

IN THE WAITANGI TRIBUNAL

WAI 2358

IN THE MATTER of the Treaty of Waitangi Act 1975

AND IN THE MATTER of the National Freshwater and Geothermal Resources Inquiry

**MEMORANDUM OF COUNSEL FOR THE CLAIMANTS IN RESPONSE
TO MEMORANDUM OF COUNSEL FOR THE CROWN DATED 21
DECEMBER 2016 AND SEEKING TIMETABLE AMENDMENTS**

Dated: 17 January 2017



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MAY IT PLEASE THE TRIBUNAL:

A. Context

1. This memorandum of counsel is filed for the claimants in response to the memorandum-directions of 12 January 2017 (#2.6.8) in which the Tribunal sought responses to the Crown's memorandum of counsel dated 21 December 2016 (#3.2.34) ("**the Crown memorandum**").

B. Crown proposals the claimants support

2. The claimants support the grant of leave to the Crown to file further evidence on Stage 2 issues that would be of assistance to the Tribunal (see paras 6-7 of the Crown memorandum).
3. The claimants support the Crown's position that the second hearing week should continue as scheduled on 20-24 March 2017 (see para 14.1 of the Crown memorandum).
4. The claimants agree with the Crown that it would be of assistance for the interested parties to file a statement of position clarifying their separate case theory compared to the claimants' case theory (see para 13.1 of the Crown memorandum). Like the Crown, the claimants are content to leave it to the Tribunal to determine when such a statement should be filed.

C. Crown proposals the claimants oppose

5. The claimants oppose the timetable that the Crown has proposed in para 14.2 – 14.3 of the Crown memorandum. On that timetable, the Crown has over 3 months to prepare and file its additional evidence. It is, however, difficult to see why the Crown evidence, including on the matters sketched in para 10 of the Crown memorandum, will take so long to prepare.
6. In the claimants' view, all written evidence should be filed before hearing week two commences on 20 March 2017. That should include (i) the Crown's additional evidence plus any evidence the Crown wishes to file in

response to the interested parties' evidence, and (ii) any evidence filed by the claimants and interested parties in reply to the Crown's evidence.

7. On this approach, all witnesses who give evidence in hearing week two will be able to testify and to be asked questions in the knowledge of all written evidence that will be on the record for Stage 2 purposes. This is likely to assist all parties, and the Tribunal, to ensure that individual witnesses are able to be questioned in the timeliest and most resource-efficient manner on topics that they address which overlap with topics any other witness addresses in written evidence. This approach will also reduce as much as possible the risk that a witness who testifies in hearing week two will need to be called to testify again in hearing week three to give evidence in reply to evidence that is filed (on the Crown's proposal) after that witness has finished testifying in hearing week two.
8. Having regard to the resources available to the Crown, and noting the difficulty that claimants and interested parties can experience in getting legal aid or other funding for witness (travel) expenses, there is not likely to be prejudice to the Crown in a tighter timetable than the one it proposes. Correspondingly, the Crown's timetable may prejudice Māori parties.

D. Claimants' proposed amendments to timetable

9. Based on the analysis above the following amended timetable is proposed:
 - 9.1 Further Crown evidence (both in response to further evidence from interested parties, as well as the additional evidence for which leave is sought) to be filed by no later than 12pm on Wednesday 1 March 2017;
 - 9.2 Any evidence in reply to the further Crown evidence to be filed by no later than 12pm on Wednesday 15 March 2017; and
 - 9.3 Hearing week two to continue as scheduled on 20-24 March 2017.
10. The claimants see no need at this time to address the timetable for hearing week three (compare para 14.5 of the Crown memorandum). However,

they endorse as good sense having some time at the start of hearing week three available for calling any claimant and interested party witness who may not be able to testify in the time available in hearing week two.

11. If the Tribunal agrees with their proposed timetable, the claimants also see no need as matters stand to schedule a judicial teleconference for after all further written evidence has been filed (compare para 14.4 of the Crown memorandum). This is on the understanding that all parties will strictly comply with the timetable that the claimants have proposed.

Dated: 17 January 2017



R J B Fowler QC / M S Smith
Counsel for the Claimants