

IN THE WAITANGI TRIBUNAL

Wai 2561

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Ngātiwai Mandate Inquiry

**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER
REGARDING DISCOVERY, MEDIATION AND OTHER HEARING MATTERS**

29 July 2016

1. This memorandum-directions addresses the following matters:
 - a. Discovery of documents;
 - b. Mediation;
 - c. Hearing logistics;
 - d. Tribunal Statement of Issues; and
 - e. Progress of NTB and Crown Treaty settlement negotiations.

Discovery of documents

2. In memorandum-directions of 19 July 2016, I directed claimants and the Crown to review their positions regarding discovery in light of the Tribunal's confirmation of a Statement of Issues (Wai 2561, #2.5.12 at [19]), and to update the Tribunal on whether the directions outlined out at paragraphs 18(a)-(c) were still sought.
3. As directed, claimant and Crown counsel filed a joint memorandum on 26 July 2016 confirming that they still seek those directions.
4. Therefore, I now make the following directions in regards to discovery:
 - a. The Crown is to release the seven documents it has identified as being confidential to the Tribunal (Wai 2561, #3.1.96, para 5). The Tribunal will review the documents and make a final decision on the release of those documents following submissions from the NTB. Accordingly, the NTB is directed to file any submissions it wishes to make in respect of their release by **midday, Wednesday 3 August 2016**.
 - b. The Crown is to release all the documents it has withheld on grounds of irrelevancy to the Tribunal (Wai 2561, #3.1.96, para 9). The Tribunal will review those documents and make a decision as to whether they are relevant for the purposes of this inquiry.
 - c. The Crown is to release full, un-redacted copies of all the submissions on the NTB Deed of Mandate to the Tribunal. I regard the submissions, including the information relating to who the submissions were made by or on behalf of as relevant to this inquiry. I note that in the Wai 2490 Ngāpuhi Mandate Inquiry a complete un-redacted set of the submissions on the Tūhoronuku Deed of Mandate formed part of the Wai 2490 Record of Inquiry. I do not see why this situation should be viewed differently.
5. The Crown is directed file the documents requested at paragraphs 4(a)-(c) by **midday, Wednesday 3 August 2016**.

Mediation

6. I sought parties' submissions on whether some form of mediation process would be appropriate or practical at this stage in the inquiry (Wai 2561, #2.5.12 at [29]),

particularly as some agreement has recently been demonstrated in Te Kapotai's removal from the NTB Deed of Mandate.

7. We received a number of submissions in response to this proposal. While there seems to be tentative willingness on part of the Crown, the NTB (contingent on the inquiry being paused) and some claimants to participate in a mediation process, most claimant groups are reluctant given the breadth of issues and remedies sought by the claimants.
8. We recognise that there would be practical difficulties in facilitating a mediation process in this situation due to the number of parties involved in these proceedings and the diverse range of issues at stake, and various conditions of mediation that would be sought. Further, we do not wish to delay the hearing in order for mediation to occur when there is no unanimity or even a clear will to meaningfully take up that opportunity.
9. I will not refer claims to mediation at this time, but I encourage the Crown, the NTB and claimants to continue to try and find ways to engage in respect of their particular issues.

Hearing Logistics

10. The Crown and claimants have confirmed that the proposed hearing dates, 4-6 October, are workable.
11. The NTB has advised they have some difficulty with those dates due to the unavailability of their counsel, Mr Peter Andrew, as well Ms Nici Gibbs, whom the Trust has identified as a potential witness. I note however the NTB has not proposed any alternative dates for hearing.
12. The Tribunal must balance the interests of all parties involved in this inquiry. While the NTB is an important participant in this inquiry, its status is that of an interested party to the Tribunal's inquiry into Crown actions. With Crown and claimants having confirmed the hearing dates there is not sufficient justification to delay the hearing of this urgent inquiry. The hearing will proceed on the dates as currently proposed.
13. There are several months still until hearing, and therefore time for the NTB to make alternative arrangements. In relation to Ms Gibb's evidence there are alternative procedures available for her evidence to be tested, and I am likely to be amenable to practical and fair suggestions.
14. The draft submissions timetable appended to the joint-memorandum of claimant counsel seems reasonable. I confirm the timetable, other than the slight amendments made in relation to discovery of documents, and attach it to these directions as **Appendix A**.

Tribunal Statement of Issues

15. Counsel for the Crown and the NTB have sought clarification from the Tribunal in regards to the Statement of Issues (Wai 2561, #1.4.1). Specifically, counsel seek confirmation that the issue proposed by the Crown and the NTB: "To what extent do

the claimants represent the hapū of Ngātiwai”, remains a relevant issue for inquiry given it was not explicitly included in the Tribunal’s Statement of Issues.

16. In his decision on urgency, the Deputy Chairperson noted a significant body of opposition to the mandate, saying “*it would be difficult indeed for me to find that the present applications are simply an expression of dissatisfaction from a small and vocal group of dissidents*” (Wai 2561, #2.5.8). As this is an inquiry into Crown actions, the Tribunal needs to understand the Crown’s assessment of that opposition including its knowledge of the nature and scale of opposition and who the claimants are. To that extent the issue of how the claimants represent hapū is relevant.

Progress of NTB and Crown Treaty Settlement negotiations

17. The NTB has previously advised that it does not intend to appoint negotiators until the present inquiry has been determined (Wai 2561, #3.1.95). I further directed that the NTB confirm the position in relation to finalising the Terms of Negotiation, and in its memorandum of 26 July 2016, they provided an update on the progress of settlement negotiations between the NTB and the Crown.

18. The NTB confirms the following:

- a. It aims to have Terms of Negotiation agreed and signed towards the end of 2016. The Trust Board further states that “it is accepted that this will not occur until the inquiry has been determined, though some engagement between the Board and the Crown may continue in the interim”;
- b. The Trust Board intends to continue to inform and engage with members of the Ngātiwai in respect of its mandate; and
- c. The Trust Board will be required to continue discussions in respect of overlapping claims with other mandated groups, particularly Ngāti Rehua-Ngātiwai ki Aotea and Ngāti Paoa, due to the timeline on which negotiation of those claims is proceeding.

19. We request that the NTB continue to update the Tribunal on the status of settlement negotiations, particularly should the position as outlined above change. My understanding is that the inquiry is only determined once the Tribunal has issued its report pursuant to s 6(5) of the Treaty of Waitangi Act 1975.

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 29th day of July 2016



Judge S F Reeves
Presiding Officer

WAITANGI TRIBUNAL

Appendix A: Filing Timetable

Task	Date
Crown to file discovery documents with Tribunal NTB to file submissions in relation to documents provided to the Crown in confidence	Wednesday, 3 August 2016
Claimants file evidence	Wednesday, 17 August 2016
Crown and the NTB file evidence	Friday, 2 September 2016
Claimant and interested parties file evidence in reply	Friday, 16 September 2016
Applications for cross-examination	Tuesday, 20 September 2016
Draft hearing timetable to be filed	Friday, 23 September 2016
Opening submissions due	Thursday, 29 September 2016
Hearing dates	4, 5, 6 October 2016 at Toll Stadium, Whangarei
Written closing submissions due	Friday, 28 October 2016