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In the Waitangi Tribunal

Wai 898
Wai 443

Under	The Treaty of Waitangi Act 1975
in the matter of	the Te Rohe Pōtae Inquiry
and in the matter of	the claims on behalf of Raukawa

Memorandum of counsel regarding availability of expert witnesses and other matters

Dated 22 November 2013

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May it please the Tribunal

1 Introduction

1.1 This memorandum of counsel is filed on behalf of the consolidated claims of Raukawa (Wai 443) and the Raukawa Settlement Trust.

1.2 We refer to the memorandum-directions of the Tribunal dated 25 October 2013 (Wai 898, 2.6.45, paragraphs 3.2-3.5) directing Counsel to provide an update on Dr Young and Professor Belgrave's availability to answer questions of clarification on their report *#A85 Raukawa and the Native Land Court 1865-1910* (the **Report**).

1.3 We also refer to Judge Ambler's questioning at hearing week six regarding Raukawa's participation in this inquiry.

2 Dr Young and Professor Belgrave's Report

2.1 Dr Grant Young and Professor Michael Belgrave were commissioned by the Crown Forestry Rental Trust (**CFRT**) to prepare a report to assess the impact of the Native Land Court on Raukawa during the nineteenth century. The Report was released in March 2010 and filed on the Te Rohe Pōtae record of inquiry in March 2012.

2.2 In September 2013, the Tribunal heard from expert witnesses regarding the effects of the Native Land Court on Te Rohe Pōtae Māori. Raukawa did not call Dr Young and Professor Belgrave to present the Report as CFRT funding was not available. This was due to Raukawa no longer being an 'Approved Client' of CFRT as it had signed a deed of settlement with the Crown in 2012. The Tribunal however, directed that questions of clarification regarding the Report could be filed by the parties following the hearing (Wai 898 #2.6.36 at paragraphs 2.11-2.13).

2.3 As noted by the Tribunal, counsel for Tuwharetoa and Ngāti Kauwhata have filed questions of clarification regarding the Report (Wai 898 #3.3.403(a), Wai 898 #3.3.412(a)).

2.4 Since CFRT can no longer fund this work, Counsel sought funding from Legal Aid to cover the cost of answering the questions put forward by

counsel for Tūwharetoa and Ngāti Kauwhata. This was approved by Legal Aid on 12 November 2013.

2.5 Counsel is working with Dr Young and Professor Belgrave to advance this stream of work and ensure the questions of clarification are answered. A timeframe for completion is yet to be agreed, however, we can confirm that funding has been granted for this work and Dr Young and Professor Belgrave are available to do so. Any timeframes put in place will consider any directions issued by the Tribunal regarding this matter.

3 Raukawa's participation in this inquiry

3.1 At the Raglan hearing Counsel was invited to file a memorandum relating to Raukawa participation in this inquiry district.

3.2 There is no need to belabour this at length but the following points are important:

a Strictly speaking it is not correct to speak of Raukawa claims as settled. The claims are not settled until settlement date (20 business days after the date on which the Raukawa settlement legislation comes into force), and it is at that time that the jurisdiction of the Waitangi Tribunal in respect of Raukawa historical claims is excluded. Until such time, the Raukawa claims are still operative. While the Raukawa settlement legislation has been introduced into the House and had its first reading, settlement date is not expected until approximately mid-2014.

b Secondly, even if the Raukawa claims can be characterised as "settled" in a broader sense, Raukawa remain an interested party in this inquiry and are fully entitled to participate in it, call evidence, cross-examine witnesses and make submissions on that basis. Their situation is perhaps somewhat analogous to that of Ngai Tahu in the Waitangi Tribunal's Te Tau Ihu (Northern South Island) Inquiry.

c Part of the reason why Raukawa is an interested party is because the Rohe Pōtae inquiry district includes a large part of the Raukawa rohe (all of the Wharepuhunga block and at least some sections of Rangitoto-Tuhua and other areas). Raukawa lands do

not “border” or “adjoin” this inquiry district but extend into it to a significant extent.

d Furthermore, Raukawa leaders such as Hitiri Te Paerata played an important role in the negotiations that took place in the 1880s relating to the Rohe Pōtae compact. Raukawa was one of the claimant groups to the Rohe Pōtae block in 1886, not as counterclaimants to Maniapoto but rather in association with Maniapoto, Whanganui and other groups. The lists of names for the Rohe Pōtae block as fixed by the Native Land Court in 1886-1887 include many Raukawa names.

e These factors mean, as Counsel explained at the Raglan hearing, that Raukawa have an interest in how the Tribunal finally reports on this inquiry. The Tribunal inquiry process and the negotiation and settlement processes should, it is submitted, be seen as distinct processes rather than sequential (it has long since ceased to be the reality that the Crown settles with groups only when their claims have been inquired into and reported on by the Waitangi Tribunal: sometimes claims have been settled with no such inquiry having taken place, and in other instances negotiations have been commenced before the Tribunal has reported.) Just because a group is settling its claims with the Crown does not mean that a Waitangi Tribunal inquiry over lands that include a significant part of its traditional territory ceases to become important to that group. The Tribunal’s report is very important to Raukawa. It will be seen and read by many people, within Raukawa and otherwise. Tribunal reports also play an important role in regional and district planning under Resource Management Act 1991 and related processes and often inform regional and district plans and the consultation practices of local government. For these and other reasons Raukawa have judged it important to maintain a presence in this inquiry.

f It is not unlikely that other groups who are participating in this inquiry will commence negotiations with the Crown – or may indeed have commenced them already – before these hearings are concluded, and certainly before this Tribunal has reported on them.

g The “Raukawa” claim is not a single claim, but rather a coalition of Wai Nos, which includes a substantial number of hapū claims with specific and localised interests in the Rohe Pōtae. These claimants

are depending on Raukawa as an entity to support their claims, and Raukawa feel that they have a responsibility to do that.

h As has also been indicated before, Raukawa have been careful not to obtrude on the time needed to hear the claims of other groups, and have taken a conservative position – in terms of timing - with respect to the amount of testimony that has been led and the amount of submissions and cross-examination carried out by Counsel. Nevertheless Raukawa do wish to maintain a presence.

i Finally, participation in this inquiry allows Raukawa to have a voice in aspects of Tribunal procedure in this inquiry that are important to them, including the location of venues and participation in whaikōrero and other tikanga and kawa of marae when appropriate.

4 Request for extension to file evidence

4.1 Counsel seeks leave to file Raukawa evidence for hearing week nine by midday, Thursday 28 November 2013.

4.2 We have been unable to liaise with appropriate witnesses for the next hearing due to the various commitments of the Raukawa claimants in preparing for the hearing, such as the venue and catering arrangements. Raukawa have also had to meet with the Maniapoto ki te Raki claimants in co-ordinating the next hearing which has meant that it is highly unlikely that evidence will be finalised by Monday, 25 November 2013.

4.3 We can confirm that the evidence will focus on Raukawa hapū claims, and submit that given the location of the hearing it is important that Raukawa have a presence, and are heard at this hearing. It is submitted that no prejudice shall arise from the late filing of this evidence.

Dated at Wellington this 22nd day of November 2013

Richard Boast / Keitaria Haira
Counsel for the claimants