

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3550

Wai 2358

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā
AND

te Economic Development
Kaupapa Inquiry

Ā
AND

te National Freshwater and
Geothermal Resources Inquiry

**HE PĀNUI WHAKAHAU O KAIWHAKAWĀ WILLIAMS RĀUA KO
KAIWHAKAWĀ ISAAC**

*MEMORANDUM-DIRECTIONS OF JUDGE WILLIAMS AND JUDGE ISAAC CONFIRMING
A JOINT SITTING*

2 Hakihea 2024

Background

1. On 12 November 2024, the Economic Development Kaupapa (Wai 3550) Inquiry (Economic Inquiry) and National Freshwater and Geothermal Resources (Wai 2358) Inquiry (Freshwater Inquiry) issued a joint memorandum-directions that proposed the Economic Inquiry panel sit jointly alongside the Freshwater panel for one day of hearing two of stage three of the Freshwater Inquiry in December 2024 (Freshwater hearing two) (Wai 3350, #2.5.3 & Wai 2358 #2.6.119).
2. On 15 November 2024, we convened a joint judicial conference to discuss the proposal with parties, and to hear submissions on:
 - (a) the nature and subject of evidence being heard at Freshwater hearing two;
 - (b) the views on the proposal of those Freshwater Inquiry parties who are presenting evidence at Freshwater hearing two; and
 - (c) any practical considerations relating to the Economic Development panel hearing the Freshwater hearing two evidence.

Draft Freshwater hearing two timetable

3. On 14 and 15 November 2024, in the lead up to the judicial conference, co-ordinating counsel for Freshwater hearing two, Donna Hall, filed four draft timetables for the upcoming hearing.
4. The final of these draft timetables filed was drafted to ensure that the most relevant economic evidence was presented on Wednesday 11 December 2024 (the day proposed by co-ordinating counsel for the joint sitting to take place) (Wai 2358, #3.2.659(a)).
5. Co-ordinating counsel noted that the availability of the witnesses proposed to appear on this day was subject to confirmation.

Submissions at judicial conference

6. There was broad support from counsel at the judicial conference for the proposal of a joint hearing, with a few exceptions where counsel sought clarity or raised specific objections, as outlined below.
7. Paul Harman questioned the jurisdiction of the Tribunal to hold a joint sitting. He noted that tribunals have the ability to examine transcripts of other inquiries but submitted that having two Tribunals test the same evidence could open prospective findings up to judicial review.
8. Donna Hall sought confirmation that the scope of the Freshwater Inquiry to inquire into the "ownership" of geothermal resources would be unaffected by the joint sitting.
9. Stephanie Roughton raised objections on the grounds that the issues for the Economic Inquiry have not yet been confirmed. Without this scoping exercise having been

completed, counsel submitted that it was not clear what evidence will be relevant to the Economic Inquiry.

10. Crown counsel Tim Stephens KC raised no objections to the prospective joint sitting but noted it was unusual for the Tribunal to hear evidence before inquiry scope has been confirmed. Counsel also considered it unclear how the evidence presented during the joint sitting would be subsequently used by the Economic Inquiry panel.
11. Jacki Cole raised concerns that the late notice of the joint sitting meant that counsel had not been able to prepare evidence with issues of economic development in mind. She expressed that counsel would have liked the opportunity to do so, if more time had been permitted.
12. These issues were addressed in the course of the conference.

Decision

13. The Economic Inquiry panel is only available to sit for one day during Freshwater hearing two.
14. In accordance with the reasons and further clarification outlined below, we confirm the Economic Inquiry panel will sit jointly with the Freshwater Inquiry panel on **Wednesday, 11 December 2024**.
15. For logistical reasons, we indicate the Economic Inquiry panel will join the hearing via audio-visual link (AVL).

Jurisdiction to hold a joint sitting

16. We are satisfied that the Tribunal has the jurisdiction to hold a joint sitting as proposed as per Clause 5(9) of Schedule 2 of the Treaty of Waitangi Act 1975 (the Act) which provides that the Tribunal 'may regulate its procedure in such manner as it thinks fit'.
17. Further, clause 6(1) of the second schedule of the Act states the Tribunal may receive as evidence any information or matter which may assist it to deal effectually with the matters before it, whether it would be legally admissible evidence.
18. These clauses operate to empower the Tribunal with the jurisdiction to undertake a sitting such as that proposed.
19. Further, we note the Tribunal has held joint sittings in the past for its district and remedies inquiries which have operated to meet the interests of both inquiries whilst also avoiding duplication of effort and resources.¹

Scope of Freshwater inquiry

¹ Whanganui (Wai 903) and National Park (Wai 1130) District Inquiries (2006); *Taihape: Rangitikei ki Rangipō* (Wai 2180) and *Porirua ki Manawatū* (Wai 2200) District Inquiries (2017); *Mangatū Forest* (Wai 814) and *Wairarapa ki Tatarua* (Wai 863) Remedies Inquiries (2019).

20. In response to [8] above, we confirm the Freshwater Inquiry will inquire into issues relating to Māori rights and interests in geothermal resources, as is reflected in the stage three issue questions (Wai 2358, #2.6.96 at [10]). We confirm this scope remains unaffected by the joint sitting. It is not proposed these issues form part of the scope of the Economic Development Inquiry.
21. Any other issues of overlapping concern highlighted by the joint hearing will be confirmed by subsequent directions, if considered necessary by the two inquiry panels.

Purpose of the joint sitting

22. As indicated by Judge Isaac at the judicial conference, the December hearing is principally a Freshwater Inquiry hearing. The primary purpose of the evidence being presented on Wednesday is for consideration by Freshwater Inquiry panel and counsel should proceed on this basis in terms of both evidence and witness preparation. Counsel and witnesses are not expected to amend their approach to evidence in order to cater for the attendance of the Economic Inquiry panel. Parties who wish to do so will have an opportunity to present evidence relating to economic issues in the future.
23. The purpose of the Economic and Freshwater Inquiry panels sitting jointly is:
- (a) to where possible, avoid duplication of evidence and hearing time; and
 - (b) to help the Economic Inquiry panel understand the extent of coverage of economic development issues in the Freshwater evidence and how this might inform the scoping of issues to be considered in the Economic inquiry.
24. In terms of the latter point, we note the Economic Inquiry has confirmed its preliminary scope along with a list of existing claims that contain allegations relating to that scope. A series of initial interlocutory steps have been proposed. This includes working with these claimants to further refine the scope of that inquiry (Wai 3550, #2.5.2). As noted at the judicial conference, this joint sitting is, in part, intended to form part of this exercise to refine the scope of the Economic Development inquiry.

Economic Development Inquiry's approach to Freshwater evidence

25. To avoid disruption of the hearing timetable, it is not intended that the Economic Inquiry panel will question any of the witnesses during the joint sitting.
26. However, following the confirmation of the refined scope of the Economic Inquiry, the Economic panel:
- (a) May identify specific evidence presented during the joint sitting and the extent to which it relates to the confirmed scope of the Economic Inquiry.
 - (b) May provide written questions to those relevant witnesses to the extent that evidence relates to the confirmed scope of the Economic Inquiry.
 - (c) Will allow an opportunity for Freshwater participants to file amended statements of claim and evidence in the Economic Inquiry in light of the confirmed scope. Any further evidence may build upon evidence presented at the joint sitting.

27. Crown and claimant counsel will also be provided an opportunity to provide written questions to relevant witnesses to the extent their evidence relates to the confirmed scope of the Economic inquiry.

The Registrar is to send a copy of this direction to all those on the distribution list for Wai 3550, the Economic Development Kaupapa Inquiry, and Wai 2358, the National Freshwater and Geothermal Resources Inquiry.

WHAKAPŪMAUTIA ki Tāmaki Makaurau me Tairāwhiti i te 2 o te Hakihea te tau 2024.



Kaiwhakawā Williams
Tumuaki Pakirehua



Kaiwhakawā W W Isaac
Tumuaki Pakirehua

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