IN THE WAITANGI TRIBUNAL

WAI 1040
WAI 1518
WAI 1520
WAI 1533
WAI 2153
WAI 2182
WAI 2240

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Paparahi o Te Raki Inquiry

AND

IN THE MATTER OF Te Horo Land Development Scheme

MEMORANDUM OF COUNSEL REGARDING TARGETED RESEARCH

DATED 18 NOVEMBER 2013

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WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This memorandum is filed in response to the Memorandum Directions of Judge Coxhead dated 23 October 2013 (Wai 1040, #2.6.35).

2. This memorandum is filed on behalf of the following claimants:
   2.1. Nonnie Puru, Wai 1518;
   2.2. Pierre Lyndon, Wai 1520;
   2.3. Otaiuru Lawrence, Wai 1533;
   2.4. Kolaski Lawrence, Wai 2153;
   2.5. Ani Wyatt, Wai 2182; and
   2.6. Marino Murphy, Wai 2240 ("the claimants").

3. The claimant's claims concern the Te Horo Land Development Scheme ("the Scheme").

4. Counsel filed submissions concerning the Scheme at document Wai 1040 #3.1.905 ("counsel's submissions").

5. In response to all research requests Dr Moorsome undertook a review of the sufficiency of Northland research Wai 1040, #6.2.13 ("the Review").

Current Research

6. Research concerning the Scheme has been addressed in the following reports, namely:

   6.1. Bassett & Kay, *Tai Tokerau Maori Land Development Schemes 1930-1990, (Whangaroa, Hokianga, Bay of Islands, Whangarei and Mahurangi Inquiry Districts),* A10, 2006 ("Bassett & Kay);

   6.2. Miles, Anita, *Te Horo Development Scheme*, Waitangi Tribunal Research Series, 1993/13 ("Anita Miles"); and

6.3. Berghan, Paula, *Northland Block Research Narratives*, Native Land Court Blocks, 1865-2005, various volumes, Crown Forestry Rental Trust, 2006 ("Berghan") hereinafter referred to as "the Reports".

Counsel's Research Request

7. In counsel's submissions research was requested under the following headings:

7.1. One: Pre-establishment of the Scheme. Here counsel sought research outlining what the claimants (and their tupuna) must have been thinking (as evidenced by Pipiwai Tribal Committee hui minutes) when they were considering joining the Scheme or not, including their plans and ambitions and what they thought the Scheme meant for them and the promises that were made to them. Further counsel submitted that an analysis of the claimant's living conditions and the utilization of their lands (pre-scheme) was required.

7.2. Two: Post 1966 and sub-issues:

7.2.1. Management of the Scheme. Counsel sought research and analysis of the operation of the Scheme between 1966 to hand back in terms of financial and operational management of the Scheme.

7.2.2. Timber. Counsel sought research into what happened to the money derived from the timber sold on the lands comprising the Scheme.

7.2.3. Ombudsmen. Counsel sought research into why the Te Horo land owners tried to fix matters that they saw ere wrong with the Scheme and why complaints were made to the Ombudsman and its subsequent response.

7.2.4. Papakainga. Counsel sought research into the reasons behind the demolition of land owners houses and the consequences on papakainga as a result.

7.2.5. Waahi tapu. Counsel sought research into the protection of waahi tapu located within lands brought into the Scheme.

7.3. Three: Maori Land Court. Counsel sought research outlining the involvement of the Maori Land Court in the establishment of the Scheme and those other issues raised in counsel's submissions.

7.4. Four: Maori Trustee. Counsel sought research outlining the nature and extent of the role that the Maori Trustee played in the Scheme.

7.5. Five: Maori Affairs. Counsel sought research outlining the nature and extent of the role that the Maori Affairs played in the Scheme.

7.6. Six: Share Values. Counsel sought research into the claimants share holdings prior to and after commencement of the Scheme.

7.7. Seven: Te Orewai Te Horo Trust. Counsel sought research into an analysis of the time period leading up to the hand back of the land blocks to the Trust including consultation with shareholders, the election of trustees and the training of the trustees.

7.8. Eight: Mana Wahine. Counsel sought research into the impact of the Scheme on the landholdings of women.

One: Pre-establishment of the Scheme

8. Counsel repeats the research requests made in counsel's submissions.

9. Further, counsel notes that Basset & Kay at pages 507-512 provides a five page narrative of the amalgamation of the Scheme. Although providing a general overview of the historical context between 1960 and 1966, the narrative discusses only 500 acres of land that was to form the Base unit of the Scheme. A more comprehensive analysis of archival records addressing owners' objections, both within the Maori Land Court and to Maori Affairs officials with

specific reference to their relevant blocks is required to establish why the Maori Land Court ("MLC") and the Maori Trustee and Maori Affairs amalgamated 7,210 acres of 62 individual block titles to form the Te Horo title.

Two: Post 1966

10. Counsel repeats the research requests made in counsel's submissions.

11. Further counsel notes that Basset & Kay does not include an analysis of significant post-1966 Scheme management issues. Although Basset & Kay's sequential paragraph overview of the minutes of the meetings of owners provides an indication of some of the concerns of the owners, a comprehensive analysis has not been undertaken of the Crown's operation and financial management of the Scheme.

12. Specific issues raised by the claimants include housing, forestry, increased cost of settlement for Maori owners, the operation of owners committees, financial management, resource management and the use of land for private commercial enterprise without owner benefit. This research is required in order to determine the extent of economic loss during the 30 years that the Scheme was under the control of the Crown.

Three: Maori Land Court

13. Counsel repeats the research requests made in counsel's submissions.

Four: Maori Trustee

14. Counsel repeats the research requests made in counsel's submissions.

15. Further counsel submits there is the need for further analysis of the Maori Trustee acquisition of shareholdings through uneconomic share purchases, compulsory acquisition or the live buying criteria ('the criteria') prior to 1965.

16. From 1966 the Maori Trustee continued to purchase owner interests for both itself and the Crown in order to ensure its authority in the selection of settlers

and the management of the Scheme. By 1972 the 572 owners listed on the original 1965 Te Horo title had been reduced to approximately 93.

17. Further research is required into the acquisition of interests under the criteria by the Maori Trustee, which drastically reduced the ability of owners to retain sufficient lands for their individual whanau.

18. Further research is also required to determine how title adjustments continued to occur, resulting in and increased to 168 owners being listed on the title by the late 1980s when the title was transferred to the Te Orewai Te Horo Trust ("the Trust"). This research is crucial as it is a central grievance of the claimants that owners lost their shareholdings during the operation of the scheme, and then were required to buy back into the Trust to regain interests in their ancestral lands. When the owners attempted to buy back shares however conflict arose as their tupuna had been removed from the title.

19. Counsel invites research to address the following questions:

    19.1. Did the Maori Trustee focus specifically on the blocks involved in the original proposals or did it begin acquiring shares in blocks outside this area prior to amalgamation? If so, why?

    19.2. Did the Maori Trustees actions in acquiring shares under the criteria prior to 1965 enable the MLC to amalgamate more than 5,000 additional acres, into the single title when initial proposals for the development scheme included only 500-600 acres and 14 individual block titles? What affect did this have on owner's retention of sufficient lands?

    19.3. To what extent did the Maori Trustee act in the best interests of the owners during the consent process?

    19.4. To what extent did the Maori Trustee assist in owner understanding of what an amalgamated title meant?

19.5. To what extent did the Maori Land Court take into consideration the objections of all whanau involved, in particularly those who owned land outside the original proposals?

19.6. To what extent did the Maori Land Court examine the purchase of interests by the Maori Trustee under the criteria, in terms of the retention of sufficient lands for the individual whanau's that make up the Te Orewai Hapu?

19.7. To what extent were owners consulted by the Maori Trustee about title adjustments during the operation of the Scheme

19.8. Why did the Maori Trustee retain the interests it purchased under the criteria on behalf of the Crown? To what extent did the retention of these interests, in terms of administration costs associated with this ownership increase the charges and the debt on the title?

19.9. To what extent did the Maori Trustee attempt to sell back these interests to other owners during the operation of the scheme?

19.10. To what extent if any did the Maori Land Court take into consideration the tikanga/whakapapa associated with the land when making title adjustments?

19.11. What was the nature and extent of consultation with the owners when additional land was purchased (which altered the title)?

19.12. To what extent did the Maori Land Court ensure succession rights derived from the original blocks amalgamated into the Te Horo Title were maintained during the operation of the scheme?

19.13. To what extent did the Maori Land Court prevent owners from partitioning out their interests to provide house and garden sites?

19.14. To what extent did the Maori Land Court examine the purchase of interests by the Maori Trustee under the criteria, in terms of the

retention of sufficient lands for the individual whanau's that make up the Te Orewai Hapu?

19.15. To what extent did the Maori Land Court examine the impact of boundary changes (straightening of boundary lines), alterations or moving of boundaries as part of land swaps with private purchasers during title adjustments?

19.16. To what extent did the Maori Land Court examine boundary changes in terms of the retention of sufficient land and the impact of boundary changes on the acreage and value of the interests?

19.17. To what extent did the Maori Land Court take into account owners objections to the partitioning of the title from the 1970s, into 2B, 2B2B, 2B2B2B? What affect did this partitioning have on the interests of the owners?

19.18. To what extent did the Maori Court examine the impact of land amalgamated into the Scheme but not developed during the operation of the Scheme, as title adjustments were being undertaken? Has this land ever been offered back to the original land owners?

Five: Maori Affairs

20. Counsel repeats the research requests made in counsel's submissions.

Six: Share Values

21. Counsel repeats the research requests made in counsel's submissions.

Maori Land Court, the Maori Trustee and Maori Affairs Department

22. In support of the Review regarding land alienation of the 20th century, further research into the processes used *between* and the interconnectedness *between* the MLC, the Maori Trustee and the Department of Maori Affairs in undertaking title adjustments is required. This interconnection between these three Crown derived and empowered entities has a direct correlation to the distribution of

shares including the removal of owners from shareholdings and title. Relevant questions include:

22.1. What was the extent of consultation with the owners when title adjustments were undertaken?

22.2. How did these agencies reassign shares that were purchased under the criteria?

22.3. What effect did this have on individual owner participation in the management and control of their ancestral blocks?

Seven: Te Orewai Te Horo Trust

23. Counsel repeats the research requests made in counsel's submissions.

24. Counsel is aware and fully acknowledges that the Trust is not the Crown and that the Trust itself cannot be the subject matter of any inquiry before the Tribunal. In counsel submission however what can rightly be the subject of investigation before the Tribunal includes those research issues requested in counsel's submissions.

Eight: Mana Wahine

25. Counsel repeats the research requests made in counsel's submissions.

5 Case Studies

26. The Review recommends that up to 5 case studies be undertaken. Counsel invites the Tribunal to include Te Horo as one of those case studies.

27. The Te Horo Development Scheme should form one of the five case studies focusing on the role of the Maori Land Board, the Maori Land Court and the Maori Trustee in the consolidation, vesting and amalgamation of Northland land under titling, alienation, retention and administration.

28. Of the 26 land development schemes in Te Paparahi o Te Raki, at 7210 acres, Te Horo was the largest scheme, with the next largest being only some 3,000 acres.

Bassett & Kay also state that the Te Horo development scheme was the most difficult, thus the importance of this amalgamation as a case study becomes apparent.

DATED at Auckland this 18 November 2013

David Stone/Chelsea Terei
Counsel for the Claimants

TO: The Registrar, Waitangi Tribunal; Crown Law Office; and those on the notification list for Wai 1040 Inquiry.