

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
FURTHER PLANNING FOR THE STAGE THREE INQUIRY**

9 October 2024

Purpose

1. This memorandum-directions addresses planning matters arising for stage three of the National Freshwater and Geothermal Resources Inquiry (Wai 2358) (the stage three inquiry) following the judicial conference held on 26 September 2024.
2. An updated stage three inquiry timetable is **attached** as **Appendix A**.

Procedural context to revised stage three inquiry planning

3. On 23 August 2024, I issued memorandum-directions concerning planning for hearings two and three of the stage three inquiry (Wai 2358, #2.6.110).
4. In regard to hearing two, I provisionally confirmed Tāpeka Marae in Waihi as the venue for hearing two (Wai 2358, #2.6.110 at [15]). I indicated that the Tribunal was amenable in principle to a proposed site visit but requested further information to inform a final decision. I directed counsel for interested party Te Kotahitanga o Ngāti Tūwharetoa (TKNT) Karen Feint KC and Hansaka Ranaweera to provide further information on a number of hearing planning matters by 30 August 2024 (Wai 2358, #2.6.110 at [17] and [24]).
5. On 30 August 2024, counsel for TKNT, sought an extension until 16 September 2024 to provide this further information (Wai 2358, #3.2.614). I granted this extension request via email from the Tribunal's Registrar on 2 September 2024.
6. On 17 September 2024, counsel for TKNT provided further information advising that Ngāti Tūwharetoa no longer wished to participate in the Wai 2358 inquiry (Wai 2358, #3.2.636).
7. In light of this TKNT update, I advised parties via email from the Tribunal's Registrar that a judicial conference would be held on 26 September 2024 to discuss forward-planning for stage three inquiry.
8. On 23 September 2024, I issued memorandum-directions confirming the judicial conference, and an agenda, which included the following matters (Wai 2358, #2.6.114 & #2.6.114(a)):
 - (a) planning for hearing two (9 to 13 December 2024) including evidence to be heard, venue, appointment of coordinating counsel and any other matters arising; and
 - (b) wider stage three inquiry planning including the extent of remaining stage three evidence, the likely nature and volume of claimant and interested party reply evidence, and any further Crown evidence.

Submissions received in advance of the judicial conference

Ngāti Tahu – Ngāti Whaoa iwi collective memorandum

9. On 25 September 2024, Paul Majurey, Tania Waikato and Tyler Paki submitted on behalf of several inquiry parties affiliated to the Ngāti Tahu – Ngāti Whaoa iwi collective (the parties) about presenting evidence in December 2024 (Wai 2358, #3.2.637).
10. Counsel submitted that the parties are able to present evidence during the December hearing week if required. This includes the brief of Wikitoria Hepi-Te Huia (Wai 2358, #12), as well as two further briefs of evidence in reply; one from Ngāti Tahu – Ngāti Whaoa Rūnanga Trust and one from Tauhara North No.2 Trust.
11. Counsel anticipate the hearing and cross-examination of this evidence will require one day of hearing time, and note the parties preference that this hearing be held in Rotorua.

12. Counsel also signal the parties intention to file a collective contemporary claim on 25 October 2024, and that they will seek priority for this claim.
13. Counsel further advised the parties intend to file a second tranche of evidence, which will include a brief of evidence for each geothermal taonga filed by the relevant kaitiaki providing evidence of the management of the resources and obstacles experienced due to the Crown's legislative intervention. There may also be some technical evidence filed on relevant scientific aspects of the resources.
14. Counsel said that parties will require a week of hearing time in 2025 and seek a timetabling order for the filing of additional evidence and a hearing week in 2025.

Taheke 8C & Adjoining Blocks Incorporation memorandum

15. On 25 September 2024 (also), Andrew Irwin filed submissions on behalf of the Taheke 8C & Adjoining Blocks Incorporation (Taheke 8C), which has interested party status (Wai 2358, #3.2.638).
16. Counsel advised that Taheke 8C intends to file two briefs of reply evidence, which may take up to two hours to present and question at hearing.
17. As Taheke 8C's perspective is similar to that of the Tauhara North No. 2 Trust, which has sought hearing time in December, Taheke 8C suggests that its evidence be heard at the same time. Depending on the hearing location, Taheke 8C will be ready to present in December.
18. Counsel indicate that Taheke 8C supports a December hearing being held in Rotorua.

Decisions on next steps

Hearing two planning

November hearing dates vacated

19. In my directions of 30 September 2024, I indicated that there was support at the judicial conference for outstanding hearing one evidence to be merged into hearing two (Wai 2358, #2.6.115 at [19]).
20. I agree that it will be more efficient to hear outstanding hearing one evidence in December alongside the other claimant and interested party evidence yet to be heard. I, therefore, now **vacate** the hearing scheduled for 5 to 6 November 2024 to hear material not able to be heard in hearing one. That evidence should now be heard in hearing two, scheduled for 9 to 13 December 2024.
21. For ease of reference, a list of evidence on the record of inquiry that has yet to be heard is attached as **Appendix B**.
22. I consider it necessary to confirm all hearing two arrangements as soon as possible, and therefore direct counsel to file a draft timetable by **5 pm, Monday 18 November 2024**.

Venue for hearing two

23. The two submissions received prior to the judicial conference suggested Rotorua as the location for hearing two, which counsel in the judicial conference supported. Annette Sykes indicated that venues at Whakarewarewa and Ihenga in Rotorua were being considered, and that she would work with Donna Hall to determine arrangements for the hearing.

24. I thank Ms Sykes for her helpful indications about potential venues in Rotorua and her and Ms Hall's offer to assist in coordinating hearing two.
25. As hearing two is fast approaching, I consider it essential that arrangements are confirmed as soon as possible. To that end, tribunal staff will liaise directly with Ms Sykes and Ms Hall on the hearing venue and begin making arrangements as soon as possible.
26. In the event that a venue in Rotorua cannot be secured, I confirm that the Tribunal's Offices are available, if required.

Wider stage three inquiry planning

Timetabling for specific geothermal claims

27. I indicated at the judicial conference that the Tribunal is considering how best to structure the inquiry following the potential withdrawal of TKNT evidence.
28. I acknowledged the indications from the Ngāti Tahu – Ngāti Whaoa iwi collective that they would be seeking to file a specific claim to be supported by specific geothermal evidence, and sought indications if other parties intended to file specific hapū or iwi claims in relation to their geothermal resources, for this inquiry.
29. In light of the indications advised at the conference, Mr Majurey suggested that counsel could co-ordinate and provide the Tribunal with a proposed timetable.
30. I indicated this would be helpful and proposed that if specific claims were filed in a timely manner, these might be heard as part of stage three. This would allow the Tribunal to consider all geothermal issues, both generic and specific, in a comprehensive manner. It would also enable a more timely, efficient, and effective inquiry into the relevant issues, since the evidence and submissions to be filed for the specific claims would for the most part be relevant to the current stage 3 issue questions. I confirmed that those filing specific claims would not need to seek priority, as this evidence would be heard alongside the other evidence from stage three.
31. To accommodate this, I suggested that an additional inquiry issue question or questions could be added to encompass specific iwi and hapū issues. This would need to be considered after claims are filed..
32. As agreed in the judicial conference, I confirm that Mr Majurey is to confer with inquiry parties and the Crown and file a suggested draft inquiry timetable that accommodates the proposed revised scope for stage three by **5 pm, Tuesday 15 October 2024**. Counsel should include agreed deadlines for the filing of any new or amended claims, and the filing of any additional claimant-specific evidence arising from these new and amended claims.

Inquiry scope and hearing requirements

33. As indicated above, I signalled at the judicial conference that the Tribunal proposed to add an additional question to the geothermal issue questions already confirmed, in light of the revised scope of inquiry for stage three, once all new or amended claims have been received.
34. I acknowledged at the judicial conference that an expansion of the stage three inquiry scope will result in further hearing time being required. Counsel are to address revised hearing estimates (and any related requirements) in their submission on a revised hearing three programme due 15 October 2024.



35. I, therefore, **vacate** the current filing date of 22 November 2024 for parties to advise any further stage three hearing requirements.
36. I remind parties that the Tribunal is currently resourced for one further hearing this financial year (1 July 2024 to 30 June 2025), which is currently allocated for hearing two, 9 to 13 December 2024. I indicated at the judicial conference that if parties were ready to proceed to hearing specific iwi and hapū claims in the current financial year, I was open to seeking resourcing for further hearings.

Arrangements for reply evidence

37. On 17 July 2024, I confirmed that claimant and interested party reply evidence was to be filed by 25 October 2025 (Wai 2358, #2.6.107).
38. Several counsel indicated in recent submissions an intention by claimants and interested parties to file reply evidence to existing Crown evidence, as well as claimant evidence presented at hearing one, which they would seek to be heard at hearing two.
39. Given the proposed expansion of the stage three inquiry scope, and the Crown's indications that further Crown evidence may be required, I consider it is no longer appropriate for reply evidence to be filed at this time. I therefore also **vacate** the current filing date of 25 October 2024 for the filing of reply evidence.
40. Counsel may also wish to address the timing and nature of any claimant and interested party reply evidence in the joint submissions due 15 October 2024.

Any further Crown evidence

41. The Crown also signalled it is still considering whether any further evidence will be needed, likely in early 2025. This submission was made independently of the inclusion of any specific claims in stage 3. Counsel also indicated the Crown's preference to present its evidence in a single block.
42. To assist with timetabling for this inquiry, it would be helpful if the Crown could provide an update on when any further evidence might be filed and its likely nature and extent, if feasible.

Crown update on resource management reforms

43. At the judicial conference, claimant and interested party counsel called for an update on the state of government reforms in the resource management space, including the proposed 'fast-track' approval process. Counsel for the Crown indicated that an update can be provided.
44. I direct the Crown to provide an update on the matters at [42] and [43], alongside timeframes for any expected reforms and resource management policy or legislative changes by **5 pm, Wednesday 23 October 2024**.
45. I also remind the Crown of my previous direction that the Crown is to file a memorandum as soon as possible regarding any significant policy or legislative developments should or as they transpire, and to do so on an ongoing basis (Wai 2358, #2.6.107 at [44]).

Proposed interim report

46. Noting that increasing the scope of the stage three inquiry would delay reporting, Ms Sykes raised the possibility of an interim report (at the judicial conference). Counsel

suggested that recommendations could be made on Crown policy frameworks in the interim to assist with resource management planning, with findings on the nature of prejudice suffered in the final report. Counsel submitted that otherwise there was a risk of recommendations coming too late, as the policy context develops.

47. There was a variety of submissions about an interim report being issued on resource management policy developments before proceeding to hapū and iwi evidence.
48. The Tribunal's preference is that the report should be based on the most up to date evidence available, however as noted at conference, the Tribunal will await for Mr Majurey's submission on the future programme before making any decision on an interim report.

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 Whakatāne this 9th day of October 2024



Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL