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

25 July 2013

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1. This memorandum-directions concerns hearing week 4 matters and other procedural matters regarding Waitangi Tribunal commissioned witnesses.

Week 4 technical witnesses

2. In my memorandum-directions dated 1 July 2013 (#2.6.10), I requested claimant counsel Moana Tuwhare respond to the following:

   a) file an updated week 4 timetable;

   b) confirm if Messrs Stirling and Towers can present '*Not with the Sword but with the Pen: The taking of the Northland Old Land Claims*' (#A9) in week 4; and

   c) confirm if claimants still require Dr Barry Rigby to present evidence.

3. In her memorandum dated 5 July 2013, Ms Tuwhare filed an updated week 4 timetable. Counsel confirmed that Messrs Stirling and Towers can present their report and that they will be led by claimant counsel Terena Waara. Ms Tuwhare confirmed that Te Waimate Taiamai and Kaikohe claimants do want Dr Rigby to present in hearing week 4. Counsel seeks confirmation from the Tribunal that Dr Rigby can present.

4. I confirm that Dr Rigby can present evidence concerning old land claims prepared for the Waitangi Tribunal Rangahaua Whanui publication series in 1996 and 1997.

5. I direct the Registrar to place the following evidence on the Wai 1040 record of inquiry:

   a) Rosemary Daamen, Paul Hamer and Barry Rigby, *Auckland*, Rangahaua Whanui Series, district report 1 (part 1), 1996; and

   b) Duncan Moore, Barry Rigby and Matthew Russell, *Old Land Claims*, Rangahaua Whanui National Theme A, 1997.

Hearing procedure

Briefing and leading of Waitangi Tribunal commissioned witnesses

6. In her memorandum dated 5 July 2013, Ms Tuwhare seeks a decision from the Tribunal as to how the leading of Tribunal witnesses is to proceed. She suggests an approach from other inquiries could be adopted, that where claimant lawyers have led Tribunal witnesses.

7. During stage 1 of the Te Paparahi o Te Raki inquiry, the Tribunal engaged independent counsel to brief and lead Tribunal witnesses. The procedure for stage 2 hearings will vary slightly and will largely follow that adopted for the Te Rohe Pōtae district inquiry.

8. For stage 2 hearings, Tribunal commissioned witnesses will be briefed in preparing statements and evidence for the hearing with independent counsel appointed by the Tribunal. This will mean that neither Crown nor claimant counsel will meet with Tribunal commissioned witnesses prior to their appearance. This is to ensure independence of those witnesses.

9. Although Tribunal commissioned witnesses are witnesses of the Tribunal and independent experts, I see no conflict in them being led by claimant counsel. Claimant counsel are to appoint from among themselves, counsel to lead Tribunal witnesses. I note counsel have adopted this approach concerning the Waitangi Tribunal commissioned evidence of Dr Bayley (#E41) when they filed the long term hearing plan (#3.1.797(a)).

10. The Tribunal request that claimant counsel to lead Dr Rigby, and indeed for any Tribunal witnesses in the future, notify the Tribunal of their name at least 4 weeks before

hearings. In this instance I direct that the Tribunal is advised of the name of claimant counsel to lead Dr Rigby by **12pm, Monday 5 August 2013**.

Cross-examination of Tribunal commissioned witnesses

11. As Tribunal is appointing independent counsel to brief Tribunal commissioned witnesses, it follows that neither Crown nor claimant counsel have access to Tribunal witnesses prior to hearing. At least 4 weeks before the relevant hearing week, claimant counsel will appoint from among themselves 'appointed counsel' for each such Tribunal witness, who may cross-examine on behalf of claimants.

12. Appointed lead counsel must indicate to the Tribunal how much time they will require for questioning of each Tribunal witness, and must also indicate the subject area of the questions. These indications are to be filed 2 weeks before the relevant hearing week.

13. In the event that counsel for any claimant group has a particular theme to pursue on behalf of their clients that is different (in ways material to the Tribunal's jurisdiction) from the perspective of the others, that lawyer may seek leave to cross-examine separately from the appointed counsel. Applications for such leave are to be filed no later than 2 weeks before the relevant hearing week, and must explain the circumstances of, and estimate the time required for, such cross-examination.

Week 4 amended filing dates for Stirling and Towers report (#A9)

14. In his memorandum of 5 July 2013, claimant counsel Jason Pou sought leave to file late the technical evidence summary for the Stirling and Towers report '*Not with the Sword but with the Pen: The taking of the Northland Old Land Claims*' (#A9) to 5 August 2013.

15. Mr Pou cites uncertainty around Crown Forestry Rental Trust funding as creating delays to the commencement of the work required to summarise the report and address the Tribunal Statement of Issues. I grant the leave sought. The Stirling and Towers report summary is now due by **12pm, Monday 5 August 2013.**

16. In a memorandum dated 19 July 2013, claimant counsel Linda Thornton and Bryce Lyall propose dates for an amended filing timetable based on the Stirling and Towers amended report summary due date as above. I have taken note of these suggested dates and direct the following dates be adhered to. Due to tight turnaround, filing dates must be strictly adhered to. The new deadlines are as follows:

Amended filing deadlines regarding Stirling and Towers (#A9) report for hearing week 4	
Technical evidence summary and answers to Tribunal Statement of issues by Stirling and Towers	**DUE:** 12pm, Monday 5 August 2013
Questions of clarification	**DUE:** 12pm, Monday 12 August 2013
Answers to questions of clarification	**DUE:** 12pm, Monday 19 August 2013
Lead and Crown counsel to provide time estimates for their questioning of Stirling and Towers	**DUE:** 12pm, Monday 26 August 2013
Non-lead counsel to advise which evidence they seek leave to cross-examine and why, providing time estimates.	**DUE:** 12pm, Monday 26 August 2013

Week 4 amended filing dates for Dr Manuka Henare's report summary (#E33)

17. In a memorandum dated 22 July 2013, Ms Tuwhare seeks an extension of one week to file Dr Manuka Henare's summary of the Te Waimate Taiamai oral and traditional history report. I grant the leave sought. Dr Henare's summary report is now due by **12pm, Monday 29 July 2013**.

18. This also means shifting the related filing deadlines for this evidence. Due to tight turnaround, filing dates must be strictly adhered to. The new deadlines are as follows:

Amended filing deadlines regarding Dr Manuka Henare's report (#E33) for hearing week 4	
Technical evidence summary and answers to Tribunal Statement of issues by Dr Manuka Henare	**DUE:** 12pm, Monday 29 July 2013
Questions of clarification	**DUE:** 12pm, Monday 5 August 2013
Answers to questions of clarification	**DUE:** 12pm, Monday 12 August 2013
Lead and Crown counsel to provide time estimates for their questioning of Stirling and Towers	**DUE:** 12pm, Monday 19 August 2013
Non-lead counsel to advise which evidence they seek leave to cross-examine and why, providing time estimates.	**DUE:** 12pm, Monday 19 August 2013

Week 4 site visit and detailed timetable

19. In the 22 July 2013 memorandum, Ms Tuwhare also files an updated week 4 hearing timetable and seeks leaves to hold the site visit on Friday 6 September. Ms Tuwhare also files a draft site visit proposal. She mentions that the list of sites will likely be added to over the coming weeks. Leave will be decided for the site visit when I see the final site visit plan.

Week 4 amended filing dates for Dr Barry Rigby's report summary

20. Tribunal witness Dr Barry Rigby has sought leave to file his report summary by 12pm Friday 26 July 2013. I grant the leave sought. This also means there will be a shift to the related filing deadlines for this evidence. Due to tight turnaround, filing dates must be strictly adhered to. The new deadlines are as follows:

Amended filing deadlines regarding Dr Barry Rigby's report for hearing week 4	
Technical evidence summary and answers to Tribunal Statement of issues by Dr Barry Rigby	**DUE:** 12pm, Friday 26 July 2013

Questions of clarification	**DUE:** 12pm, Friday 2 August 2013
Answers to questions of clarification	**DUE:** 12pm, Friday 9 August 2013
Lead and Crown counsel to provide time estimates for their questioning of Stirling and Towers	**DUE:** 12pm, Friday 16 August 2013
Non-lead counsel to advise which evidence they seek leave to cross-examine and why, providing time estimates.	**DUE:** 12pm, Friday 16 August 2013

Tangata whenua briefs of evidence

21. Tangata whenua briefs of evidence are still to be filed in accordance of our hearing planning deadlines, Tangata whenua briefs of a technical nature are due 3 weeks prior to the start of a hearing week For hearing week 4 they are due **12pm, Monday 12 August 2013**.Other tangata whenua briefs are due 2 weeks prior to the start of hearing week. For hearing week 4 they are due by **12pm, Monday 19 August 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 25th day of July 2013

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL