

IN THE WAITANGI TRIBUNAL

Wai 2358

CONCERNING

the Treaty of Waitangi Act 1975

AND

the National Freshwater and
Geothermal Resources Inquiry

**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER CONCERNING
ARRANGEMENTS FOR HEARINGS TWO AND THREE OF THE STAGE THREE
INQUIRY**

23 August 2024

Purpose

1. This memorandum-directions addresses planning for hearings two and three of stage three of the National Freshwater and Geothermal Resources Inquiry (Wai 2358) (the stage three inquiry).
2. An updated inquiry timetable is **attached as Appendix A**.

Arrangements for hearings two and three

Background

3. In my directions dated 17 July 2024, I instructed counsel for Te Kotahitanga o Ngāti Tūwharetoa (TKNT) to file submissions by 22 July 2024 on a revised proposal explored at the 8 July judicial conference that would see (Wai 2358, #2.6.107 at [27]):
 - (a) hearing two held in Tūrangi; and
 - (b) hearing three (currently scheduled as the Crown hearing) held at Wairakei.
4. I further noted the (Wai 2358, #2.6.107 at [30]–[34]):
 - (a) practical difficulties that would arise for the Tribunal in convening (as was originally suggested by counsel) a split venue hearing;
 - (b) Tribunal's preference that hearings occur from a single hearing venue for inquiry efficiency purposes; and
 - (c) the possibility that Ngāti Tūwharetoa may wish to fund hearing two (thereby negating the loss of a possible hearing day in the event the Tribunal were to convene hearing two across two venues).
5. I also addressed the prospect of a possible site visit and confirmed that the Tribunal was open to such an activity occurring as part of hearing two, provided that suitable transport arrangements could be made for Tribunal panel members and staff, and that unanticipated resourcing pressures did not arise as a consequence (Wai 2358, #2.6.197 at [33]).
6. Counsel were directed to file further submissions on these matters by way of their updating memorandum referred to at [3].
7. On 23 July 2024, Karen Feint KC and Hansaka Ranaweera filed as directed submissions in relation to the above on behalf of TKNT (Wai 2358, #3.2.607).

Venue arrangements

8. Counsel advise that Ngāti Tūwharetoa are grateful for consideration of both hearing weeks being in their rohe, and submit that Te Hikuwai hapū wish to present with their whanaunga in Te Mātāpuna as part of a Ngāti Tūwharetoa hearing in hearing two (Wai 2358, #3.2.607 at [2]–[3]).
9. Te Hikuwai hapū have also agreed to a single hearing venue for the week. Counsel are instructed to formally extend Ngāti Tūwharetoa's invitation to hold the hearing at Tāpeka Marae, in Waihi (Wai 2358, #3.2.607 at [3]–[4]).
10. On this basis, counsel apprehend there is no need to discuss further funding issues related to the venue (Wai 2358, #3.2.607 at [5]).

11. Counsel further advise that Ngāti Tūwharetoa are content that hearing three be held in Rotorua, and confirm their view that there is no need for hearing three to be held at Wairakei (Wai 2358, #3.2.607 at [3]).

Site visit

12. Counsel propose that the first four days of hearing two be held for hearing purposes, with the fifth day (i.e. Friday) reserved for a site visit to geothermal fields in the Taupō region (Wai 2358, #3.2.607 at [4]).

13. Counsel note that Te Hikuwai hapū consider it vital that the Tribunal visit their geothermal taonga in the region to 'witness firsthand the degradation of Te Ahi Tāmou at Wairakei-Tauhara' (Wai 2358, #3.2.607 at [4]).

14. Counsel advise that funding arrangements for the site visit are being discussed within Ngāti Tūwharetoa, and indicate they will update the Tribunal further once these discussions have taken place (Wai 2358, #3.2.607 at [5]).

Discussion

15. I thank Ngāti Tūwharetoa for their invitation and provisionally confirm Tāpeka Marae as the venue for hearing two, subject to the usual venue assessments which Tribunal staff will undertake shortly. I will advise final venue arrangements in due course.

16. I further indicate the Tribunal is amenable in principle to the proposed site visit as outlined by counsel, but consider that further information is needed in order to make an informed decision.

17. With this in mind, I direct counsel for TKNT to file a further memorandum by **5pm, Friday 30 August 2024** that provides:

(a) an itinerary of proposed site visit locations;

(b) submissions on how the proposed site visit will enhance the Tribunal's understanding of the stage three issues; and

(c) confirmation that the proposal has been raised with those counsel likely to participate in hearing two.

18. I note that resourcing and dates for hearing three have yet to be confirmed, and that the nature of this hearing (currently the Crown hearing) could be subject to change.

19. As parties will be aware, counsel have been directed to confer and file a joint memorandum addressing any further hearing requirements for stage three by 22 November 2024 (Wai 2358, #2.6.107 at [55]). I anticipate that Crown counsel will also address, by way of these submissions, the likely nature and timing of hearing three.

20. With this in mind, I indicate that it would also be helpful if counsel could include in their memorandum any related hearing three venue suggestions.

Hearing two evidence and coordination

Background

21. On 15 August 2024, I issued a decision declining a request for the Geothermal Resources (Ngāti Tūwharetoa and Ngā Hapū o Ngāti Tūwharetoa) (Wai 3381) claim to be

consolidated into this inquiry (Wai 2358, #2.6.108). TKNT remains an interested party to this inquiry.

Discussion

22. There have been 13 briefs of evidence filed by TKNT for the purposes of the stage three inquiry.
23. I note that Ms Feint indicated at the 8 July 2024 judicial conference that my decision (then pending) on the participation of Wai 3381 would likely inform whether all 13 briefs of evidence would need to be heard.
24. With this in mind, and given I have now issued my decision, it would be helpful for the updating memorandum specified at [17] to also clarify which briefs of evidence filed by TKNT are expected to be heard in the stage three inquiry.
25. Given current indications, I anticipate that counsel for TKNT will likely act as coordinating counsel for hearing two.
26. Counsel should indicate if this is not the case, and indicate any proposed alternative arrangements.

The Registrar is to send this direction to all those on the notification list for Wai 2358, the National Freshwater and Geothermal Resources inquiry.

DATED at Gisborne this 23rd day of August 2024



Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL