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BEFORE THE WAITANGI TRIBUNAL

WAI 2358

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IN THE MATTER OF                      the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF                      the National Fresh Water and Geothermal  
Resources Inquiry

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**MEMORANDUM OF COUNSEL FOR THE CROWN PROVIDING  
CORRECTIONS TO THE TRANSCRIPT FOR HEARING WEEK ONE**

**3 February 2017**

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**RECEIVED**

Waitangi Tribunal

**3 Feb 2017**

Ministry of Justice  
WELLINGTON

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**MAY IT PLEASE THE TRIBUNAL:****Introduction**

1. The Presiding Officer has invited parties to review the transcript of the first Wai 2358 (Stage Two) hearing week held on 7–11 November 2016 and submit any corrections by Friday 3 February 2017.<sup>1</sup> Counsel submit the following corrections should be made:

**Corrections**

2. Every instance of the name “Damien Ward” should read “Damen Ward”.
3. Every instance of the name “Keith Hille” should read “Kevin Hille”.
4. On page 17, the name “Mr Pals” should read “Mr Pouwels”.
5. On page 17, the text “I assume Mr Pals is not yet admitted” should read “Sir, as Mr Pouwels is not yet admitted”.
6. On page 37, the sentence “Presuming that to your view that should apply regardless of what the paper title situation...” should read “Presumably that is your view that should apply regardless of what the paper title situation...”
7. On page 186, the sentence reading “And at that point there is also 13Z4 was the only block...” should read “And at that point 13Z4 was the only block...”
8. On page 186, every instance of “Waipaoa Stream” should read “Waipao Stream”.
9. On page 187, the sentence reading “Now prior to 1967 there were two easements granted over Whatitiri 13Z4 would you have alluded to in your” should read “Now prior to 1967 there were two easements granted over Whatitiri 13Z4 which you have alluded to in your”.
10. On page 188, every instance of “Waipaoa Stream” should read “Waipao Stream”.
11. On page 189, every instance of “Waipaoa Stream” should read “Waipao Stream”.

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<sup>1</sup> Wai 2358, #2.6.7 and #4.1.2.

12. On page 192, the sentence reading “Notified there was an objection...” should read “Notified. There was an objection...”
13. On page 193, the sentence reading “Now there is several other consent decisions after that point that the trustees of the Whatitiri 13Z4 reserve involved themselves in” should read “Now there are several other consent decisions after that point that the trustees of the Whatitiri 13Z4 reserve involved themselves in”.
14. On page 193 the word “*take*” should not be italicised.
15. On page 194, the sentence at the top of the page reading “– summarised the position taken in 1989” should read “– You’ve summarised the position taken in 1989.”
16. On page 195 “...Waipaoa taonga awa” should read “...Waipao taonga awa”.
17. On page 195, the sentence at the bottom of the page reading “The answers to the questions of clarification just came in last night so there is possible we may have a few more questions arising from those” should read “The answers to the questions of clarification just came in last night so it is possible we may have a few more questions arising from those”.
18. On page 230, the question at the bottom of the page reading “And if you turn over the page to page 2, we have copies of sections 39(a) and 39(b), is that correct?” should read “And if you turn over the page to page 2, we have copies of sections 39A and 39B, is that correct?”.
19. On page 232, the question at the top of the page reading “Now if we look at section 39(a) that deals with accreditation” should read “Now if we look at section 39A that deals with accreditation”.
20. On page 232, the question at the bottom of the page reading “And it says, “Pursuant to section 39(a) of Resource Management Act 1991 the Minister for the Environment gives the following notice.”” Should read “And it says, “Pursuant to section 39A of Resource Management Act 1991 the Minister for the Environment gives the following notice.””

21. On page 232, the question at the bottom of the page reading “And it says, “I approve the following qualification establishing a person’s accreditation under section 39(a) of the Resource Management Act, successful completion of the Making Good Decisions foundation course, is that correct?” should read “And it says, “I approve the following as qualifications establishing a person’s accreditation under section 39A of the Resource Management Act 1991, successful completion of the Making Good Decisions foundation course”, is that correct?”.
22. On page 233, the question in the middle of the page reading “And it says doesn’t it that the purpose of this Māori values and world view supplement is to enable decision makers to take these and world views into account in Resource Management Act first instance decision-making?” should read “And it says, doesn’t it, that “the purpose of this Māori Values and World Views Supplement is to enable decision-makers to take these values and world views into account in Resource Management Act 1991 (RMA) first instance decision-making?””.
23. On page 256, the question at the bottom of the page reading “To assist with the costs of your appear” should read “To assist with the costs of your appeal”.
24. On page 257, the question in the middle of the page reading “So this is a copy of the brief of evidence of Mark Pointer in that” should read “So this is a copy of the brief of evidence of Mark Pointer in that case”.
25. On page 269, the response of Gillian Gillies at the bottom of the page reading “We can confirm answers about the documents but perhaps these questions might be better posed tō the Crown witnesses tio come in the next hearing week” should read “We can confirm answers about the documents, but perhaps these questions might be better posed to the Crown witnesses to come in the next hearing week”.
26. On page 272, in the response at the bottom of the page, the name “Ms Katu” should read “Ms Carter”.

27. On page 274, at the end of the second sentence, the final word of the sentence should read “here” not “hear”.
28. On page 275, the name “Mr Goff” should read “Mr Gough”.
29. On page 275 the statements “I understand Sir, I think yes we’ll take that on board” and the following comment “I understand yes Sir” are statements by Jason Gough, not by Tim Castle.
30. On page 284, the sentence reading “But it’s the only that’s above the Porotī springs Reserve.” Should read “But it’s the only one that’s above the Porotī Springs Reserve.”.
31. On page 284, the sentence reading “Now if I could ask you to turn to paragraph of your evidence, now at paragraph 30, you state...” should read “Now if I could ask you to turn to paragraph 30 of your evidence, now at paragraph 30, you state...”
32. On page 290, the sentences reading “And if turn over to page 28 and looking at the second paragraph, ‘The water that emerges at the spring is ground water from the Whatitiri volcanic cone which is located the south of Mangakāhia Road’” should read “And if you’ll turn over to page 28 and look at the second paragraph, ‘The water that emerges at the spring is ground water from the Whatitiri volcanic cone which is located to the south of Mangakāhia Road’”.
33. On page 290, the sentences reading “And rainfalls on the volcanic cone and moves downwards into the aquifer. Some of the groundwater moves in northerly direction where it discharges at Porotī Springs...” should read “And rain falls on the volcanic cone and moves downwards into the aquifer. Some of the groundwater moves in a northerly direction where it discharges at Porotī Springs...”
34. On page 291, the sentence reading “And the lowest groundwater amount sit between April and June” should read “And the lowest groundwater amount sits between April and June”.

35. On page 377, the sentence reading “Can I take you through to page 16 that document” should read “Can I take you through to page 16 of that document”.
36. On page 377, the sentence reading “Now in your evidence at paragraph 5, you say that on many occasions trustees have complained about effluent discharge into the lake from some of the farms only to have the Kaikohe authorities ignore us” should read “Now in your evidence at paragraph 5, you say that on many occasions trustees have complained about effluent discharge into the lake from some of the farms only to have the Kaikohe authorities ignore them”.
37. On pages 377 and 378, the sentence reading “So you see the figure 2, the map shows the landowner boundaries in 2011 in black lines, the catchment boundary in yellow line and there are yellow and green squares showing the farm dairy effluent discharges” should read “So you see the figure 2, the map shows the landowner boundaries in 2011 in black lines, the catchment boundary in yellow lines and there are yellow and green squares showing the farm dairy effluent discharges”.
38. On page 378, the sentence reading “And all six if tee current effluent discharges for dairy farms are outside the catchment aren’t they” should read “And all six of the current effluent discharges for dairy farms are outside the catchment aren’t they”.
39. On page 378, the sentence reading “At the time that when the algae bloom was taking effect up Lake Ōmāpere there were the trustees and also the different authorities that had a meeting to see how we could fund the lake and describing of making sure that’s more healthy than it was” should read “At the time when the algae bloom was taking effect up at Lake Ōmāpere there were the trustees and also the different authorities that had a meeting to see how we could fund the lake and make sure that it’s healthier than it was”.
40. On page 378, the sentence reading “And so there was funds that came to knowledge of the Lake Trustees and also with the Northern Regional Council, District Council and also with the support of DOC” should read “And so there were funds that came to the knowledge of the Lake Trustees and also

with the Northern Regional Council, District Council and also with the support of DOC”.

41. On page 379, the sentence reading “On – of the outcomes for the project was to assist the trustees in their as kaitiaki role for the lake? That’s – I’ve accurately worded that haven’t I? So it’s project objective 6” should read “One – of the outcomes for the project was to assist the trustees in their role as kaitiaki for the lake? That’s – I’ve accurately worded that haven’t I? So it’s project objective 6”.
42. On page 379, all words reading “tō” should read “to”.
43. On page 380, the sentences reading “I mean with the influence of people that work in within the departments, and Māori they want only the best for their lake or the cleanup of their lake. They want only the best they can make it work” should read “I mean with the influence of people that work in the departments, and Māori they want only the best for their lake or the clean-up of their lake. They want only the best they can make it work”.
44. On page 381, the sentence reading “I mean you got to ask yourself after all this is going around us taking on board that we’ve had our hearings in Te Raki Inquiry” should read “I mean you got to ask yourself after all this is going on around us taking on board that we’ve had our hearings in Te Raki Inquiry”.
45. On page 381, the sentence reading “I mean Ngā Puhī never ceded their sovereignty and that was really spelt out by stage on in Anne Salmon’s report...” should read “I mean Ngā Puhī never ceded their sovereignty and that was really spelt out by stage one in Anne Salmon’s report...”
46. On page 381, the sentence reading “So we need to make sure that the real issues that pertain to where Ngā Puhī sits is at the hapū/whānau level not because their iwi” should read, “So we need to make sure that the real issues that pertain to where Ngā Puhī sits is at the hapū/whānau level not because they’re iwi”.
47. On page 399, the sentence reading “So presumably support additional funding for those purposes” should read “So presumably you would support additional funding for those purposes”.

48. On page 435, the sentence reading “But in simple terms Sir the leaders group involves those representatives of iwi who have indicated an interest and of desire to actively participate in the group to move forward the kaupapa of engagement with the Crown” should read “But in simple terms Sir the leaders group involves those representatives of iwi who have indicated an interest and desire to actively participate in the group to move forward the kaupapa of engagement with the Crown”.
49. On page 482, the text “The Gisborne District Council formed the Freshwater Advisory Group and for approximately years David and I represented Te Whānau-a-Kai at the Freshwater Advisory Group table”, should read “... approximately 4 years ...”.
50. On page 486, the sentence reading “And all its come is a scrum for commercial interests” should read “And all it’s come to is a scrum for commercial interests”.
51. On pages 486 and 487, the sentence reading “You know that’s about as far as they go sitting in these meetings that we’ve had with them and we’re competing the farming interests and all that” should read “You know that’s about as far as they go sitting in these meetings that we’ve had with them and we’re competing with the farming interests and all that”.
52. On page 525, the sentence reading “Correct the recent duty consult cases emphasised that conclusion” should read “Correct the recent duty to consult cases emphasised that conclusion”.
53. On page 525, the sentence reading “So if a Canadian Government extinguished an aboriginal rights prior to that time there is no recourse for protection of that right”. Should read “So if a Canadian Government extinguished an aboriginal right prior to that time there is no recourse for protection of that right”.
54. On page 526, the sentence reading “And while section 35 protects existing rights, those rights are subject to what’s called justifiable infringement, correct, by a Government legislation or action, correct”, should read “And while

- section 35 protects existing rights, those rights are subject to what's called justifiable infringement, correct, by Government legislation or action, correct".
55. On page 526, the sentence reading "So, if prima face inference is that the paragraph" should read "So, "if prima face inference" – is that the paragraph".
  56. On page 527, the sentence reading "I think an aboriginal consultation" should read "I think on aboriginal consultation".
  57. On page 527, the sentence reading "And in that case ultimately the Court found that conservation objectors were justifiable infringements even of aboriginal subsistence fishing" should read "And in that case ultimately the Court found that conservation objectives were justifiable infringements even of aboriginal subsistence fishing".
  58. On page 527, the sentence reading "The general principles governing justification lay down in Sparrow and embellished by Gladstone operate with respect to infringements of aboriginal title" should read "The general principles governing justification laid down in *Sparrow* and embellished by *Gladstone* operate with respect to infringements of aboriginal title".
  59. On page 527, the sentence reading "Most of these objectives can be traced to the reconciliation of the prior occupation of North America by aboriginal peoples with the assertion of Crown sovereignty, which entails a recognition the..." should read "Most of these objectives can be traced to the reconciliation of the prior occupation of North America by aboriginal peoples with the assertion of Crown sovereignty, which entails a recognition of the..."
  60. On page 528, the sentence reading "...building of infrastructure and settlement of foreign populations to support those aims of the kinds of objectives that are consistent with this purpose..." should read "...building of infrastructure and settlement of foreign populations to support those aims are the kinds of objectives that are consistent with this purpose..."
  61. On page 528, the sentence reading "Forestry correct" should read "Forestry, correct".
  62. On page 528, "Coquitlam" should read "Tsilhqot'in".

63. On page 529, the paragraph reading “To justify overriding the aboriginal title holdings groups’ wishes on the basis of the broader public good, the Government must show (1), that it discharged its procedural duty to consult and accommodate. (2), that its actions were backed by a compelling and substantial objective. And (3), that the Government action is consistent with the Crown’s fiduciary obligation to the group” should read ““To justify overriding the aboriginal title holdings groups’ wishes on the basis of the broader public good, the Government must show (1), that it start its procedural duty to consult and accommodate. (2), that its actions were backed by a compelling and substantial objective. And (3), that the Government action is consistent with the Crown’s fiduciary obligation to the group””.
64. On page 530, “Coquitlam” should read “Tsilhqot’in”.
65. On page 531, every instance of “Coquitlam” should read “Tsilhqot’in”.
66. On page 532, the sentence reading “So there is still even on the unproven claim there is still a larger almost of consultation if it is a serious claim at the deeper end of the spectrum” should read “So there is still, even on the unproven claim, there is still a larger area of consultation if it is a serious claim at the deeper end of the spectrum”.
67. On page 534, “Coquitlam” should read “Tsilhqot’in”.
68. On page 535, “Coquitlam” should read “Tsilhqot’in”; “Takau River” should read “Taku River”.
69. On page 536, the sentence reading, “If you say the consultation policies themselves are – must simply be reasonably, I am not certain about that” should read “If you say the consultation policies themselves are – must simply be reasonable, I am not certain about that.”.
70. On page 537, the sentence reading “And there you suggested that in certain complex cases governments may wish to adopt partial dispute?” should read “And there you suggested that in certain complex cases governments may wish to adopt impartial dispute –”.

71. On page 537, the sentence reading “Resolution procedures” should read “– resolution procedures.”
72. On page 537, the sentence reading “And there’s also no requirement that governments fund the First Nations participation and consultations” should read “And there’s also no requirement that governments fund the First Nations participation in consultations”.
73. On page 537, the sentence reading “It is actually difficult to research ‘cos particular incident this wasn’t there, the prime focus of my affidavit is actually difficult to research how consultation is funded, because so few of the documents appear to be public” should read “It is actually difficult to research this particular incident ‘cos it wasn’t there, the prime focus of my affidavit is actually difficult to research – how consultation is funded – because so few of the documents appear to be public”.
74. On page 540, the sentence “– and the water reservation for it that’s affected under this Act, correct” should read “– and the water reservation for it that’s effected under this Act, correct”.
75. On page 541, the sentence “And subject to conformity with provincial –” should read “And subject to conformity with provincial requirements –”.
76. On page 542, every instance of “Tla’min” should read “Tla’amin”.
77. On page 542, the sentence reading “Now, as far as you’re aware, there is no co-management agreements in British Columbia” should read “Now, as far as you’re aware, there are no co-management agreements in British Columbia”.
78. On page 549, the sentence reading “And how it has I believe you refer to it as a first in time, first in right approach to such allegation” should read “And how it has I believe you refer to it as a first in time, first in right approach to such allocation”.
79. On page 549, the sentence reading “Which I believe here’s goal first, in first served” should read “Which I believed here’s called first in, first served”.

80. On page 549, the sentence which reads “Now these were part of negated settlements of land claims to a large extent” should read “Now these were part of negotiated settlements of land claims to a large extent”.
81. On page 553, the sentence which reads “So you looked the approved water management plan for the factors and considerations that must be considered” should read “So you looked to the approved water management plan for the factors and considerations that must be considered”.
82. On page 627, the sentence reading “...His Honour was asking hwo long it might take...” should read “...His Honour was asking how long it might take...”
83. On page 647, the sentence reading “You discuss various mechanisms at paragraph 21 of your evidence, am I right in thinking those mechanisms are mechanisms to give effect to the right to have to access and use resources” should read “You discuss various mechanisms at paragraph 21 of your evidence, am I right in thinking that those mechanisms are mechanisms to give effect to the right to have access to and use of resources”.
84. On page 652, in the sentence reading “It includes five right iwi without whom we could not have included our task”, the word “right” should be “river”.
85. On page 656, the sentence reading “..., if I purchases all the shares say in a river,...” should read “..., if I purchased all the shares say in a river,...”.
86. On page 657, the sentence reading “You may pollute the river and I don’t have any recourse in prevent, in any loss that you impose on me...” should read “You may pollute the river and I don’t have any recourse in preventing any loss that you impose on me...”
87. On page 658, the sentence reading “Yeah, okay so the externalities I was asked to deal with which to do with the fact that owning water” should read “Yeah, okay so the externalities I was asked to deal with which had to do with the fact that owning water”.
88. On page 660, the sentence reading “Is that a fair summation o that subparagraph” should read “Is that a fair summation of that subparagraph”.

89. On page 660, the sentence beginning “And it be” should read “And in (b)”.
90. On page 660, in the answer underneath the number 1610, all instances of “Invaluid” should read “Inuivialuit”.
91. On page 661, the text “electricity companies or transitioning” in the second to last question to Mr Kaine should read “electricity companies of transitioning”.
92. On page 724, the sentence reading “Now it’s correct isn't it that you are hapū representative on the Northern Regional Council Waitangi Water Catchment Group” should read “Now it’s correct isn't it that you are a hapū representative on the Northern Regional Council Waitangi Water Catchment Group”.

3 February 2017

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J R Gough / D A Ward  
Counsel for the Crown

**TO:** The Registrar, Waitangi Tribunal  
**AND TO:** Claimant Counsel