

I MUA TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

WAI 2358

KEI RARO I TE MANA O

te Tiriti o Treaty o Waitangi Act 1975

Ā

I TE TAKE O

te National Freshwater and
Geothermal Resources Inquiry (Wai
2358)

**JOINT MEMORANDUM OF CLAIMANT COUNSEL IN RESPONSE TO THE
CROWN'S MEMORANDUM OF COUNSEL REGARDING HEARING WEEK FOUR**

Dated: 19 February 2026

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Waitangi Tribunal

19 Feb 26

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This joint memorandum is filed by Counsel on behalf of:
 - a. Mr Anthony Whareraupo Olsen, Trudy Elizabeth Paatu Olsen, and Kathryn Fiona Wheturereata Olsen (**Wai 2460**) on behalf of Waitaha and Kāti Māmoe
 - b. Tauhara North No.2 Trust (**Wai 3444**),
 - c. The Ngāti Tahu Ngāti Whāoa Collective, comprised of:
 - i. Ngāti Tahu – Ngāti Whāoa Rūnanga Trust,
 - ii. Ngāti Tahu Tribal Lands Trust,
 - iii. Paeroa South B2B1 Trust,
 - iv. Tahorakuri A1 Sec 33b Ah Whenua Trust,
 - v. Tutukau East Z Trust,
 - vi. Te Toke Marae,
 - vii. Mataarae Marae,
 - viii. Ohāki Marae, and
 - ix. Waimahana Marae

(“Claimant Counsel”)

INTRODUCTION

2. On 12 February 2026 the Presiding Officer instructed the Assistant Registrar to invite claimants and interested parties to file submissions in response to the Crown's Memorandum¹ dated 30 January 2026 ("**Crown's Memorandum**").
3. This joint memorandum is filed by Claimant Counsel in response to the Crown's Memorandum and is supported by the claimant counsel identified in **Appendix A** to this memorandum.
4. For the reasons explained below, Claimant Counsel, together with the counsel listed in Appendix A, begrudgingly support Option Two as described in the Crown's Memorandum.

CROWN'S MEMORANDUM

Option One

5. The current Wai 2358 inquiry ("**inquiry**") timetable schedules hearing week four for 13 to 17 April 2026 to hear Crown evidence.²
6. However, the Crown proposes, as Option One, that hearing week four be deferred in its entirety due to the planned timing of resource management, conservation and public service reforms.³
7. The Crown proposes to file supplementary evidence following the enactment of the Planning Act, Natural Built Environment Act and changes to the Conservation Act that, according to the Crown, are likely to be enacted after

¹ T Stephens KC, J Sarich, G Seeley, C Strowger-Turnock, *Memorandum of counsel for the Crown regarding hearing four of the state three inquiry* dated 30 January 2026, Wai 2358, #3.2.816

² Waitangi Tribunal, *Appendix A: Updated inquiry timetable for stage three of the National Freshwater and Geothermal Resources Inquiry (Wai 2358)* dated 17 Hakihea 2025, Wai 2358, #2.6.145(a).

³ Resource management reform being the Planning Bill and Natural Environment Bill, conservation reform being changes to the Conservation Act 1987 and the public service reform being the establishment of a new Ministry of Cities, Environment, Regions and Transport (MCERT) bringing together Ministry for the Environment with the Ministry of Housing and Urban Development, the Ministry of Transport and local government functions from the Dept of Internal Affairs.

July 2026, with changes to the Conservation Act likely after August/September 2026.⁴

8. Accordingly, with Option One, the Crown proposes that hearing week four be rescheduled in its entirety to October/November 2026.⁵

Option Two

9. As an alternative to Option One, the Crown proposes, as Option Two, that briefs of evidence already filed on behalf of Crown witnesses from the Ministry of Business, Innovation and Employment (“**MBIE**”) and Earth Sciences New Zealand (“**Earth Sciences NZ**”) be updated where necessary prior to, and heard in, hearing week four as currently scheduled.⁶
10. The Crown has foreshadowed its intention to seek leave to file by, 13 March 2026, supplementary evidence on the finalised geothermal strategy, supercritical project and geothermal data. The Crown proposes that this evidence could be heard in the April hearing week.⁷
11. With Option Two, the Crown proposes that evidence from witnesses representing the Ministry for the Environment and Department of Conservation be deferred to a hearing week in October/November as per Option One.⁸
12. The Crown also proposes that the April hearing week is shortened to three days to reflect the narrower grouping of Crown evidence.⁹

JOINT CLAIMANT COUNSEL RESPONSE

13. The Waitangi Tribunal’s Strategic Direction 2025-2035¹⁰ confirms that the inquiry is expected to be completed in 2027.¹¹ The current inquiry timetable

⁴ Wai 2358, #3.2.816 at [9.1]

⁵ Wai 2358, #3.2.816 at [9.2]

⁶ Wai 2358, #3.2.816 at [13]

⁷ Wai 2358, #3.2.816 at [14]

⁸ Wai 2358, #3.2.816 at [15]

⁹ Wai 2358, #3.2.816 at [16]

¹⁰ Waitangi Tribunal, *Strategic Direction 2025-2035*, dated 2 July 2025 (Waitangi Tribunal, 2025)

¹¹ Waitangi Tribunal, *Strategic Direction 2025-2035*, dated 2 July 2025 (Waitangi Tribunal, 2025) at 22

has already scheduled Crown evidence hearing week for 13 to 17 April 2026 which, it is submitted, should assist with completing the inquiry by 2027.

14. To achieve the Tribunal's target, claimant counsel supporting this memorandum are agreed that ideally the whole of the Crown's evidence ought to be presented in hearing week four, as currently scheduled.
15. That said, it is acknowledged that the Tribunal may be better served in this inquiry by the Crown presenting complete and detailed evidence concerning matters relevant to this inquiry arising out of the proposed resource management, conservation and public sector reforms, rather than guarded, potentially incomplete and therefore unhelpful evidence about legislation that is still before the House.
16. The Tribunal will be acutely aware that the Crown's failure to provide highly relevant details of the Resource Management Act 1991 reforms that are now before the House, despite ongoing directions by the Tribunal to do so, has precluded any ability for the Tribunal to examine these reforms before they were introduced into the House.
17. With all these factors in mind, we can confirm begrudging support for Option Two.
18. Claimant Counsel submit that the Crown's Option One will unnecessarily delay the inquiry and, consequently, may result in the inquiry not meeting its expected completion date.
19. Moreover, there is no reason apparent from the Crown's memorandum of 30 January 2026 to justify delaying the Tribunal hearing evidence from MBIE and Earth Sciences NZ witnesses or concerning the Crown's geothermal strategy, supercritical project and geothermal data collection. All that evidence ought to continue to be presented during the allocated hearing week in April.

20. With that evidence heard, the Tribunal may be in a position to commence report writing on those geothermal issues, which may mitigate future delays in delivering a final report.¹²
21. The proposed October/November hearing week for the remaining Crown evidence (which the Crown says will likely take place after the passing of the Planning Bill and Natural Environment Bill) is likely to require more cross-examination and Tribunal questioning time than previously considered as it will, by then, be law. Claimant Counsel respectfully suggest that any spare hearing time not required for the April hearing week be allocated to the October / November hearing week to account for this.
22. Accordingly, Claimant Counsel respectfully request that the Tribunal press on with the inquiry to hear the Crown evidence noted in [19] above that can be heard now and reallocate any unused hearing time to examining the reform legislation, if enacted, in October / November or other date suitable to the Tribunal.

2026 ELECTION DATE

23. On 21 January 2026 the Prime Minister announced the 2026 election is to be held on 7 November 2026. Parliament will dissolve on 1 October.¹³ The current Government will sit in caretaker mode from that date, in accordance with the caretaker convention.¹⁴
24. Claimant Counsel are concerned to ensure that should any part of the Crown's hearing week fall within the period in which there is a caretaker government, the Crown will not seek to further delay the hearing and thus the inquiry.

¹² Noting, of course, that the Tribunal will not by then have the benefit of reply evidence from claimants.

¹³ <https://vote.nz/2026-general-election/about/key-dates/>

¹⁴ <https://www.dPMC.govt.nz/our-business-units/cabinet-office/supporting-work-cabinet/cabinet-manual/6-elections-transitions-and-government-formation/caretaker-convention>

DATED at Manukau this 19th day of February 2026



Paul Majurey

Counsel Acting for Ngāti Tahu Ngāti Whāoa



Tania Waikato



Victoria Tumai



Tui Henry

Counsel Acting for Tauhara North No.2 Trust (Wai 3444) and Waitaha and Kāti Māmoe (Wai 2460)