OFFICIAL

WAITANGI TRIBUNAL

CONCERNING: the Treaty of Waitangi Act 1975

AND: the Te Rohe Pōtae Inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule of the Treaty of Waitangi Act 1975, the Tribunal commissions Jonathan Sarich, a member of the Tribunal's staff, and Philip Cleaver, contract researcher, to prepare a report on railways and hapū and iwi of the Te Rohe Pōtae inquiry district for the Te Rohe Pōtae district inquiry. This project is project 16 in the agreed casebook programme for the inquiry (Wai 898 #6.2.7).

2. The report will focus on the North Island Main Trunk Line and any branch lines and will address the following topics:

   a) Government and hapū and iwi motivations and understandings of agreements made to build the main trunk railway through the district, with particular regard to questions around economic development, settlement, political authority and security;

   b) The extent to which the construction and operation of the railways in this district reflected any understandings and assurances made in the negotiations between the Crown and hapū and iwi in the 1880s, including, for example:
      - Agreed conditions over the construction of the railway and any agreed alterations to these,
      - Compensation payments for lands required for the railway route,
      - Protection of urupā, kāinga, wāhi tapu and other sites of importance during railway construction,
      - Promises of economic benefits from the railway, including specific promises to Māori communities of work undertaking railway contracts,
      - Assurances to Māori committees, such as the Kawhia committee, that they would be able to manage economic opportunities offered by the railway, including setting rates to be paid for timber and gravel required, and
      - The extent to which standard public works provisions were applied rather than agreements reached through negotiations.

      This section should include consideration of any protest by Te Rohe Pōtae Māori in relation to these issues and Crown responses to such protest;

   c) Whether land and resources acquired for railway purposes in this district were significantly in excess of agreements in the negotiations, or of what was required for the actual railway route, and whether alternatives to taking such as leases for some railway purposes were seriously considered;

   d) Whether adequate compensation for land and resources taken for the railway was provided and whether the compensation that was awarded was properly

paid;

e) The impact on remaining lands of railway takings, such as landlocked land, loss of access to urupā and commercially unusable land between the railway line and roads;

f) Any issues raised by Māori at the time of construction about the environmental effects of railway construction, for example destruction of mahinga kai, and Crown responses to these;

g) The relationship between railway development, tourism and the creation and management of native townships in the district;

h) The impact of the development and operation of the railways on hapū and iwi communities of the district and on their exercise of authority, including the social and economic impact of construction camps on local communities, the role of the railways in enabling liquor to be introduced outside of community control and any changes in settlement patterns, including the relocation of marae and communities;

i) Benefits Māori communities derived in the Te Rohe Pōtae district from the arrival and operation of the railway, including economic opportunities, and the extent of any restrictions on opportunities to gain economic benefit from the railway, such as the use of legal monopolies to prevent Māori selling resources such as timber and stone;

j) The extent and nature of ongoing employment of members of the hapū and iwi of the district on the railway;

k) Any later developments or agreed changes in understandings over the railway subsequent to the original negotiations, including over whether some land might be given free of charge, later Government and Native/Māori Land Court understandings and determinations about compensation payments for lands, and later inquiries into railways issues and agreements in the district, including the inquiry conducted by Justice Smith in 1946;

l) Negotiations and agreements over the restructuring of the railways in the 1980s, ownership of the railways corridor and changes in ownership of the railway system, which was privatised in 1993 and returned to state ownership in 2008;

m) Issues relating to lands taken but never used for railway purposes, leasing by the railways of lands taken but not used for railway purposes, lands taken to fund railways and the return of lands (and railway housing) no longer required for railway purposes; and,

n) The relationship between the development and operation of the railway and the Crown's land purchasing and land settlement policies.

3. The commission commenced on 17 November 2008. A complete draft of the report is to be submitted by 2 October 2009 and will be circulated to claimants and the Crown for comment.

4. The commission ends on 30 October 2009, at which time one copy of the final report must be submitted for filing in unbound form, together with indexed copies of any supporting documents. An electronic copy of the report should also be provided in Word or Adobe Acrobat format. The report and any subsequent evidential material based on it must be filed through the Registrar.

5. At the discretion of the Presiding Officer the commission may be extended if one or more of the following conditions apply:

   a) The terms of the commission are changed so as to increase the scope of work;

   b) More time is required for completing one or more project components owing to unforeseeable circumstances, such as illness or denial of access to primary sources;

   c) The Presiding Officer directs that the services of the commissionees be temporarily reassigned to a higher priority task for the inquiry;

   d) The commissionees are required to prepare for and/or give evidence in another inquiry during the commission period.

6. The report may be received as evidence and the author may be cross-examined on it.

7. The Registrar is to send copies of this direction to:
   Jonathan Sarich
   Philip Cleaver
   Claimant counsel and unrepresented claimants in the Te Rohe Pōtae Inquiry
   Chief Historian, Waitangi Tribunal Unit
   Manager - Research/ Report Writing Services, Waitangi Tribunal Unit
   Inquiry Supervisor, Waitangi Tribunal Unit
   Inquiry Facilitator, Waitangi Tribunal Unit
   Solicitor General, Crown Law Office
   Director, Office of Treaty Settlements
   Chief Executive, Crown Forestry Rental Trust
   Chief Executive, Te Puni Kōkiri

Dated at Whangarei this 24th day of September 2009

Judge D J Ambler
Presiding Officer
WAITANGI TRIBUNAL