

IN THE WAITANGI TRIBUNAL

Wai 2200

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Porirua ki Manawatū District
Inquiry

MEMORANDUM-DIRECTIONS (NO. 150) OF DEPUTY CHIEF JUDGE C L FOX

31 August 2017

Tēnā koutou katoa

Introduction

1. This memorandum-directions proposes an update to the forward inquiry programme. The programme is set with the aim of beginning the hearing of Te Āti Awa/Ngāti Awa ki Kapiti claims in May 2018 and of Ngāti Raukawa and affiliated groups in September or October 2018. Below, I set out the rationale underpinning the proposal and provide an updated timetable for the interlocutory steps required to achieve the milestones suggested therein.

Background

2. In December 2016 I proposed an updated inquiry timetable and invited submissions from parties (Wai 2200, #2.5.137). Following receipt of those submissions, a revised timetable was confirmed in my memorandum-directions dated 2 February 2017 (Wai 2200, #2.5.139). That timetable envisioned that the remainder of the inquiry would broadly proceed under the standard new approach for all remaining claim issues, with hearings commencing in the second half of 2018.
3. Since that proposal we have held a joint hearing with the Taihape Tribunal, and the research programme for the inquiry has progressed significantly. The Tribunal also completed the priority report, *Horowhenua*, which dealt with the bulk of Muaūpoko claims.
4. In my memorandum-directions following the joint hearing in May 2017, I indicated that a further revised forward programme for this inquiry would be forthcoming (Wai 2200, #2.7.11). With consideration of the important milestones achieved above, I now focus on the next steps required to progress the inquiry overall.

Proposed forward programme

5. From the early stages of this inquiry, the Tribunal's decisions have been shaped by the understanding that there are distinct tribal groups within the claimant community that are participating in this inquiry. This was reflected in the agreed casebook research programme that was issued in December 2012, which envisaged the production of separate historical, local, and oral and traditional reports for Muaūpoko, Te Āti Awa/Ngāti Awa ki Kapiti, and Ngāti Raukawa and affiliated groups (Wai 2200, #2.5.58). The purpose of this design was to recognise claimants' desire that the process:

is inclusive and equitable to all claimant groups, hapū and iwi entities; that respects the mana of established tribal authorities and organizations; and ensures that each group is allowed to maintain and enhance its rangatiratanga and identity while telling its own story from its own distinct perspective (Wai 2200, #2.5.58, para 4).

6. As outlined above, the bulk of the Muaūpoko claims have now been reported on. Our attention now shifts to the progression of the claims yet to be heard in this inquiry. In line with the tribal approach outlined above, I propose that the Tribunal proceed next with hearing and reporting on those Te Āti Awa/Ngāti Awa ki Kapiti claims that can be covered without prejudicing other claimants who have overlapping claims or interests, while at the same time progressing Ngāti Raukawa and affiliated groups towards hearings later in 2018.

Proposed scope of a Te Āti Awa/Ngāti Awa ki Kapiti phase of our inquiry

7. I propose that the Tribunal hear and report on the bulk of Te Āti Awa/Ngāti Awa ki Kapiti nineteenth-century claim issues, as well as select twentieth-century local studies. It is my understanding that the main twentieth-century issues raised by Te Āti Awa/Ngāti Awa ki Kapiti are as follows:

- (a) Public works issues (Paraparaumu Airport, Paraparaumu Scenic Reserve, Whareroa Māori Reserve, Whitireia Block, Kapiti Expressway);
 - (b) Land administration issues (Kārewarewa Urupā, Kapiti Island, the acquisition and sale of Wi Parata's land at Waikanae for Parata Native Township, the taking of Baker whānau land for rates arrears, 1000-year leases); and
 - (c) Environmental issues (Kapiti Island).
8. As part of this inquiry process, the Tribunal would not make findings and recommendations on the following:
- (a) Any historical acts or omissions of the Crown in respect of the relationships between Te Āti Awa/Ngāti Awa ki Kapiti and Ngāti Raukawa, and between Te Āti Awa/Ngāti Awa ki Kapiti and Muaūpoko;
 - (b) Any historical acts or omissions of the Crown relating to the respective rights and interests of Te Āti Awa/Ngāti Awa ki Kapiti, Ngāti Raukawa, and Muaūpoko; and
 - (c) Any district-wide issues that are not specific to Te Ātiawa/Ngāti Awa ki Kapiti.
9. A potential list of claims for inclusion in a Te Āti Awa/Ngāti Awa ki Kapiti phase of this inquiry are included as **Appendix A**.

Proposed technical evidence for a Te Āti Awa/Ngāti Awa ki Kapiti phase of this inquiry

10. The three Te Ātiawa/Ngāti Awa ki Kapiti reports commissioned by the Tribunal will comprise the primary technical evidential base for this phase of the inquiry:
- (a) Te Ātiawa/Ngāti Awa ki Kapiti oral evidence and traditional history;
 - (b) Te Ātiawa/Ngāti Awa ki Kapiti land and political engagement issues, c.1819-1900; and
 - (c) Te Ātiawa/Ngāti Awa ki Kapiti twentieth century overview and gap-filling (local issues) report.
11. I also propose to include several of the CFRT district overview reports within the scope of this phase, to the extent that they are relevant to discrete Te Ātiawa/Ngāti Awa ki Kapiti claim issues. This could include the following:
- (a) Public works issues;
 - (b) Local government issues; and
 - (c) Environment and natural resource issues.
12. The Tribunal would only hear the aspects of the public works, local government and, environment and natural resource reports that relate to Te Āti Awa/Ngāti Awa ki Kapiti, with the understanding that those technical witnesses will be recalled to present the bulk of their evidence later in the inquiry.
13. Nearly all of the casebook research projects listed above are scheduled to be completed by the end of November 2017. The exception is the Te Ātiawa/Ngāti Awa ki Kapiti twentieth-century overview and gap-filling (local issues) report, which is not scheduled to commence until after the all of the CFRT district overview reports are available in draft form so as to avoid duplicating any research contained therein (Wai 2200, #6.2.62).
14. The CFRT district overview reports will likely cover some Te Ātiawa/Ngāti Awa ki Kapiti twentieth-century claim issues, but not all of them. Nevertheless, I believe that a Te Ātiawa/Ngāti Awa ki Kapiti inquiry process phase can commence before the completion of the twentieth-century overview and gap-filling (local issues) report.

15. In addition, Dr Hearn would need to appear and be cross-examined on his report “One Past, Many Histories” (Wai 2200, #A152), and would produce a summary focused on Te Āti Awa/Ngāti Awa ki Kapiti, as he did for Muaūpoko in the Muaūpoko priority hearings.

Proposed process for a Te Āti Awa/Ngāti Awa ki Kapiti phase of the inquiry

16. Given the discrete nature of the claim issues that would be involved, I propose that a truncated interlocutory process similar to that implemented for the Muaūpoko priority inquiry should be sufficient for Te Āti Awa/Ngāti Awa ki Kapiti claims. In sum, this would include the aggregation and consolidation of relevant claims, filing particularised statements of claim, and a Crown statement of position and concessions.
17. Given that the majority of the relevant research is scheduled for completion by the end of November 2017, I believe it is possible to commence hearings in May 2018. I propose that three hearing weeks should be sufficient to hear opening submissions, claimant and technical evidence, cross-examination and Tribunal questioning of evidence, and closing submissions. Crown counsel should advise whether any Crown research will be submitted for a Te Āti Awa/Ngāti Awa ki Kapiti phase of this inquiry, and, if so, how much hearing time might be required for it.
18. Following the hearings, the Tribunal would then release its findings and recommendations in a Te Āti Awa/Ngāti Awa ki Kapiti specific report which, as with *Horowhenua*, would eventually become a volume or volumes of our final report on the Porirua ki Manawatū district.

Proposed process for all remaining claim issues

19. We believe that a separate inquiry phase for Te Āti Awa/Ngāti Awa ki Kapiti can commence before the completion of the oral and traditional reports for Te Hono ki Raukawa and Tū Te Manawaroa. Once this research is complete, I propose to commence an inquiry process for all remaining claim issues; namely, those of Ngāti Raukawa and affiliated iwi/hapū, and any residual or overlapping claim issues involving Muaūpoko and Te Ātiawa/Ngāti Awa ki Kapiti. I envisage that this process would follow the Tribunal’s standard new approach to district inquiries. An interlocutory process may proceed partially in tandem with the hearing process for Te Ātiawa/Ngāti Awa ki Kapiti, and I envisage that hearings for Ngāti Raukawa and affiliated groups would begin in September or October 2018, immediately after the hearings for Te Āti Awa/Ngāti Awa ki Kapiti. This parallel process may involve starting the claims aggregation and consolidation process in the first half of the 2018 calendar year.

Proposed timetable

20. The following timetable includes the major milestones necessary to achieve what I have proposed above:

Process	Due
Submissions from parties on the Tribunal’s proposed separate inquiry programme for Te Ātiawa/Ngāti Awa ki Kapiti claim issues	Oct 2017
Judicial conference to discuss and confirm a forward inquiry programme	Nov 2017
Completion of CFRT district overview reports and two of the three Te Ātiawa/Ngāti Awa ki Kapiti Tribunal-commissioned reports	
Direction confirming an inquiry programme for Te Ātiawa/Ngāti Awa ki Kapiti claim issues	Dec 2017
Preliminary aggregation/consolidation list for Te Ātiawa/Ngāti Awa ki Kapiti claims	

Process	Due
Response from parties to the preliminary list of aggregated/consolidated claims for Te Ātiawa/Ngāti Awa ki Kapiti	Jan 2018
Particularised statements of claim for Te Ātiawa/Ngāti Awa ki Kapiti	
Final aggregation/consolidation list for Te Ātiawa/Ngāti Awa ki Kapiti claims	Feb 2018
Crown statement of position and concessions	Mar 2018
Commence hearings for Te Ātiawa/Ngāti Awa ki Kapiti claims	May 2018

Submissions

21. Parties are invited to respond to this proposal in writing **by no later than midday, Friday 6 October 2017.**
22. Any submissions from Te Āti Awa/Ngāti Awa ki Kapiti claimants on this proposal should also address:
 - (a) Any support sought and/or secured by the claimants from CFRT, Legal Aid, the Crown and/or any other organisations of note; and
 - (b) Additions and/or amendments to the preliminary list of claims in **Appendix A.**
23. To discuss this proposal and any issues raised in written submissions, I will convene a judicial conference in November 2017. An agenda, date and venue will be advised once written submissions have been received.

The Registrar is to distribute this direction to all parties on the notification list for Wai 2200, the record of inquiry for claims in the Porirua ki Manawatū District Inquiry.

DATED at Gisborne on this 31st day of August 2017



Deputy Chief Judge C L Fox
Presiding Officer

WAITANGI TRIBUNAL