses hearing planning matters for week 3 of stage 2 and other matters for the Te Paparahi o Te Raki Inquiry.

Funding for hearing weeks 3 and 4 of stage 2

2. On 20 June 2013, Crown counsel Andrew Irwin informed parties that, given the exceptional circumstances that claimants in this inquiry are facing, Cabinet has approved Crown funding for weeks 3 and 4 of stage 2 of the Te Paparahi o Te Raki Inquiry (#3.2.93). I thank the Crown for their assistance.

Week 3 oral and traditional evidence: filing

3. On 4 June 2013, claimant counsel Bryan Gilling and Hanna Stephen confirmed that Aroha Harris, the coordinating author of Te Uira Associates' 'Oral and Traditional History Report for Te Rohe o Whangaroa' (#E32), is now available to assist with the presentation of the report in hearing week 3 and is working to provide a summary of the report to assist with this presentation (#3.2.81).
4. Counsel sought leave to file this summary by 1 July 2013.
5. I grant the leave sought. The summary is to be filed by **12pm, Monday 1 July 2013.**

Week 3 tangata whenua briefs of evidence: filing

Tangata whenua briefs of evidence of a technical nature

6. On 27 May 2013, I directed that tangata whenua briefs of evidence relying on a high quantity of technical research be filed 3 weeks in advance of hearings, to ensure sufficient time for all parties to fully engage with the evidence (#2.6.6).
7. On 4 June 2013, Dr Gilling and Ms Stephen submitted that claimants had been working towards a 24 June filing date (2 weeks in advance of hearings), and at this stage it would be very onerous to meet an earlier deadline (#3.2.81). Counsel requested that the early filing requirement be waived for any week 3 witnesses to whom it might apply.
8. On 5 June 2013, claimant counsel Linda Thornton and Bryce Lyall supported the above mentioned submissions of Dr Gilling and Ms Stephen, and sought leave to file their clients' briefs of evidence on 24 June 2013 (#3.2.82).
9. I grant the leave sought. The revised filing deadline for tangata whenua briefs of a technical nature for hearing week 3 of stage 2 is amended to **12pm, Monday 24 June 2013**.
10. The requirement for tangata whenua briefs of a more technical nature to be filed 3 weeks in advance of hearings applies onwards from hearing week 4 of stage 2.

Late filing of tangata whenua briefs of evidence

11. The following brief of evidence was filed after the 12pm deadline on 24 June 2013 and counsel must seek leave for late filing:
    a) Linda Thornton for the brief of Ani Taniwha.

Requests for leave to file late

12. On 24 June 2013, a number of counsel sought leave to file late, including:

    a) Dr Gilling and Ms Stephen who sought leave to file the brief of Rawiri Timoti later that day after the 12pm deadline. The brief was subsequently filed.

    b) Te Kani Williams, Robyn Gray and Ihipera Peters who sought leave to file tangata whenua briefs for Wai 320 and Wai 726 by 5pm, Tuesday 25 June 2013. Annexures to briefs of evidence were filed after 5pm, and counsel subsequently sought leave for this late filing.

    c) Gerald Sharrock and Mireama Houra who sought leave to file tangata whenua briefs of evidence for Wai 2179, Wai 1673, and Wai 179 by 12pm, Thursday 27 June 2013. Counsel then re-filed, seeking leave to file these briefs of evidence by 12pm, Monday 1 July 2013.

    d) Tony Shepherd and Daniel Watkins who sought leave to file two tangata whenua briefs of evidence of a technical nature by 12pm, Monday 1 July 2013.

13. I grant the leave sought.

Week 3 cross-examination and Tribunal questioning of tangata whenua witnesses: timetable

14. In memorandum-directions of 10 June 2013, I requested that Dr Gilling and Ms Stephen file an updated week 3 hearing timetable, stating the length of time allocated for cross-examination and Tribunal questioning of tangata whenua witnesses (#2.6.8).

15. Dr Gilling and Ms Stephen responded that with tangata whenua evidence yet to be filed, it was difficult to provide time estimates (#3.2.86). Counsel prefer to prepare and lead witnesses through evidence in a manner that would allow for some questioning and engagement with the subject matter contained.

16. I accept the need to allow for flexibility in terms of itemising timings however, witnesses must not exceed the total time allocated to them in the final timetable. Counsel are reminded that the time allocated must account for witness presentation, Crown cross-examination, claimant counsel cross-examination, Tribunal questioning, and re-examination.

Week 3 cross-examination of technical witnesses: filing

17. I thank counsel who have met filing deadlines for requests to cross-examine technical witnesses. However, a number of tangata whenua briefs were filed after the 12pm deadline on 24 June 2013.

18. The following counsel sought leave for late filing:

    a) Darrell Naden

    b) Moana Tuwhare

    c) Cameron Hockly

    d) Mr Irwin, for the request to cross-examine Dr Harris and Ms Tauroa

19. I grant the leave sought.

20. Requests by the following counsel were filed after midday and counsel must seek leave for late filing:

    a) Te Kani Williams, Robyn Gray and Ihipera Peters

b) Aidan Warren and Season-Mary Downs

c) Jason Pou, Terena Wara and Zina Anderson

d) Peter Johnston and Eve Rongo

e) Gerald Sharrock and Mireama Houra

Cross-examination of David Armstrong and Evald Subasic, 'Northern Land and Politics: 1860-1910' (#A12)

21. I remind counsel that in seeking leave to cross-examine technical witnesses, counsel should indicate the subject areas, time to be taken, nature of content of questioning, issues of contention, and document/s they will be referring to (#2.5.152).

22. The cross-examination request filed by Mr Naden on 24 June 2013 is declined as a time estimate was not provided. On 27 June 2013 Mr Naden sought to make amendments to his previous memorandum, and provided a time estimate for cross-examination. I grant the leave sought.

23. The cross-examination request filed by Messrs Shepherd and Watkins on 24 June 2013 is declined as counsel did not fulfil the requirements above.

Week 3 requests to cross-examine technical witnesses: timetable

Cross-examination of David Armstrong and Evald Subasic, 'Northern Land and Politics: 1860-1910' (#A12)

24. In the hearing week timetable filed by Dr Gilling and Ms Stephen on 21 June 2013, counsel allocated 4 hours 45 minutes for the cross-examination of Messrs Armstrong and Subasic. The Crown has requested 2 hours 15 minutes for cross-examination. The Tribunal will require 1 hour for questioning. That leaves claimant counsel with 1 hour 30 minutes for cross-examination.

25. Cross-examination requests from claimant counsel to date are well in excess of this time, with a current estimate totalling over 6 hours. There are two options:

a) Reduction of time allocated to witnesses earlier in the hearing week to allow further time to be allocated for the cross-examination of Messrs Armstrong and Subasic; or

b) Leaving the timetable as it is, with the remaining 1 hour 30 minutes for claimant counsel cross-examination to be coordinated by lead counsel for cross-examination, Ms Tuwhare.

26. I ask that Ms Tuwhare and other counsel revisit their cross-examination requests and file a memorandum advising which option they elect. This is due by **midday Monday 1 July 2013.**

27. Whichever option is elected, if time does not allow for cross-examination to be completed, questions may be put in writing after the hearing week.

Cross-examination of Aroha Harris and Robyn Tauroa, 'Oral and Traditional History Report for Te Rohe o Whangaroa' (#E32)

28. In the hearing week timetable counsel have allocated 1 hour 30 minutes for Dr Harris and Ms Tauroa. Again I note that this time must include presentation of the report, Crown cross-examination, claimant counsel cross-examination, Tribunal questioning, and re-examination of the witnesses.

29. The following counsel sought leave to cross-examine Dr Harris and Ms Tauroa:

a) Te Kani Williams, Robyn Gray and Ihipera Peters (10 minutes)

b) Jason Pou, Terena Wara and Zina Anderson (1 hour)

30. On 25 June 2013, Mr Irwin sought to cross-examine Dr Harris and Ms Tauroa for up to 20 minutes, noting that time for questioning was limited, and that other claimant counsel had sought leave to cross-examine the witnesses.

31. On 25 June 2013, Mr Pou responded to matters raised in the memorandum of Mr Irwin. Mr Pou submitted that Crown counsel implied that the Crown request for questioning time was truncated due to pressures on the hearing schedule. Mr Pou submitted that, given the nature of the report, Crown cross-examination outweighed his previous request for 1 hour. Mr Pou submitted that it would be more practical for claimant counsel to truncate their approach and ask questions in writing if required, allowing the Crown to fully engage and traverse matters that it deems appropriate to test before the Tribunal.

32. Again, if time does not allow, questions may be put in writing after the hearing week.

Week 3 questions of clarification for technical witnesses

33. On 25 June 2013, Ms Tuwhare sought leave to file late questions of clarification for Messrs Armstrong and Subasic. I grant the leave sought.

34. However, as these questions were filed less than two weeks before hearing week 3 commences, I do not expect the witnesses to reply before hearings. Their answers to these questions are due to be filed by **12pm, Friday 9 August 2013.**

Week 3 site visit: filing

35. On 14 June 2013, Dr Gilling and Ms Stephen sought leave to file further details regarding a site visit for week 3 hearings by 21 June 2013, due to uncertainties around Crown funding.

36. On 21 June 2013, Ms Thornton sought leave to file the site visit booklet by 12pm, Monday 24 June 2013. The site visit booklet was filed after midday on 24 June 2013.

37. On 27 June 2013, Ms Thornton and Mr Lyall sought leave for the late filing of the site visit booklet.

Week 3 site visit: timetable

38. The site visit booklet filed by Ms Thornton and Mr Lyall on 24 June 2013 includes a timetable for the site visit scheduled from 12.30pm to 6pm on Sunday 7 July 2013.

39. I have previously said that pōwhiri and subsequent site visits should be held from 2pm on the Sunday prior to hearing week (#2.5.152). The Tribunal is willing to attend a site visit from 12.30pm for hearing week 3. However, the site visit will need to be shortened.

40. The Tribunal also has concerns about the feasibility of part two of the site visit plan. Staff familiar with the region advise that part two is likely to take longer than scheduled (3.15-5pm).

41. I note that the Tribunal has visited Kororipo on a stage 1 site visit. The Tribunal does not expect to revisit sites (#2.5.152).

42. Options for truncating the site visit through the use of video presentation, photographs, and kōrero, for example, are encouraged.

43. I direct counsel to re-file a site visit plan that takes into account concerns about the duration of part two and has a scheduled finish time of 4.00pm at the latest. The amended site visit plan is to be filed by **midday Monday 1 July 2013.**

Week 2 evidence: Te Kapotai filing

44. On 17 June 2013, claimant counsel Aidan Warren and Season-Mary Downs sought leave to file an amended version of Te Kapotai hapū korero (#F26) within three months (#3.2.90). I grant the leave sought. The amended version is to be filed by **12pm, Tuesday 17 September 2013**.

45. Mr Warren and Ms Downs also sought leave to file late the Te Kapotai site visit booklet and the Powerpoint presentation as at 17 June 2013. I grant the leave sought.

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 June 2013

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL