IN THE WAITANGI TRIBUNAL

WAI 2750

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER the Housing Policy and Services Kaupapa Inquiry

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JOINT MEMORANDUM OF COUNSEL IN RESPONSE TO MEMORANDUM DIRECTIONS OF 23 PIPIRI 2026

Dated this 4th day of August 2026

RECEIVED
Waitangi Tribunal
4 Aug 26
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

1. This Memorandum of Counsel is filed jointly by Claimant Coordinating Counsel, and counsel for the Crown. The Crown's submissions are at [20].

2. A list of Claimant Counsel in support of this Memorandum is provided at **Appendix A**.

3. In Memorandum-Directions dated 23 Pipiri 2026 ("**Directions**"), Presiding Officer Judge C T Coxhead released the Tribunal Statement of issues and gave directions on the next steps in Stage Two of the inquiry.

4. His Honour directed Claimant Coordinating Counsel to collate and file any initial feedback from Counsel regarding the content of the Directions by no later than 5pm, Monday 6 July 2026.[1]

5. On 6 July 2026, Counsel filed a joint memorandum from Claimant Coordinating Counsel and counsel for the Crown seeking an extension to file the above submissions by 4 August 2026.[2] The Presiding Officer granted the requested extension, and this Memorandum is filed accordingly.

6. Claimant Coordinating Counsel have liaised with counsel for the Crown and Claimant Counsel to provide the feedback below. Counsel for the Crown have commented on Claimant Counsel feedback and also provided discrete feedback from the Crown as set out below, at [20].

7. Given the number and complexity of issues at this stage in the inquiry planning process, Claimant Coordinating Counsel and counsel for the Crown seek a judicial conference to enable parties and the panel to discuss and progress these issues more efficiently, and with greater clarity.

Claimant Counsel feedback

Preliminary Views on the Tribunal's Proposed Stage Two Inquiry Procedure

[1] Wai 2750, #2.6.70 at [70].
[2] Wai 2750, #3.2.474.

8. Counsel submit that the six allocated hearing weeks will need to accommodate claimant evidence from a number of claims (174 eligible claims) the presentation of Stage Two research reports (and any additional evidence relating to Crown and claimant-commissioned reports), Crown evidence, claimant reply evidence, and closing submissions.

9. Counsel further note that the Tribunal has confirmed that Stage Two will include a broader inquiry into homelessness issues. This may require updated claimant evidence and additional research report hearings, further reducing the hearing time available for the remaining issues.

10. In light of the number of claims, the breadth of the issues to be addressed, and the additional matters now proposed for inquiry, Counsel consider that six hearing weeks may not be sufficient to hear all evidence and submissions.

11. Claimant Counsel are continuing to liaise as to the accessibility requirements of the claimants for the hearings and will advise the Tribunal of the same in due course. At this stage we note that some accessibility measures, if adopted, may impact upon the amount of hearing time available for the presentation of research, evidence and submissions.

Proposed hearing efficiencies

12. To assist the Tribunal in its determination of the witnesses required to appear at hearings, Counsel generally support the Tribunal's proposed measures to improve hearing efficiency. These may include thematic hearings, concise opening submissions taken as read with a brief oral summary, focused and non-duplicative claimant evidence, continued coordination between claimant counsel on matters of common interest, exploration of alternative claim resolution where appropriate, Crown concessions to narrow the issues for inquiry, the preparation of draft timetables well in advance of hearings, and the filing of written Crown questions of clarification before each hearing.

13. To assist the Tribunal in its determination of the witnesses required to appear at hearings, Counsel suggest that Claimant Counsel first confer with the claimants to identify which claimants wish to present oral evidence and which are content for their evidence to be taken as read. Coordinating Counsel could then prepare an indicative witness list for the Tribunal's consideration, with the Tribunal determining who should appear, having regard to the Statement of Issues, the evidence of the parties, any leave sought for cross-examination, and the need to avoid unnecessary duplication.

14. While Counsel acknowledge that measures such as evidence being taken as read, written questions of clarification, and a lead counsel approach to cross-examination may improve hearing efficiency, these measures should be carefully balanced against the need to ensure claimants are able to participate meaningfully in the inquiry and the need to test evidence relevant to their individual claims. Counsel also submit that consideration should be given to ensuring that claimants whose evidence is not selected for oral presentation do not perceive their evidence as being of lesser significance. Experience in other kaupapa inquiries demonstrates that, because of time constraints, witnesses of considerable expertise and standing have been unable to present their evidence orally, despite the importance of their contributions.

15. Some Counsel consider it unlikely any hearing efficiencies will result from alternative claim resolution with sufficient time to influence the planning of hearings due to the timing of the 2026 General Election. Any progress that might be made towards the alternative resolution of claims ahead of the Election may not be continued after the Election. Accordingly, those Counsel are of the view that the claimants will not be in a position to treat any inquiry issues as no longer within scope of the inquiry due to alternative resolution until the policy platform of the next Government is known, likely in early 2027.

16. Relatedly, some Counsel are of the view that it will be difficult to produce draft hearing timetables very far in advance of the beginning of hearings

on the approach proposed in the Directions. Draft timetables can only be produced after evidence has been filed and the Tribunal has confirmed, with support from the parties, those witnesses that are required to appear. Further delay might arise from any significant changes to the Crown's housing-related policies and services resulting from a change in Government, which could impact the live issues in the inquiry, and therefore the evidence that the parties wish to file.

Oral Presentation of Evidence

17. Counsel note that concise oral presentations are generally desirable, while acknowledging that some flexibility may be needed. For example, written English is not the first language of some whānau hauā and tāngata turi witnesses and they may therefore require additional presentation time for their short opening statements.

18. Further, if thematic hearings are adopted, it may assist witnesses whose evidence spans multiple pakitara to present within a single hearing week, rather than being recalled in a later week to give evidence under a different pakitara.

Ongoing Concerns Regarding Hearing Preparation

19. Counsel note that with only six hearing weeks, at most six hearing locations can be selected without further reducing hearing time, likely limiting hearings to major urban areas. Additionally, without knowing which witnesses the Tribunal requires to appear Coordinating Counsel may have a limited ability to plan hearings around claimants' preferred venues, rather than around the pakitara, at this stage.

Crown feedback

20. As indicated above at [6], counsel for the Crown have liaised with Claimant Coordinating Counsel, and had the opportunity to review Claimant Counsel feedback. The Crown wishes to set out its own

comments in response to the Tribunal's memorandum-directions dated 23 June 2026, as below:

(a) The upcoming General Election on 7 November 2026 constrains the Crown's ability to produce concessions and acknowledgements, or develop a definitive position in response to the Tribunal's Statement of issues, leading up to and for a period of time following the Election, noting:

i. Generally, concessions (ie, of Treaty breach) are made only once all relevant evidence has been presented and tested.
ii. There is then a policy process that officials undertake to consider the evidence and, if warranted, develop the appropriate concessions.
iii. Concessions then need ministerial, and in some cases, Cabinet approval.
iv. This takes some time to work through.
v. Acknowledgements, (ie factual acknowledgements) also involve a process for development and approval (although it may not be as extensive as for concessions).
vi. Even if the Crown were able to make early concessions or acknowledgements ahead of the presentation and testing of relevant evidence, the upcoming General Election means Ministers will become unavailable to review and approve possible concessions (and if necessary acknowledgements) from about 24 September.

(b) The Crown considers that a pakitara-based approach (to hearing weeks, discovery, and evidence) may optimise efficiencies, enable parties to maximise progress concerning discovery, and mitigate the risk of developments in the ongoing policy reform programme overtaking progress in the inquiry.

(c) It may be necessary to review and update the existing research reports, given the time that has lapsed since they were released, and it may be helpful in this regard for the Tribunal's chief historian to

release the casebook review (which the Tribunal had indicated was completed),[3] so as to inform what further research and evidence is required to fill gaps in the present research base.

(d) For the purposes of hearing and venue planning, it may be helpful if the Tribunal panel can indicate their calendar availability for hearing weeks in 2027, 2028 and 2029.

Dated: this 4th day of August 2026

N Lambert / J C Alexander / A Madsen
Claimant Co-ordinating Counsel

N Whittington / D Kleinsman / T Garimella
Counsel for the Crown

[3] Wai 2750, #2.6.54 at [5] – [6].