

Ref: letter received

28 Dec 1990

11:00am

WAITANGI TRIBUNAL

Wai 87

CONCERNING

the Treaty of
Waitangi Act 1975

AND

the Whakatohea
claim

MEMORANDUM-DIRECTIONS OF TRIBUNAL

RESEARCH COMMISSIONS

1. TRIBUNAL RESEARCH

This memorandum follows a chambers meeting of 18 December 1990 with Mr Mikaere, Director and Dr Belgrave, Research Manager of Tribunal Staff on the one hand, and Ms J Lake counsel and D Loveridge historian of Crown Law Office on the other.

Mr Mikaere proposed he be commissioned to undertake preliminary research on this claim. He advised the research would be of a non-interpretative nature, that he had completed research before in this area, that preliminary research was required, and that there are no funds to commission non staff researchers.

Mr Mikaere added that the proposal had been discussed with claimants and they had agreed to it.

Ms Lake and Mr Loveridge doubted the propriety of initial reports coming from tribunal staff. The initial reports, it was considered, should come from claimant commissions and be directed to defining the claim. The Crown claimed to be prejudiced by any report proposing positions and which appeared to come from the Tribunal. The Crown would agree to the appointment in this case however, provided it was not seen as a precedent and the research was generally along the lines that I now describe below.

The Tribunal, I note, has statutory power to commission researchers, and whether or not the researcher is a member of the Tribunal's own staff. The commissioning of a staff member must be exercised with caution however, and I accept the Crowns' concern that such appointments should not be made as a matter of course.

In particular, the initial or opening research report, when prepared by a member of the Tribunals own staff, should be non-interpretative, neither making the claimants' case nor judging it.

Accordingly, pursuant to cl. 5A (1) second schedule Treaty of Waitangi Act 1975, Britson Mikaere, Director, Waitangi Tribunal, is hereby commissioned

- (a) to complete, on or before 30.6.91, a background historical report on the history of the confiscations concerning Whakatohea following the New Zealand wars provided that, to the extent practicable
 - (i) the report will not reach definitive conclusions about, or pre-judge the merits of the claim, and
 - (ii) the report will be directed to identifying issues, not answers
- (b) to identify important documents in the Raupatu Document Bank, or to add to that Bank, and to call upon the claimants and/or the Crown to assist, if need be.

2 CLAIMANT RESEARCH

Mr Mikaere advised that the claimants proposed to complete the research work described in the schedule hereto and sought financial assistance. The Tribunal's budget did not enable it to meet the full cost but only contribute to it.

The Crown did not seek to be heard on this matter.

Accordingly, pursuant to Clause 5A(1) of the Second Schedule of the Treaty of Waitangi Act 1975, the claimants are authorised to commission Claude Edwards to investigate and prepare a report, or to supervise the investigation or preparation of a report on the matters outlined in the schedule hereto, and subject to the following terms and conditions:

- (1) The Tribunal will contribute a total of \$15,000 towards costs but subject to prior deduction of the cost of a copy of the Raupatu Document Bank to be made available to the claimants.
- (2) The research report will be filed with the Tribunal on or before 30.6.91.
- (3) The said Claude Edwards will make himself available for cross examination on the report, as is required by statute.
- (4) The Tribunal will consider an application for confidentiality in respect of material of a

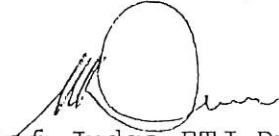
traditional nature.

- (5) This authorisation will be implemented by agreement between the claimants and the Waitangi Tribunal Division of the Department of Justice.

The Registrar will please send copies of this direction to:

Maori Land Information Office
Crown Law Office
Treaty of Waitangi Policy Unit
Claimants

Dated at Wellington this 20th day of December 1990



Chief Judge ETJ Durie
Chairperson
WAITANGI TRIBUNAL

SCHEDULE

To report on:

1. The boundaries of Whakatohea tribal rohe and confiscation boundaries as they relate to this.
2. Traditional mana whenua as established through traditional and documented evidence.

This will include:

- whakatauki
- whakapapa
- waka
- tribal boundaries
- hapu histories
- traditions of place names that mark tribal boundaries
- histories of important places - pa, kaianga, awa, maunga (some of this may be presented orally and in confidence to the Tribunal)

Where possible traditions included in the report will be corroborated by personal interviews or by reference to Court minutes or other documentary evidence.

3. Customary use of land and sea resources including freshwater fisheries using traditional and documented sources.
4. Impact of raupatu in social and economic terms using traditional and documentary evidence.
5. Land Use Maps and Tenure. (Claimants to consult with Waitangi Tribunal regarding mapping assistance. Initially claimants should draw up a proposal to the Maori Land Information Office to commission DOSLI to prepare an appropriate large size base map with overlays of current land in Maori ownership and SOE and Crown Lands within the tribal rohe.)

AGREEMENT FOR SERVICES

This agreement is made between:

GRANTOR: _____

and

GRANTEE: _____

This agreement:

comes into effect on _____

and will end _____

A THE WORK

1 The Grantee agrees to investigate the matters set out in the "Schedule of Research Work" which is an appendix to this agreement.

2 A final Report:

- in written and bound form
 - appropriately referenced
 - will be filed with the Registrar of the Waitangi Tribunal on
- _____

B FEES

1 The Grantee will be paid _____ in total for the work.

2 These amounts are inclusive of any GST which may be payable.

3 Funds will be disbursed as follows:

- _____ on the filing of a report on progress on
_____ to the Registrar of the Waitangi
Tribunal.

- _____ on the filing of a report on progress on
_____ to the Registrar of the Waitangi Tribunal.

- _____ on the filing of the final report.

4 Reports on progress will include:

- brief details of the research work undertaken in each month to which the report relates.
- accounts detailing the expenditure in each month to which the report relates.

C MISCELLANEOUS

1 The Grantee agrees that no payments will be made for holidays, sickness or overtime or leave.

2 The Grantors will not be responsible for PAYE or ACC levies.

3 The Grantee understands that the Final Report and any information or materials obtained out of the work under this agreement remains the property of the Waitangi Tribunal Division.

4 Either party may end this agreement by giving one calendar month's notice in writing at which time an assessment of the value of the work completed will be made by the Director of the Waitangi Tribunal. If the Director determines a refund of fees already paid may be required. In the event of termination before the completion of the Final Report the Grantee will provide a report on the stage reached in the project. Again, depending on an assessment by the Director of the value of the work completed, a refund of fees may be required.

Any documents or other written materials or information obtained out of the work under this agreement will be made available to the Waitangi Tribunal Division.

5 The Grantee may be required to attend hearings of the Waitangi Tribunal to give evidence or be questioned and to reply to written memoranda from the parties to the claim following the completion of this agreement. For this the Grantee will be paid at a rate determined by the Waitangi Tribunal. Any travel, accommodation and meal expenses incidental to attendance at the hearings will be paid as approved by the Waitangi Tribunal Division and pursuant to the Witnesses and Interpreters Fees Regulations 1974.

WHAKATOHEA CONFISCATION CLAIM

Copies of the original claim submitted by the Board on the 22nd May 1989 and subsequent correspondence from the Tribunal, was distributed to the members.

MATTERS ARISING FROM THE INFORMATION

The Chairman clarified various aspects of the information presented especially the proposed contract to the Board for research funding to enable a report on the Whakatohea claim to be compiled by June 1991. The contract gives authority to commission Claude Edwards to prepare and compile report, on behalf of the Whakatohea. The contract also detailed specific criteria which must be adhered to. The Chairman further stated that the report to the Waitangi Tribunal is of such great importance that the compilation of information should be entrusted to a team of personnel, who have skills and attributes in a particular aspect of the Whakatohea history. To this end he had liaised with Sir Monita Delamere and Mr Joe TeMaipi to be incorporated within the production of the report in conjunction with research group, including the chairman himself. John Kameta stated that the Board will support whatever actions that the Chairman may take to ensure that the Confiscation Report is made available to the Waitangi Tribunal by June 1991. There was general acceptance of this statement and the Chairman stated that his first task was to meet with the Research Unit and explain the situation to them. Audit procedures applicable to both the Board and the Waitangi Tribunal require that the proper procedures regarding contractual agreements be adhered to and therefore Full Board approval be given for this contract.

MOVED

That the Board re-affirms its support for the claim as submitted and that the contract agreement, inclusive of the conditions be accepted and Claude Edwards is authorised to manage the production of the Report to the Waitangi Tribunal according to the criteria of the contract.

H Mio, T Biddle CARRIED

WAI 87 WHAKATOHEAACTION:

From meeting of 21 August 1990

Director to talk to claimant to see what Whakatohea are up to, how far their research has progressed, if they still intend using Rangi Walker to write their final report.

Depending on what stage Whakatohea are at, the tribunal may be able to consider financially contributing to having Rangi Walker write the final report IF the report is filed with the tribunal and a copy submitted to the Crown Law Office for their response. Tribunal funding should be in the form of subsidy rather than full cost.

Check that the boundaries of the Ngaitai claim are in fact within the raupatu boundary. Also check Ngaitai's situation in relation to Whakatohea. (Perhaps see Whakatohea by A C Lyalls or talk to Pat Parks at ITA.)

5. Corroboration trad. history
- Court Minutes
 - Compensation Court.

Section II:

1. Effects of the Ranpitu

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Current times

2. Undergrowth claims.

3. Relief.

OUTLINE of RESEARCH REPORT

1. Whakatauki — Patere

2. Waka

Mana.

3. Whakapapa — Main line

Whenua

— Hapu

— Where they lived.

4. Tribal Rohe

5. Histories of place names

— Pa

— Kaiinga

— fishing places

— Awa

— Rangia

— wahi: tapu