

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 2358

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

te National Freshwater and
Geothermal Resources Inquiry

HE PĀNUI WHAKAHAU A TE MANA WHAKAHAERE

*MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER CONFIRMING
COMMISSIONED RESEARCH FOR STAGE THREE*

25 Whiringa-ā-rangi 2025

Purpose

1. This memorandum-directions confirms the Tribunal's intention to commission a targeted research report on Māori participation in geothermal resource management under the Resource Management Act 1991 (RMA) for stage three of the National Freshwater and Geothermal Resources (Wai 2358) Inquiry (the stage three inquiry).
2. I also further address revised arrangements for stage three reply evidence.

Commissioned evidence

Background

3. On 10 July 2025, I issued a memorandum-directions indicating that the Tribunal had identified a gap in the evidential coverage for stage three (Wai 2358, #2.6.134). I advised that (Wai 2358, #2.6.134 at [2]–[3]):
 - (a) the gap relates to geothermal resource management under the RMA and details of Māori participation and decision-making; and
 - (b) the Tribunal consequently proposes to commission a targeted research report to address the evidential gap before us.
4. In terms of approach, I explained that (Wai 2358, #2.6.134 at [3]–[4]):
 - (a) the report would focus on regions where geothermal resources are primarily located;
 - (b) the report would be completed over a twelve-month period;
 - (c) the research would take part in consultation hui with claimants, interested parties, and the Crown, and take into account any relevant information that parties wish to make available; and
 - (d) the final report would be examined and tested at a future hearing in the usual way.
5. I acknowledged that the proposed research report, occurring as it would part-way through our stage three hearing phase, could not be filed before the (then) filing date for reply evidence (17 October 2025), nor before what was then assumed to be the timing of the Crown hearing (February 2026) (Wai 2358, #2.6.134 at [5]).
6. I therefore confirmed that (Wai 2358, #2.6.134 at [6]):
 - (a) inquiry parties would have the opportunity to cross-examine the report at hearing and make use of the report in closing submissions; and
 - (b) adequate time would be allowed for this purpose in the stage three inquiry timetable.
7. I indicated that I considered it desirable to confer with inquiry parties regarding the proposed research, as well as how such research might be best accommodated within the stage three inquiry timeframes (Wai 2358, #2.6.134 at [7]).
8. I therefore confirmed (Wai 2358, #2.6.134 at [8] and [10]):
 - (a) the Tribunal would convene a judicial conference, via AVL, on 18 August 2025, to discuss the proposal; and
 - (b) parties should file any written submissions, in advance of the 18 August 2025 judicial conference, by 6 August 2025.

9. The Tribunal received a total of five written submissions from counsel for the claimants and interested parties. The Tribunal also received submissions from counsel for the Crown.
10. A high-level summary of these submissions is **attached as Appendix A**.
11. In general, the inquiry parties:
 - (a) were supportive of the proposed research;
 - (b) expressed a range of views regarding research timeframes; and
 - (c) indicated they wished to participate actively in the envisaged research programme, once initiated.
12. I further explored this matter (among others) with parties at the 18 August 2025 judicial conference.
13. The oral submissions made by parties at the judicial conference largely reflected those outlined in writing. There was, however, interest expressed in supplying further feedback regarding the possible parameters for the research, in the form of proposed issue questions for consideration in the potential commission, in further submissions to be filed following the judicial conference.
14. I therefore confirmed, via an e-mail from the Registrar, that the claimants should further confer and file by 8 September 2025, a joint memorandum that advises any proposed issue questions, to be considered for the planned Tribunal-commissioned research.
15. I indicated the Tribunal panel would then confer and advise our determination following the receipt of these submissions.

Submissions received

Joint memorandum dated 8 September 2025

16. On 8 September 2025, the Tribunal received as directed a joint memorandum from Donna Hall and Bryn Singers, for the New Zealand Māori Council (Wai 2358), Ngāi Tahu Settlement (Waitaha ki te Waipounamu) (Wai 2460), and Ngāti Tahu–Ngāti Whāoa and Tauhara North (Wai 3444) claimants (Wai 2358, #3.2.766 & #3.2.766(a)).
17. The New Zealand Māori Council (NZMC) claimants advised they would be assisted if the proposed research could ‘identify and discuss considerations relevant to, and a potential process for how to resolve disputes in respect of, overlapping claims to geothermal resources’ (Wai 2358, #3.2.766 at [3]).
18. Counsel submit this should include but not be limited to joint claims and multiple interest claims in the same geothermal resources (Wai 2358, #3.2.766 at [3]).
19. The NZMC envisages such a process should assess the extent to which (if any) the RMA consenting rules, regional planning rules and consent practices (including Māori participation and decision-making) ‘address the matters’ (Wai 2358, #3.2.766 at [4]).
20. The Wai 2460 and Wai 3444 claimants proposed the following specific issue questions (Wai 2358, #3.2.766 at [5]–[7]):
 - (a) What are the proposed changes to the RMA that are likely to affect the management of geothermal resources and te Tiriti principles’ current provisions?

(b) With reference to the expert planning evidence of Deborah Kissick (Wai 2358, #175 & #181), how are the proposed changes to the RMA likely to affect the conclusions and recommendations set out in Ms Kissick's evidence, and in the evidence filed in the stage three inquiry, regarding the lack of consistency of the current geothermal resources law with te Tiriti principles?

(c) What are the relevant objectives, policies, rules and methods in the relevant planning documents for geothermal resources in the Bay of Plenty region? To what extent are these planning documents consistent, if at all, with te Tiriti principles?

21. Counsel concluded by requesting that other participating counsel be allowed to file separate submissions to the above, owing to the 'limited circulation time' available in preparing the joint memorandum (Wai 2358, #3.2.766 at [8]).

22. I accordingly confirmed, via an e-mail from the Registrar, that any further submissions should be filed by 12 September 2025.

Memorandum from the Whakarewarewa Geothermal Valley and State Forest (Wai 533) claim

23. On 15 September 2025, the Tribunal received a memorandum from John Kahukiwa and Gabriella Brayne, counsel for interested party the Whakarewarewa Geothermal Valley and State Forest (Wai 533) claim (Wai 2358, #3.2.774).

24. Counsel submitted that the following issue questions, focussing on Te Arawa, should be considered:

(a) What is the nature and extent of iwi and hapū participation in relation to new applications for consent to use the geothermal resource under the RMA?

(b) Generally, what (if any) are the barriers to their participation in the management of geothermal resource under the RMA?

(c) Generally, what kind of participation do they seek in the management of geothermal resource under the RMA?

(d) Where issues of tikanga arise between iwi in the management of the geothermal resource, how are they determined under the RMA? Is that what Te Arawa wants?

(e) In light of the Kawana's transformation of their traditional land tenure (including by enabling the acquisition of their land by purchase or compulsory taking), how do they see their relationship with their geothermal resources and other natural resources?

Memorandum from counsel for the Crown

25. On 10 November 2025, the Tribunal received a memorandum from counsel for the Crown (Wai 2358, #3.2.795).

26. Counsel acknowledged the time taken to respond to the claimant memoranda referred to above and sought leave to file the Crown's submissions out of time (Wai 2358, #3.2.795 at [8]).

27. In summary, counsel submitted that:

(a) the key gap in evidence before the Tribunal on RMA matters was outside the direct first-hand knowledge of the Crown;

- (b) the Tribunal would be assisted by evidence from relevant regional councils, particularly those in Waikato, the Bay of Plenty and Northland, that explain how geothermal resources are locally regulated and managed; and
 - (c) such evidence would ensure the perspective of those with statutory regulation and management responsibilities are before the Tribunal, and that an 'appropriate balance' is struck with the evidence presented for the claimants.
28. The Crown advised that regional councils could particularly assist the Tribunal with their knowledge of:
- (a) consultation and engagement relevant to geothermal resource management and the way in which relationships with Māori occur at a practical level;
 - (b) existing use of the geothermal resource in the Taupō Volcanic Zone (TVZ) region, with 'granular' information provided on who is currently using geothermal resources, for what purpose, and by which regulatory mechanisms (with particular reference to Māori);
 - (c) insights into geothermal rights and interests claimed by Māori 'vis à vis land ownership';
 - (d) section 14(3)(c) of the RMA; and
 - (e) local level management of geothermal resources, including any tensions between traditional cultural values and 'development potential', issues with the first-come first-served approach, the use of System Management Plans and issues concerning the management of information and data.
29. Counsel further submitted that:
- (a) as an alternative to engagement through the proposed commissioned researcher, the Tribunal could instead invite regional councils to join the stage three inquiry as interested parties and file their own evidence on the regional-level management of the resource;
 - (b) both TVZ regional councils played a significant part in the Tribunal's Central North Island Regional Inquiry, as was reflected in the final report; and
 - (c) local authorities are not part of the Crown, and as such, the Crown cannot compel them to participate in these proceedings so the Tribunal may wish to consider making a formal request of the TVZ regional councils to participate in the stage three inquiry.

Decision

30. I thank claimant counsel for their submissions.
31. The Tribunal panel has conferred and we agree that the proposed research is critical to the stage three inquiry and should proceed.
32. I accordingly confirm that Waitangi Tribunal research services staff, taking into the account the submissions filed, will shortly finalise a project brief for party feedback. Parties will have two weeks to review the brief and provide feedback via e-mail.
33. Parties should note that the report is intended to be targeted, and must be guided by the stage three inquiry issues. I therefore signal now that issues relating to the process of dispute resolution for overlapping claims to geothermal resources, and impacts resulting

from the recent (and proposed) changes to the RMA, will not be included in the final commission.

34. Due to the complexity of the subject matter, the Tribunal has further concluded that, once commenced, the full signalled 12 months will be needed to complete the commission.
35. As noted in my previous directions (Wai 2358, #2.6.134), I reiterate that the research report will be tested at a future stage three hearing, and that adequate time will be allowed in the stage three inquiry timetable for both the cross-examination of the research commission, and consideration by parties of the final report in closing submissions.

Reply evidence

Background

36. In my memorandum-directions of 24 September 2025, I noted that (Wai 2358, #2.6.138 at [90]–[92]):
- (a) the timing of the Crown’s further evidence (indicated for mid-2026) on its current RMA reforms meant the Tribunal would not receive a critical aspect of the Crown’s evidence for the foreseeable future; and
 - (b) some claimants and interested parties had requested that reply evidence follow – not only the Crown’s RMA evidence – but also the filing of any Tribunal commissioned research.
37. I therefore vacated the existing filing date for stage three reply evidence and confirmed I would address revised arrangements for reply evidence in due course (Wai 2358, #2.6.138 at [91] and [95]).

Update

38. I signal that the Tribunal now intends that the filing of reply evidence should follow the:
- (a) receipt of the Crown’s evidence on its RMA reforms (anticipated by mid-2026);
 - (b) release of the Tribunal’s commissioned research; and
 - (c) subsequent hearing and questioning of the said research report and commissionee.
39. I therefore confirm that I will set a revised filing date for stage three reply evidence following the initiation of the above research.

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 25 o te Whiringa-ā-rangi 2025



Kaiwhakawā W W Isaac
Te Mana Whakahaere

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI