IN THE WAITANGI TRIBUNAL

Wai 2358

CONCERNING the Treaty of Waitangi Act 1975

AND the National Freshwater and Geothermal Resources Inquiry

MEMORANDUM-DIRECTIONS OF PRESIDING OFFICER W W ISAAC REGARDING ISSUE QUESTIONS FOR STAGE THREE

18 October 2023

Purpose

1. This memorandum-directions:

    (a) proposes changes to the Tribunal's issue questions for stage three of the National Freshwater and Geothermal Resources inquiry (Wai 2358);

    (b) confirms the date for hearing one of the stage three inquiry; and

    (c) seeks parties' feedback on a potential location for hearing one.

Background

2. In my memorandum-directions of 24 June 2021, I suggested the following issue questions for the stage three inquiry (Wai 2358, #2.6.93 at [48]):

    (a) Issue question 1: What Māori rights and interests in geothermal resources are guaranteed and protected by the Treaty of Waitangi?

    (b) Issue question 2: Is the current law in respect of geothermal resources consistent with the principles of the Treaty of Waitangi?

    (c) Issue question 3: If the current law in respect of geothermal resources is not consistent with Treaty principles, what recommendations should be made for the reform of the Resource Management Act 1991? What other recommendations (if any) should be made?

3. Planning for stage three was deferred as a result of the discrete priority inquiry, held as part of these proceedings, into representation on planning committees established under the (then proposed) Natural and Built Environments Bill (NBA) (Wai 2358, #2.6.83 at [31]). On 3 April 2023, following completion of the priority inquiry, I directed parties to file submissions on stage three inquiry planning, including a proposed timetable towards hearing, by 5 May 2023 (Wai 2358, #2.6.92 at [7]).

4. On 5 May 2023, Matthew Smith filed a memorandum on behalf of the New Zealand Māori Council (NZMC), in response to my directions at [3]. This memorandum was supported by a number of parties, including the Crown (Wai 2358, #3.2.509 at [4]). Mr Smith proposed a timetable for the stage three inquiry, and submitted that hearings for the stage three inquiry should be held in April or May 2024, as the NBA and the Spatial Planning Bill (SPA) – which will repeal the Resource Management Act 1991 (RMA) – will be in force by this time. Counsel further submitted that delaying the stage three hearings would allow the Tribunal to hear evidence, and make findings and recommendations, on the implementation of the relevant legislation and policy (Wai 2358, #3.2.509 at [1.1]) (Wai 2358, #3.2.509 at [2]).

5. On 8 May 2023, Jamie Ferguson filed a memorandum on behalf of the Freshwater Iwi Leaders Group (ILG), in response to my directions at [3]. Counsel submitted that, in light of the prospective enactment of the NBA and SPA, a hearing in, or subsequent to, mid-2024 was most realistic (Wai 2358, #3.2.514 at [7] – [8]). Counsel further submitted that, once the new legislation was enacted, provision should be made for reframing inquiry questions two and three (at [2(b) – (c)] above) (Wai 2358, #3.2.514 at [4] – [6]).

6. I confirmed the timetable for the stage three inquiry in my memorandum-directions of 6 September 2023, and signalled that a hearing would be held in June 2024 (Wai 2358, #2.6.93 at [17]).

Stage three inquiry issue questions

7. In their memoranda at [4] and [5] above, both Messrs Smith and Ferguson referenced the impending enactment of the NBA and SPA, designed to replace the RMA. Mr Ferguson also noted the potential need to reframe the stage three issue questions, in light of these legislative changes.

8. Since the filing of these memoranda, the NBA and SPA have now been enacted. As a result of the new legislation, and the submissions of Mr Ferguson at [5], I now propose two options for reframing the stage three issue questions. That is, either to:

   (a) remove reference to the RMA and reframe the questions to refer to the current legislation (NBA and SPA); or

   (b) remove any mention of specific pieces of legislation, and instead refer simply to 'the current law'.

9. I direct parties to file submissions on reframing the stage three issues questions, including their views on the two options proposed at [8], by **5pm, Wednesday 8 November 2023**.

Hearing one, June 2024

10. In my directions at [6] above, I confirmed that a hearing for the stage three inquiry would be held in June 2024. I now confirm the dates for hearing one are **17 – 21 June 2024.**

11. The Tribunal's preference is for hearing one to be held in either Wellington, Taupō, or Rotorua. In light of this, I direct parties to provide feedback on the proposed location for hearing one by **5pm, Wednesday 8 November 2023**.

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

DATED at Gisborne this 18th day of October 2023.

W W Isaac
Presiding Officer
WAITANGI TRIBUNAL