

IN THE WAITANGI TRIBUNAL

Wai 2544, Wai 156, Wai 745,
Wai 2181, Wai 2337, Wai 2545,
Wai 2546, Wai 2548, Wai 2549,
Wai 2550, Wai 2557 and Wai
2561

CONCERNING

the Treaty of Waitangi Act 1975

AND

applications for urgent hearings
from the claimants for Wai 2544,
Wai 156, Wai 745, Wai 2181,
Wai 2337, Wai 2545, Wai 2546,
Wai 2548, Wai 2549, Wai
2550 and Wai 2557

AND

the Ngātiwai Mandate Inquiry

FURTHER DECISION OF THE DEPUTY CHAIRPERSON
ON THE FORMULATION OF THE CENTRAL THEME
FOR THE NGĀTIWAI MANDATE INQUIRY

26 May 2016

Introduction

1. I have now received a series of submissions from Counsel as to the precise framing of the central theme for the Wai 2561 Ngātiwai Mandate Inquiry.

Summary of submissions for Wai 2549

2. Counsel for Wai 2549 suggests that the second part of the issue ought to be amended by the addition of the words underlined:

The policy, practice, act or omission alleged is the Crown's recognition of a mandate held by the NTB in relation to the hapū referred to in the NTB's Deed of Mandate (including those who are not ejusdem generis) without the support and consent of those hapū.

This position is supported by Counsel for Wai 2181 by a memorandum dated 13 May 2016.

3. His reason for doing so is that Te Waiariki, Ngāti Kororā and Ngāti Taka Pari deny being hapū of Ngātiwai or even being a shared hapū of Ngātiwai but rather, say they are hapū in their own right.
4. Mr Kahukiwa, it seems, asserts that they should not be referenced in the Deed of Mandate at all. It seems to me the question to be inquired into, as originally framed, would allow them to argue that proposition before the Tribunal. An amendment is not required and is denied.
5. This claimant filed a second memorandum dated 11 May which addresses the submissions from the NTB, which I will deal with at a later point.

Summary of submissions for Wai 2544 and Wai 2546

6. Counsel for Wai 2544 & 2546 filed a joint memorandum dated 9 May 2016. The thrust of this submission is that urgency should be granted on the issues of accountability and transparency. It is suggested that the Crown is in breach for recognising a mandate knowing that NTB mechanisms contained in the Deed of Settlement and the Trust Deed do not provide for the level and accountability and transparency which the Crown requires. Those submissions end in these terms:

Thus, in Counsels submissions, aspects of NTB internal processes need to be included within the scope of this inquiry in so much as they are incorporated into the NTB DoM and touch on the issues of accountability and transparency which are interconnected with the exercise of hapū tino rangatiratanga.

7. The question upon which I have allowed urgency specifically excludes internal processes as a central issue. These submissions are an attempt to have me revisit the decision that I have already made. To an extent, the internal processes may be relevant to the Tribunal hearing the substantive matter for they may be the reasons that hapū have not and will not give a mandate to the NTB.

8. I decline to broaden the scope of the grant of urgency.

Summary of submissions for Wai 2181

9. Counsel for Wai 2181 filed a memorandum dated 10 May 2016. The gist of the complaint of Ngāti Rongo and Ngāti Maraeariki is that the Ngātiwai Deed of Mandate includes areas where they have customary rights and where, they say, Ngātiwai do not. It is said this has been done without consent or consultation and other Kawerau tribes are wrongly described as Ngātiwai hapū or described as an historic tribe of Ngātiwai.
10. An amendment is sought in the following terms:
 - b. The policy, practice, act or omission alleged in the Crown's recognition of a mandate held by the NTB in relation to the hapū or their **customary rights** referred to in the NTB's deed of Mandate without the support or consent of those hapū.
11. It should be noted that in the Deed of Mandate at paragraph 11 it is clear the reference to Ngāti Rongo is not a hapū covered by the Deed. Section 11 provides background information on the context of these hapū. The hapū included in the Deed of Mandate are those in paragraph 12.
12. I did not grant urgency in relation to customary rights. That is a matter for discussion between the hapū and the Trust Board. The Deed does not exclude other hapū. It is clear from page 9 that the settlement relates to only Ngātiwai interests within the area shown. The submission as made does not move me to amend the framing of the question to be heard by the Tribunal.

Summary of submissions for Wai 2544, 156, 745, 2181, 2337, 2545, 2546, 2548, 2550, 2557

13. Counsel for a series of applications filed submissions on 10 May 2016,¹ the thrust of the submissions is that all claimant groups or claimant communities and marae should be the persons referred to in the central theme and that the word 'hapū' at the end of paragraph (a) should be deleted. This was implicitly excluded from the formulation of the central theme by me. The central issue relates to the Treaty relationship between the hapū and the Crown and not other groups. I did not invite Counsel to reopen the very matter upon which I made my decision.
14. I decline to revisit that decision.
15. Counsel also addresses the formulation of a statement of issues suggesting that that would be helpful in preparing evidence which has to be filed in the near future. There is

¹ Wai 2544, 156, 745, 2181, 2337, 2545, 2546, 2548, 2550, 2557.

a certain logic to this but on reflection the formulation of the central issue is precise enough for Counsel to prepare their evidence.

16. The claims as filed were of course made on the basis that the claimants were ready to proceed urgently and so the evidence will exist now in some form and is probably contained within the documents already filed. If the issue as formulated by me is to be broken down into sub issues then that will be a matter for the Tribunal panel hearing the matter.
17. Counsel also addresses the issues of requests for information under the Official Information Act 1982 and of venue for hearing. Those too are matters for the Tribunal panel to address and are not within my purview on the issue of urgency.

Summary of submissions for Wai 156

18. Counsel for Wai 156 points out that the hapū she represents, Te Whakapiko, are not listed or referred to in NTB's Deed of Mandate. However, its claim is included as one of the Ngātiwai historical claims to be settled under the mandate. Te Whakapiko is regarded as an inactive or historical hapū of Ngātiwai.
19. Whether Te Whakapiko is in fact an existing hapū and whose support or consent might be required falls within the central theme and I accept that I should amend accordingly.
20. Ms Tuwhare's proposed amendment is as follows:

The policy, practice, act or omission alleged is the Crown's recognition of a mandate held by the NTB in relation to the hapū referred to in the NTB's Deed of Mandate and including those hapū whose claims are intended to be settled by the NTB settlement but not referred to in the NTB's Deed of Mandate without the support or consent of those hapū.
21. What is overlooked however is that Te Whakapiko is referred to in the Deed of Mandate within paragraph 11 and its issue is well within the issue, as presently framed. I will discuss this further when I deal with the submissions of the Crown.

Summary of submissions for the NTB

22. Counsel for the NTB has filed a memorandum dated 11 May 2016. The NTB does not take objection to the issue as framed but seeks to refine it. A comparison of the existing formulation on the one hand, and the proposed formulation on the other, has not disclosed to me anything helpful and I prefer to follow the structure set out in section 6.²
23. Counsel then proposes that the focus for the hearing should be on a number of particular hapū where there are specific allegations relevant to the central issue in the

² Treaty of Waitangi Act 1975.

existing claims. I have not framed the central issue in those terms and urgency is not constricted to that extent.

24. Finally, Counsel seeks confirmation that the urgency does not extend to collateral matters. I have already made the decision in that regard and it does not require to be repeated.
25. The position taken, by NTB is the subject of a further submission by Counsel for Te Waiariki, Ngāti Kororā, Ngāti Taka Pari as is. This is the counsel that I have referred to in paragraph 2 of this decision. He takes the view that as the dispute is between hapū and the Crown, NTB is but an interested party that has not been granted leave to appear and should be heard only on limited issues and to a limited extent. In my view, that is a matter for the Tribunal hearing the matter.

Summary of submissions of the Crown

26. The Crown filed short submissions. The crown took the reference to '*a hapū referred to in NTB's Deed of Mandate*' to mean the 13 hapū listed in section 12 and seeks confirmation that the urgent inquiry concerns the 5 who have specifically taken the issue.
27. That is not the intention of the grant. In particular I see no reason why other hapū, for example, Te Whakapiko, who are not listed in paragraph 12 should not have their issues aired. The issues as presently framed does not restrict claimants and does not restrict hapū except to the extent that they must be named in the Deed of Mandate. The intention is that all claimants and any hapū referred to in the Deed of Mandate may be heard.
28. I note that the Crown, at this stage, does not intend to call further evidence.

Final matters

29. That completes this decision for urgency. The matter to be heard is as it stands in paragraph 314 of my decision of 2 May 2016 (Wai 2544, #2.5.6).
30. As I finalised this memorandum I noted a joint memorandum of counsel dated 23 May 2016 and the response of the Crown dated 25 May 2016. I will deal with the matters rising in the following way:
 - a) The production of documents and statement of issues are properly matters for the Tribunal hearing this matter;
 - b) The time that it has taken to finalise the matter mean that it is appropriate that an extension of time to file evidence until 17 June 2016 is granted and of course that is a condition of the grant of urgency.

31. Except to the extent that the matter is before me in relation to paragraph 30(b) the issue of urgency is now complete and the matter is to be referred to the Chair of the Tribunal for consideration.

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

DATED at Wellington this 26th day of May 2016

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a horizontal line that ends in a small flourish.

Judge P J Savage
Deputy Chairperson

WAITANGI TRIBUNAL