

IN THE WAITANGI TRIBUNAL

Wai 2561

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Ngātiwai Mandate Inquiry

**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER
ADDRESSING HEARING VENUE AND FURTHER EVIDENCE**

17 November 2016

Introduction

1. On 20 October 2016 (Wai 2561, #2.6.3), I issued memorandum-directions advising that a further two days of hearing time would be convened on Thursday 1 and Friday 2 December 2016, at the Waitangi Tribunal Offices, Wellington.

Counsel for the Ngātiwai Trust Board request for venue change

2. On 3 November 2016, counsel for the Ngātiwai Trust Board (NTB) filed a memorandum seeking a venue change for the further hearing days from Wellington to Whangārei for the following reasons:
 - a. It is contrary to Ngātiwai tikanga to have the hearing concluded so far from the Ngātiwai rohe;
 - b. It would be more cost-effective for the parties involved in this inquiry;
 - c. It is difficult, expensive and time consuming for kaumātua to travel to Wellington.
3. Counsel advise that the NTB are keen to assist the Tribunal to locate a suitable venue.
4. Counsel have consulted with other parties to the inquiry and advise that the claimants support the venue change to Whangārei, and Crown counsel are not opposed to the venue change and will abide by the decision of the Tribunal.

Decision

5. The situation that has arisen through the NTB cross examination not being completed at the Whangārei hearing is unfortunate. However as this is an urgent inquiry our priority is to complete the evidential part of the inquiry as expeditiously as possible, this year. The best way to achieve this is by holding the hearing in Wellington.
6. I therefore decline the request to transfer the hearing venue to Whangārei.
7. The Tribunal will arrange to have a live stream of the public portion of the proceedings made available online and will investigate and consider other ways to make the hearing accessible to those not in Wellington. Further information will be provided in due course.

Renewed request for the production of various written communications with Mr Graeme Murdoch

8. In memorandum-directions #2.6.3 I also granted leave for counsel for Wai 2181, Linda Thornton, to file a brief of evidence on behalf of Graeme Murdoch responding to the documents contained in sections of the confidential claimant definition research documents (Wai 2561, #A90).
9. I declined to direct the NTB to release the written communications between Kristan John MacDonald and Tania McPherson and historian Mr Murdoch between 25 August 2009

and the present. I disagreed with counsel on the potential relevance of this material to the key issues in this inquiry.

10. On 3 November 2016, Ms Thornton filed a memorandum stating that, following communication from their client Michael Beazley, Mr Murdoch has indicated that he will not voluntarily provide a brief of evidence (Wai 2561, #3.2.27). Counsel therefore renews her request for the production of written communications, but narrows it to only cover email correspondence between Ms McPherson and Mr Murdoch between the dates of 1 June 2013 and the present.

Counsel for NTB response

11. On 4 November 2016, counsel for the NTB filed a memorandum opposing the renewed request made by Wai 2181 counsel for the following reasons:
 - a. It has already been directed that the email correspondence is irrelevant to the key issues in this inquiry;
 - b. Counsel has not provided a rationale as to the relevancy of this large amount of material;
 - c. Counsel still has the opportunity to cross-examine Mr MacDonald and Ms McPherson *viva voce*. A request for additional evidence could be made, if necessary and justified, following the completion of the cross-examination of the NTB witnesses.
12. Counsel for the NTB also submits that it is unfounded and inappropriate to imply that Mr Murdoch has been uncooperative by not filing evidence.

Decision

13. Ms Thornton should note that I declined the original request regarding the production of written communications and granted leave for Mr Murdoch to file rebuttal evidence. If Mr Murdoch does not wish to take the opportunity to file such evidence that is his choice, but the original decision will not be revisited.

Native Land Court Minutes filed

14. On 4 November 2016, counsel for the NTB filed an extract from Judge Johnson's Minute Book 11, 1901, regarding the Ngaiotonga 1 and 2 Blocks, referred to in confidential document #A90 at page 32.
15. Counsel submit that during the hearing they had sought leave to file this extract, in order to avoid the need to discuss the contents of the confidential documents while cross-examining Pereri Mahanga, claimant witness for Te Waiariki, Ngāti Kororā and Ngāti Taka Pari (Wai 2549).
16. I grant leave for these documents to be filed on the Wai 2561 Record of Inquiry.

Tribunal request for records from Te Puni Kōkiri

17. In memorandum-directions #2.6.3 I directed the Crown to file with the Tribunal all records that relate to advice and analysis provided by Te Puni Kōkiri (TPK) to the Minister for Māori Development in relation to the NTB's mandate. I said that, in order to test these records, the attendance of an appropriate representative from TPK at the hearing may be necessary.
18. I directed Crown counsel to file a submission identifying who they consider an appropriate representative may be and whether they will be seeking to file a brief of evidence.
19. On 4 November 2016, Crown counsel filed a memorandum attaching the following records and sought leave for late filing:
 - a. Advice from TPK to the Minister for Māori Development; and
 - b. Additional advice provided by the Office of Treaty Settlements (OTS) to the Minister for Māori Development.
20. Crown counsel advised that they had confirmed with both TPK and OTS that neither agency held any other relevant records within the scope of the Tribunal's request.
21. Crown counsel provided an overview of the documents and submitted that they did not consider it necessary for a separate brief of evidence to be filed as the documents speak for themselves. However, if directed the Crown will arrange for a joint brief to be prepared.
22. They advised the most appropriate representatives to speak to the documents would be:
 - a. Emily Owen, from OTS; and
 - b. Tia Warbrick, who was (at the relevant times) Acting Manager, Crown-Iwi, Hapū, Whānau Māori Relations, Te Puni Kōkiri.

Decision

23. I grant the leave sought for late filing.
24. The Crown is to provide a joint brief of evidence by Emily Owen and Tia Warbrick to address the documents that have been filed relating to advice and analysis provided by Te Puni Kōkiri (TPK) to the Minister for Māori Development in relation to the NTB's mandate. This brief is to be filed by **4pm, Wednesday 23 November 2016**. Emily Owen and Tia Warbrick are also directed to appear for cross-examination during the hearing.

Evidence in reply

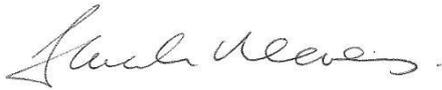
25. Claimants and interested parties are to file evidence in reply to any new evidence filed by **midday, Monday 28 November 2016**.

Hearing timetable

26. In memorandum-directions #2.6.3 I noted that I would again ask counsel to work together to prepare a draft timetable for the upcoming hearing. I also indicated some timing allocations that would be required in the draft timetable. Now that the additional witnesses (Nicci Gibbs, Emily Owen and Tia Warbrick) have been confirmed, I direct counsel to jointly file a draft hearing timetable by **4pm, Monday 28 November 2016**.
27. Cross-examination requests for Nicci Gibbs, Emily Owen and Tia Warbrick must be filed by **midday, Friday 25 November 2016**.
28. Bundles of documents for cross-examination are to be filed in advance of the hearing to ensure efficiency during the hearing. Any bundles are to be filed by **midday, Tuesday 29 November 2016**.

The Registrar is to send this direction to all those on the notification list for Wai 2561, the Ngātiwai Mandate Inquiry.

DATED at Christchurch this 17th day of November 2016



Judge S F Reeves
Presiding Officer

WAITANGI TRIBUNAL