TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 2358

E PĀ ANA KI te Treaty of Waitangi Act 1975
CONCERNING

Ā, te National Freshwater and
AND Geothermal Resources Inquiry

HE PĀNUI WHAKAHAU A TE MANA WHAKAHAERE

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER ADDRESSING HEARING THREE PLANNING AND OTHER MATTERS ARISING

23 Pipiri 2025

Purpose

1. This memorandum-directions:

    (a) responds to counsel's revised assessment of hearing requirements for stage three of the National Freshwater and Geothermal Resources (Wai 2358) inquiry;

    (b) records various extensions confirmed via e-mail correspondence from the Waitangi Tribunal's Registrar; and

    (c) responds to the Crown's update on pending policy and legislative reforms.

Stage three hearing requirements

Background

2. In my memorandum-directions of 4 November 2024, I directed counsel to file any hapū or iwi claims relating to geothermal areas and resources by 6 December 2024. I further directed parties to file any evidence in support of these claims by 28 March 2025 (Wai 2358, #2.6.118 at [26]).

3. In my subsequent memorandum-directions of 21 March 2025, following initial planning submissions, I directed counsel representing specific geothermal claims to further confer and file by 11 April 2025 a joint memorandum that provides a revised assessment of stage three hearing requirements and related arrangements in light of the evidence filed (Wai 2358, #2.6.129 at [31]).

4. I also indicated that counsel should take into account the following planning considerations (Wai 2358, #2.6.129 at [32]):

    (a) In light of potential resource constraints for the 2025/2026 financial year, and in order to conclude stage three as expeditiously as possible, I requested that counsel consider ways to confine the hearing of claim-specific evidence within a single hearing week.

    (b) I confirmed that any generic evidence that was scheduled for previous stage three hearings but was not heard due to a lack of witness availability would now be taken as read. I also confirmed, however, that counsel should accommodate for the hearing of any remaining generic evidence that has not yet been otherwise scheduled.

    (c) I indicated the Tribunal's strong preference that the hearing of any reply evidence follow the Crown hearing (which we anticipated, I advised, to be hearing four) rather than be accommodated within hearing three.

    (d) I confirmed the Tribunal was amendable to a site visit conducted as part of hearing three, subject to the usual requirements set out in the *Guide to Practice and Procedure,* and on the basis that any proposed site visit was confined to no more than half a day in duration.

5. On 15 April 2025, I issued memorandum-directions in response to various extension requests received for the late filing of evidence and confirmed that counsel should now file by respectively 28 April and 12 May 2025 (Wai 2358, #2.6.131 at [25]):

    (a) any remaining claim specific evidence, or any remaining interested party evidence; and

(b) the revised assessment of stage three hearing requirements and related arrangements.

6. On 23 and 29 April 2025, the Tribunal received further extensions from parties seeking leave to file both remaining specific claim evidence, and remaining interested party evidence, from:

   (a) John Kahukiwa and Gabriella Brayne, counsel for the Whakarewarewa Geothermal Valley and State Forest (Wai 533) claim, seeking to file evidence by 9 May 2025 (Wai 2358, #3.2.711);

   (b) Bryce Lyall, Maithili Sreen, and Hannah Swedlund, counsel for the Wai 2358 'sixth claimants' and the Te Atatu Lands (Auckland) (Wai 914) claim, seeking to file evidence by 2 May 2025 (Wai 2358, #3.2.712); and

   (c) Tara Hauraki, Tyler Paki, and Rhianna Morar, counsel for Tūaropaki Trust, seeking to file evidence by 9 May 2025 (Wai 2358, #3.2.713).

7. The Tribunal also received a memorandum from Donna Hall, counsel for the New Zealand Māori Council (NZMC) claimants, seeking an extension to file a brief of evidence of Tori Rotarangi by 9 May 2025 (Wai 2358, #3.2.716).

8. On 29 April 2025, I confirmed via an e-mail from the Registrar that:

   (a) any remaining claim specific, or interested party evidence, should be filed by 9 May 2025;

   (b) any evidence filed after this date would be added to the Wai 2358 Record of Inquiry but would not be heard in this inquiry; and

   (c) counsel representing specific claims should now confer and file the joint memorandum advising the revised assessment of stage three hearing requirements and related arrangements by 23 May 2025.

Submissions received

Joint submissions

9. On 23 May 2025, the Tribunal received as directed a joint memorandum from counsel Tania Waikato, Victoria Tumai, Paul Majurey, Andrew Irwin and Tara Hauraki, on behalf of (Wai 2358, #3.2.725):

   (a) the Ngāi Tahu settlement (Waitaha ki te Waipounamu) (Wai 2460) claim;

   (b) the Ngāti Tahu – Ngāi Whāoa and Tauhara North (Wai 3444) claim;

   (c) the Proprietors of Taheke 8C & Adjoining Blocks Incorporation (Taheke 8C); and

   (d) Tūaropaki Trust.

10. Counsel additionally filed a draft timetable reflecting feedback from counsel representing specific geothermal claims who have filed evidence, and parties with generic geothermal evidence yet to be heard in stage three (Wai 2358, #3.2.725(a)).

11. Counsel propose that hearing three be convened at Wairakei Resort, Taupō, in the week of 8 September 2025. They further propose that Tamaki Legal and Holm Majurey act as coordinating counsel for the hearing.

12. The draft timetable reserves Tuesday afternoon for proposed site visits to Orakei Korako, Waiotapu, Ohaaki, and one of the geothermal power stations. Counsel advise they will file a more detailed site visit proposal, in compliance with Appendix D of the *Guide to Practice and Procedure,* once relevant details are finalised.

13. Counsel acknowledge that the draft timetable does not currently include time estimations for Crown cross-examination or Tribunal questions.

14. Counsel accordingly seek leave to file a further draft timetable for the Tribunal's consideration, once these matters are finalised, at the end of June 2025.

Woodward Law submissions

15. On 23 May 2025, the Tribunal also received a memorandum from Ms Hall and Kieran Hewett, on behalf of the NZMC claimants (Wai 2358, #3.2.726).

16. Counsel seek a different approach to the operation of hearing three to that set out in the joint memorandum, and accordingly filed an alternative proposed timetable for the Tribunal's consideration (Wai 2358, #3.2.726(a)).

17. This timetable appears to be broadly similar to the joint draft timetable, with the exception of minor timing differences and some additional cross-examination indications provided.

18. Counsel provides no further submissions on the suggested operations of hearing three, or regarding the remainder of the stage three inquiry.

Decision

19. I thank counsel for their planning submissions. These largely address the resourcing considerations raised in my directions of 21 March 2025 and confirms that remaining claimant and interested party evidence, including evidence filed in support of specific geothermal claims, will be heard within a single hearing week.

20. On this basis, I confirm that I do not see a need to convene a judicial conference to hear further submissions from parties.

21. I accordingly adopt the joint timetable filed by counsel at [10] above with the following additional commentary and directions. An updated stage three inquiry timetable, now with relevant milestones leading to hearing three, is **attached** as **Appendix A**.

Coordinating counsel for hearing three

22. As noted above, the joint memorandum of 23 May 2025 proposes that Tamaki Legal and Holm Majurey act as coordinating counsel for hearing three (Wai 2358, #3.2.725 at [11]).

23. I thank counsel for assuming this role, which is duly confirmed.

Hearing three timing and venue arrangements

24. I advise parties that the panel is unfortunately unavailable to sit in the proposed week of 8 September 2025.

25. I accordingly confirm that hearing three will be held in the week of **15 September 2025.**

26. I also confirm Wairakei Resort, Taupō as the venue hearing three. Tribunal staff will undertake necessary venue enquiries and assessments shortly.

27. I will issue further memorandum-directions on these matters in due course.

Further timetable proposed

28. I agree with counsel that an updated hearing timetable will be helpful for forward planning purposes. Counsel are therefore directed to file an updated draft timetable for the week of 15 September 2025 by no later than **5 pm, Monday 30 June 2025**.

29. Counsel should also supply by the same date an update on the half-day site visit they propose be conducted as part of hearing three, in compliance with the Tribunal's *Guide to Practice and Procedure.*

30. In accordance with my previous directions, counsel should ensure that all available hearing time is appropriately used and accounted for. Counsel should also include a finalised list of witnesses who will appear at the hearing and their proposed order of appearance (Wai 2358, #2.6.109 at [14]).

31. I remind parties that any generic evidence that was scheduled for previous hearings but was unable to be heard due to lack of witness availability is to be taken as read (Wai 2358, #2.6.129 at [32(b)]).

Arrangements for opening submissions

32. Parties will note that the updated inquiry timetable provides a filing date for parties to file any opening submissions in instances where they have not already been filed and otherwise presented at our previous stage three hearings.

33. Other parties, such as the NZMC claimants, who have filed further evidence to be heard in hearing three (Wai 2358, #I67, #I67(a) & #I69) may wish to provide a brief opening statement prior to the presentation of their further evidence, if they consider this will assist the Tribunal and parties at the hearing.

Other matters arising

Responses to Crown questions

34. In my memorandum-directions of 15 April 2025, I confirmed that (among other matters) any outstanding responses to written cross-examination questions for hearing two witnesses should be filed by 28 April 2025 (Wai 2358, #2.6.131).

35. On 28 April 2025, the Tribunal received an extension request from Janet Mason, counsel for the Water and Geothermal Bodies (Tai Tokerau) (Wai 2601) claimants and others, seeking leave to file outstanding responses to Crown hearing two cross-examination questions by 9 May 2025 (Wai 2358, #3.2.715).

36. On 29 April 2025, I granted the leave sought via e-mail from the Registrar and confirmed that any outstanding responses must now be filed by 9 May 2025.

37. I confirm this outstanding material has now been received.

Crown update on reforms

Memorandum from the Crown

38. On 9 May 2025, the Tribunal received a memorandum from counsel for the Crown providing (Wai 2358, #3.2.723):

    (a) an update on the Crown's supercritical geothermal energy project;

    (b) an update on the development of a Crown Geothermal Strategy;

(c) an update on ongoing Crown resource management reforms; and

(d) an indication that the Crown will, in 'due course', seek to file updated evidence in this inquiry on these matters.

Supercritical Geothermal Energy Project

39. Counsel note the Minster for Regional Development, Minister for Resources, and Associate Minister for Energy, the Hon. Shane Jones, held a hui with mana whenua and landowners in the Taupō Volcanic Zone in March 2025 to provide an overview of the Government's supercritical geothermal energy project and its significance to New Zealand and the energy sector and economy (Wai 2358, #3.2.723 at [2]).

40. Counsel advise the supercritical geothermal well depth would be greater than conventional geothermal wells currently used for electricity generation and submit that wells at this new depth are 'expected to be much hotter and provide up to three times more energy' (Wai 2358, #3.2.723 at [3]).

41. Counsel advise that the project, which is led by the Ministry for Business, Innovation and Employment (MBIE) in collaboration with GNS Science, aims for the 'technology to be deployable by 2035-2040, with a wider rollout between 2040-2050' (Wai 2358, #3.2.723 at [4]).

42. Counsel advise the project responds to the expected increase in demand for electricity in the medium term due to 'increased electrification in the economy and economic growth' (Wai 2358, #3.2.723 at [5]).

Crown Geothermal Strategy

43. Counsel state that, following the above, Minister Jones released a public statement announcing his intention to develop a Geothermal Strategy (the Strategy) in order, counsel state, to 'realise the potential of New Zealand's geothermal resources' (Wai 2358, #3.2.723 at [6]).

44. Counsel advise that Minister Jones has indicated 'Māori experience and expertise in relation to geothermal resources will be a critical part of developing the Strategy'. MBIE is currently in the early stages of engagement with Māori (Wai 2358, #3.2.723 at [8]).

45. Counsel state that the Crown intends to release a draft Geothermal Strategy for public consultation in mid-2025, with a final Strategy to be released 'by the end of 2025' (Wai 2358, #3.2.723 at [9]).

Resource management reforms

46. Counsel for the Crown also provide a further update on the Government's current three phase resource management reforms.

47. Counsel state that phase two provides for the reform of New Zealand's existing resource management systems and includes:

(a) the Fast-track Approvals Act 2024; and

(b) targeted amendments to the Resource Management Act 1991 (the RMA).

48. Counsel note that the Government announced the form of the system intended to replace the RMA in March 2025. Counsel appends the relevant Cabinet paper and Minute from the 24 March 2025 Cabinet meeting. This confirms the Crown's approach for developing

new legislation and is to be undertaken as phase three of the Crown's RMA reforms (Wai 2358, #J12).

49. The Crown advise work is being undertaken 'on the approach to a Treaty of Waitangi clause in the new system' and state that 'Cabinet has agreed that upholding Treaty settlements and related agreements is a principle of the RMA reform' (Wai 2328, #3.2.723 at [24] and [26]).

Further Crown evidence

50. Counsel state the Crown will, in 'due course', file updated evidence in this inquiry on the Crown's 'Geothermal Strategy and related matters', along with (as previously indicated) the Crown's resource management reforms (Wai 2358, #3.2.723 at [27]).

51. No specific (or indicative) date for the filing of this material is provided.

Next steps

52. The Crown's update is noted.

53. As previously signalled, the Tribunal currently anticipates that the Crown hearing for the stage three inquiry will be hearing four (Wai 2358, #2.6.129 at [32(c)]).

54. I now indicate to parties that Tribunal staff will shortly assess panel availability for a prospective hearing date in or around February 2026. This timing has been selected to provide sufficient preparation time for the Tribunal and parties between hearings three and four.

55. With this in mind, and to ensure effective forward hearing planning, I direct the Crown to file a further update regarding the likely timing of its updated evidence as soon as possible, and by no later than **5 pm, Friday 1 August 2025**.

56. I note the timing of the Crown's further evidence may inform adjustments to any remaining stage three inquiry milestones, such as the filing of reply evidence, which is currently set down for 29 August 2025 (Wai 2358, #2.6.131(a)).

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 2358, the National Freshwater and Geothermal Resources Inquiry.

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

WHAKAPŪMAUTIA ki Tairāwhiti i te 23 o te Pipiri 2025

Kaiwhakawā W W Isaac
Te Mana Whakahaere
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI