

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 FOLLOWING
HEARING ONE OF THE STAGE THREE INQUIRY**

30 September 2024

Purpose

1. This memorandum-directions addresses matters arising from hearing one of stage three of the National Freshwater and Geothermal Resources (Wai 2358) Inquiry (the stage three inquiry), which was held at the Tribunal's offices, in Wellington, from 9 to 11 September 2024. This memorandum includes arrangements for:
 - (a) documents requested over the course of the hearing;
 - (b) questions in writing from counsel and the panel; and
 - (c) the hearing of evidence arising from the adjournment of hearing one after 11 September 2024.
2. I also signal the Tribunal's intention to utilise evidence filed in previous Tribunal inquiries in our stage three report.
3. Tribunal questions in writing are **attached** as **Appendix A**, and an updated inquiry timetable is **attached** as **Appendix B**.

Supplementary filing

4. Several matters were raised at hearing which require further filing. Some of this has already been received, and I thank parties for their speed in providing the requested documentation. The following matters remain outstanding.
5. On Monday 9 September 2024, claimant counsel Victoria Tumai asked Dr Gregory Bignall (Wai 2358, #117) questions regarding the Ministry of Business, Innovation and Employment Crown mineral strategy. Hardcopies of the document were provided to the Tribunal panel, however an electronic copy should be filed on the Wai 2358 distribution list for the benefit of all parties.
6. On Tuesday 10 September 2024, Tribunal panel member Dr Grant Phillipson asked counsel for the New Zealand Māori Council (NZMC) to file all cases, court decisions and documents that were referred to by Professor David Percy KC in his brief of evidence (Wai 2358, #13) or cited during cross-examination. Counsel are to file this material in a document bundle that is paginated and has a corresponding index.
7. On Wednesday 11 September 2024, Crown counsel Grace Seeley requested that the Cultural Impact Assessments undertaken in 2007 and 2022 and referred to at [12(c)] by James Hill in his brief of evidence (Wai 2538, #116), be filed. I agree that this material would be helpful and accordingly direct counsel to file the assessments.
8. I later requested that counsel for the NZMC file a copy of the lease agreement for Wairakei Terraces referred to by Mr Hill in his presentation.
9. Panel member Ron Crosby also asked Mr Hill to file a copy of the decision of the Environment Court referred to by Mr Hill in his presentation.
10. Counsel are to file the requested material of Mr Hill in a document bundle that is paginated and has a corresponding index.
11. Dr Phillipson noted that supporting documents filed alongside Anna Kendall's brief of evidence (Wai 2358, #115) did not go up to the present day. He requested that counsel file any outstanding court minutes and documents. Counsel are to file this material.

12. Counsel for the above witnesses are directed to file the information and documents requested at [5] – [11] above by no later than **5 pm, Monday 14 October 2024**.

Questions in writing

13. On hearing day two, during cross-examination of Professor Percy, Ms Tumai referred to a bundle of cross-examination documents filed out of time (Wai 2358, #13(b)). Professor Percy indicated he had not been able to read the documents in full and would prefer to do so before answering. Ms Tumai agreed to put any relevant questions in writing.

14. On hearing day three, Crown counsel Tim Stephens KC requested that Anne Kendall explain what legislative reform would be required to address the concerns outlined at [27] of her brief of evidence (Wai 2358, #115), particularly as it relates to intellectual property and Crown funding. Ms Kendall indicated she would need to discuss this with the owners of the Kaiwha block. Mr Stephens sought leave to put this question to Ms Kendall in writing.

15. I now direct the above counsel to file their written questions by no later than **5 pm, Monday 14 October 2024**. Responses to these questions should be filed no later than **5 pm, Monday 28 October 2024**.

16. The Tribunal has further questions in writing for Dr Bignall, Professor Percy, and Brian Cox (Wai 2358, #D24, #16). These questions are **attached** as **Appendix A**. Counsel are directed to file answers to the Tribunal's questions by **5 pm, Monday 28 October 2024**.

Arrangements for hearing of outstanding evidence

17. On 10 September 2024, I informed parties that hearing one would be adjourned at the end of the next day, 11 September, so that I could attend a tangihanga.

18. I later indicated that, subject to resourcing, the Tribunal would reconvene on 5 and 6 November to hear the remaining witnesses of those scheduled to provide evidence in hearing one.

19. I subsequently held a judicial conference on 26 September to discuss forward-planning for hearing two of stage three of this inquiry, in light of Te Kotahitanga o Ngāti Tūwharetoa's withdrawal from this inquiry. At the judicial conference, there appeared to be support for the outstanding hearing one evidence to be merged into hearing two, scheduled for 9 – 13 December 2024.

20. Further directions in relation to the judicial conference will be issued in due course.

Evidence from previous inquiries

21. I now indicate to parties that the panel may use evidence filed on the records of inquiry in previous inquiries relevant to geothermal matters, namely the Ngawha geothermal resources (Wai 304), the Te Arawa representative geothermal resource claims (Wai 153), the Central North Island (Wai 1200) and the National Park (Wai 1130) inquiries for the purpose of our stage three report. Parties may also refer to that evidence in their submissions for this inquiry.

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

DATED at Ohakune this 30th day of September 2024

A handwritten signature in black ink, appearing to read 'W W Isaac', with a period at the end.

Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL