TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 2750

E PĀ ANA KI *CONCERNING* the Treaty of Waitangi Act 1975

Ā, *AND* the Housing Policy and Services Kaupapa Inquiry

HE MANATŪ WHAKATAU NĀ KAIWHAKAWĀ MATUA TUARUA COXHEAD

MEMORANDUM-DIRECTIONS OF DEPUTY CHIEF JUDGE COXHEAD RESPONDING TO FEEDBACK REGARDING STAGE TWO HEARING PLANNING, CONVENING A JUDICIAL CONFERENCE AND ADDRESSING OTHER MATTERS

2 Hepetema 2026

Purpose

1. This memorandum-directions:

    (a) records my response to the extension sought by claimant coordinating counsel and counsel for the Crown to jointly file feedback in response to directions regarding hearing plans (Wai 2750, #3.2.474 at [9]);

    (b) responds to the joint feedback received from claimant coordinating counsel and counsel for the Crown regarding stage two hearing planning;

    (c) responds to the feedback received from claimant coordinating counsel regarding issues of accessibility;

    (d) confirms my intention to convene a judicial conference to hear further submissions from parties on these matters; and

    (e) responds to the extensions sought by counsel for the Crown to defer the current filing date set for the Crown's statement of response to the stage two claims.

2. An updated stage two inquiry timetable is **attached** as **Appendix A**.

Background

3. In my memorandum-directions dated 23 June 2026, I released the Tribunal Statement of Issues (TSOI) for stage two of the Housing Policy and Services Kaupapa Inquiry (the stage two inquiry) (Wai 2750, #1.4.6) and confirmed the evidential and procedural steps which – at that stage – remained to be taken prior to the commencement of hearings in late 2027 (Wai 2750, #2.6.70).

4. In the same memorandum-directions, I directed claimant coordinating counsel to confer with counsel for the Crown and to file any initial feedback regarding the content of those directions by 6 July 2026 (Wai 2750, #2.6.70 at [70]).

5. In addition, I directed claimant coordinating counsel to confer and advise of any accessibility requirements needed for the Tribunal's hearing phase, and for the remainder of the stage two inquiry by 14 August 2026 (Wai 2750, #2.6.70 at [57]).

6. Finally, I directed counsel for the Crown to file the Crown's statement of response to the stage two claims, along with any concessions arising, by 31 July 2026 (Wai 2750, #2.6.70 at [49]).

Feedback on evidential and procedural matters

Background

7. On 6 July 2026, the Tribunal received a joint memorandum from claimant coordinating counsel on behalf of the counsel listed at Appendix A to that memorandum (Wai 2750, #3.2.474(a)) and counsel for the Crown. Counsel jointly sought an extension to file feedback in response to my directions dated 23 June 2026 (Wai 2750, #2.6.70) by 4 August 2026 (Wai 2750, #3.2.474 at [9]).

8. Counsel advised the majority position among claimants and the Crown was that more time was required to allow the parties to meaningfully consider and provide feedback on the content of my directions, noting that several counsel were – at the time – engaged in preparations across multiple Waitangi Tribunal inquiries (Wai 2750, #3.2.474).

9. On 9 July 2026, I granted the extension sought via an e-mail from the Waitangi Tribunal's Registrar and directed claimant coordinating counsel to confer with counsel for the Crown

and file any initial feedback regarding the Tribunal's stage two hearing plans by 4 August 2026.

Joint memorandum of counsel

10. On 4 August 2026, the Tribunal received as directed a joint memorandum from claimant coordinating counsel, Neuton Lambert, Jack Alexander, and Alice Madsen and counsel for the Crown, Nick Whittington, Daniel Kleinsman and Tanuvi Garimella (Wai 2750, #3.2.476).

11. Counsel jointly seek a judicial conference to enable parties and the Tribunal panel to discuss and progress key issues they consider remain to be determined in the stage two hearing planning process (Wai 2750, #3.2.476 at [7]).

12. In addition, counsel outline specific feedback from those claimant counsel listed at Appendix A to the memorandum and the Crown respectively. A summary of these submissions is provided below.

Feedback of claimant counsel

13. The claimants' concerns centre around the six weeks currently allocated for hearings in accordance with the Tribunal's revised *Strategic Direction* and associated planning (Wai 2750, #2.6.70 at [39] – [40]). Counsel submit that six hearing weeks may not be sufficient to complete the stage two hearing phase due to the extensive evidence anticipated for stage two, 'a broader inquiry into homelessness issues', and the number of participating claims. Counsel also highlight the potential for accessibility measures that may further impact hearing time (Wai 2750, #3.2.476, at [8] – [11]).

14. Counsel generally support the Tribunal's proposed measures to improve hearing efficiency. Counsel suggest that, to assist the Tribunal in its determination of witnesses appearing, claimant counsel could first identify those claimants who wish to present oral evidence and then prepare an indicative list for the Tribunal's consideration (Wai 2750, #3.2.476, at [12] – [13]).

15. Counsel note however that any such efficiency measures should be carefully balanced against the need for claimants to participate meaningfully in the inquiry and for evidence to be appropriately tested. Counsel submit that care should be taken to ensure claimants who are not selected for oral presentation at hearings do not, as a result, perceive their evidence is of lesser significance (Wai 2750, #3.2.476, at [14]).

16. Counsel note that, due to the upcoming 2026 New Zealand General Election (the General Election), some counsel consider it unlikely that any hearing efficiencies will result from alternative claim resolution, and any progress made in that regard may not be continued until the policy platform of the next government is known – likely in early 2027 (Wai 2750, #3.2.476, at [15]).

17. Accordingly, counsel submit that it may be difficult to produce draft hearing timetables far in advance of the commencement of hearings. Counsel note that further delay might arise from potential changes to the Crown's housing policies following the General Election, which could impact the live issues before this Tribunal and, therefore, the evidence filed for stage two (Wai 2750, #3.2.476, at [16]).

18. Counsel observe that while concise oral presentations are generally desirable at hearings, some flexibility may be required since written English is not the first language of some whānau hauā and tāngata turi witnesses. Further, if thematic hearings are adopted, counsel consider it may assist if witnesses whose evidence spans multiple pakitara present within a single hearing week (Wai 2750, #3.2.476, at [18]).

Feedback of counsel for the Crown

19. Counsel for the Crown submit that the upcoming General Election constrains the Crown's ability to produce concessions and acknowledgements or to develop a definitive position in response to the TSOI, leading up to and for a period following the General Election (Wai 2750, #3.2.476, at [20]).

20. Counsel advise that the Crown agrees with claimant coordinating counsel that a pakitara-based approach may optimise inquiry planning efficiencies. In addition, counsel submit that the inquiry's existing research reports may need to be updated, given the time elapsed since they were released. Accordingly, counsel submit that it may be helpful for the Tribunal's Chief Historian to release her research casebook review in order to inform parties of what further research might be required (Wai 2750, #3.2.476, at [20]).

21. Finally, for the purposes of hearing and venue planning, counsel submit that it may be helpful for the Tribunal panel to indicate their calendar availability for hearing weeks in 2027, 2028 and 2029 (Wai 2750, #3.2.476, at [20]).

Phoenix Law memorandum

22. On 4 August 2026, the Tribunal received a memorandum from Janet Mason and Nicholas Johnson, counsel for the claimants listed in Annex A of counsel's memorandum (Wai 2750, 3.2.477(a)). Counsel advise that, while the claimants are broadly supportive of the joint memorandum filed by claimant coordinating counsel (Wai 2750, #3.2.476), there are a few additional points which counsel wish to raise.

23. Counsel submit that, in order to focus hearing time on issues that are within scope of the stage two inquiry, the scope of local government issues – which I raised in my directions of 23 June 2026 as being subject to a later determination (Wai 2750, #2.6.70 at [37]) – should be addressed for possible inclusion within the stage two inquiry prior to the commencement of the hearing phase or the deadline for filing evidence (Wai 2750, #3.2.477, at [8] – [9]).

24. Counsel further state they object to the 'truncated' hearing time of six weeks, and consider that such timeframes are not appropriate for a kaupapa inquiry. Counsel submit this degree of truncation could prejudice some claimants' ability to have their claims properly heard, since their tikanga would dictate that they present orally in te reo Māori rather than merely in writing (Wai 2750, #3.2.477, at [10] – [11]).

25. Counsel express concern about the criteria which may be used to select witnesses who will appear at hearings and submit that objective criteria for witness selection should be established. Counsel suggest several relevant considerations for establishing these criteria and further express concern that the use of written questions for Crown witnesses may not elicit sufficiently detailed responses (Wai 2750, #3.2.477, at [12] – [15]).

26. Finally, counsel advise that the claimants support the use of the disability protocol used in the disability phase of the stage two Health Services and Outcomes (Wai 2575) kaupapa inquiry (Wai 2575, #2.6.59(a)). Counsel submit that, due to many of the claimants being elderly, hearing locations and procedures should also account for the accessibility needs of kuia and kaumātua.

Sykes & Co. memorandum

27. On 13 August 2026, the Tribunal received a memorandum from Annette Sykes, Kalei Delamere-Ririnui, Jack Potaka and Rangipurei Manley, counsel for the claimants listed in paragraph one of counsel's memorandum (Wai 2750, #3.2.478).

28. Mses Sykes, Delamere-Ririnui and Manley and Mr Potaka support claimant coordinating counsel's general approach to inquiry planning: in particular, the request for a judicial conference, adopting a thematic approach to hearings where appropriate, and measures to improve hearing efficiency, while maintaining an appropriate balance with effective claimant participation (Wai 2750, #3.2.478 at [4]).

29. Counsel further support continued coordination between claimant counsel as a means of minimising duplication of evidence. Counsel agree that the inclusion of broader homelessness issues in stage two, which they describe as an 'expansion', may require updated claimant evidence and further research (Wai 2750, #3.2.478 at [4]).

30. In addition, counsel submit that the continuing development of Crown housing policy and the inclusion of broader homelessness issues means that claimants should be afforded a reasonable opportunity to update their pleadings where necessary. Counsel contend that this would enable the inquiry to proceed on the basis of 'the most current factual and policy context' (Wai 2750, #3.2.478 at [6] – [7]).

31. Counsel submit that while practical constraints are recognised, the diversity of Māori housing experiences across regions, whānau and communities must remain visible within the inquiry process to ensure meaningful claimant participation (Wai 2750, #3.2.478 at [9]).

32. Finally, counsel note that the Crown is presently preparing its statement of response to the stage two claims. Counsel submit that, 'given the pace of housing policy reform', sufficient flexibility should remain within the inquiry timetable to allow for claimants to address significant policy developments occurring before the hearing programme commences (Wai 2750, #3.2.478 at [11] – [12]).

Memorandum of coordinating counsel – accessibility

33. On 14 August 2026, Messrs Lambert and Alexander and Mses Panoho-Navaja and Madsen filed a further memorandum on behalf of claimant counsel advising of accessibility requirements needed for the Tribunal's hearing phase, and for the remainder of the stage two inquiry as directed (Wai 2750, #3.2.479).

34. Counsel submit that a flexible approach should be adopted rather than a single uniform protocol across hearing weeks to 'ensure that the inquiry is accessible to all participants' (Wai 2750, #3.2.479 at [8]).

35. Counsel advise that specific accessibility measures are required for some claimants to participate fully in the hearings. This includes accessible hearing venues, provision for support people to attend hearings, and additional time for opening statements and responding to questions. Counsel further consider that, where a claimant or witness uses augmentative and alternative communication, questions in writing could be provided in advance, and that hearing pānui should be communicated in an accessible manner and with sufficient time for further measures to be adopted if required (Wai 2750, #3.2.479 at [6] & [9]).

36. Counsel submit that it may be appropriate to have one hearing week set aside as a fully accessible hearing, which would adopt the hearing structure elements of the Health Services and Outcomes (Wai 2575) inquiry disability protocol. Counsel note that this hearing week should be conducted on an 'opt-in' basis only, with witnesses choosing to participate rather than being automatically assigned hearing time (Wai 2750, #3.2.479 at [10]).

37. Similarly, counsel contend that, in order to ensure the efficient utilisation of available hearing time, this 'fully accessible' hearing week should not be limited to only those claimants and witnesses with accessibility needs, with all witnesses for a particular claim able to present their evidence at the same hearing, regardless of individual needs (Wai 2750, #3.2.479 at [11]).

38. Finally, counsel note that the presentation at hearing of any Crown evidence and submissions will likely require the adoption of elements of the Wai 2575 disability protocol, particularly in relation to the provision of New Zealand Sign Language interpreters and captioning (Wai 2750, #3.2.479 at [12]).

Decision

Judicial conference arrangements

39. I acknowledge the submissions made by parties and the concerns raised regarding stage two hearing planning matters. I particularly acknowledge the reservations expressed in relation to the six weeks of hearing time now available and the basis on which those concerns have been advanced.

40. I note, however, that inquiry planning must proceed within the framework established by the Waitangi Tribunal's *Strategic Direction 2025–2035*, which contemplates that the Wai 2750 inquiry will be completed by 2031.[1] That timeframe necessarily constrains the scope and duration of the stage two inquiry hearing phase.

41. Against that backdrop, I emphasise that an expansive hearing phase will not be practicable. The parties must instead work constructively and collaboratively to identify a proportionate and workable approach that enables the aims of the *Strategic Direction* to be achieved within the contemplated timeframe.

42. Relatedly, I must further emphasise that the Tribunal will not be in a position to inquire into and release a report on every new aspect of Crown housing policy. We have seen in recent years a large degree of change in the Crown's housing policy. Were we to have reported fully on the suite of new policies that had been introduced by the time of our Wai 2750 inquiry, our report would by now have become out of date. We must accept that this is an area of significant policy churn, and if we are to succeed in completing a relevant and useful report, we must instead focus our analysis on the longer-term policy trends and impacts which are material to our agreed issues for inquiry. This does not mean that we cannot and should not hear evidence about current Crown policy, but we must also be realistic about how and when the inquiry will be brought to a conclusion.

43. I agree that a judicial conference will be helpful to discuss certain points raised in parties' submissions further. However, the Tribunal wishes to first understand with greater precision parties' views on what they consider to be the **minimum viable requirements** for the stage two inquiry hearing phase, including with regard to any further hearing time sought and in the context of parties' suggested accessibility measures. Claimant coordinating counsel should confer with counsel for the Crown and provide further and more detailed submissions on such minimum requirements by no later than **5pm, Wednesday 7 October 2026**.

44. I stress that this request should not be taken as an indication that any further hearing time or other resources will necessarily be forthcoming. Rather, my request for further information is intended to ensure that, should further resources ultimately be considered strictly necessary, that requisite information is available to inform the Tribunal's further assessment and its consideration of next steps.

45. A date and time for the judicial conference will be advised in due course. At this stage, I anticipate that the judicial conference will take place in Wellington, with an audio-visual link available for those who wish to participate remotely.

[1] Te Rōpū Whakamana i Te Tiriti o Waitangi | Waitangi Tribunal, *Strategic Direction: 2025 – 2035* (2025).

46. I will release memorandum-directions confirming the necessary arrangements in due course.

Preliminary comments

47. To further assist the parties, I make the following preliminary remarks in response to the submissions received.

48. While I recognise the potential disruption arising from the upcoming General Election, it is important that we maintain momentum in order to achieve the stage two inquiry goals and timeframes set out in the *Strategic Direction*. With this in mind, it is not this panel's intention to pause the timing of our judicial conference or any other necessary interlocutory steps pending the outcome of the General Election unless absolutely necessary. This relates also to our desire to plan for the completion of the inquiry, and not to be tied to election cycles and the generation of new and revised Crown policy on Māori housing needs.

49. In response to the Crown's comments summarised above at [20], I remind parties that the outcome of the Chief Historian's research casebook review has already been communicated to parties. That outcome confirmed that no further research is required and that the Tribunal may proceed to hearings (Wai 2750, #2.6.54 at [5] – [10] & #2.6.68 at [13] – [14]). Consistent with my earlier comments at [40], and given the Tribunal will primarily be analysing long-term trends and impacts in housing policy, I consider that it is neither necessary nor practicable to initiate further Tribunal-commissioned research at this late stage of these proceedings.

50. On the same basis, and in response to the submissions of Mses Sykes, Delamere-Ririnui and Manley and Mr Potaka above, I further indicate that updated pleadings from the parties will not be necessary.

51. In relation to homelessness, I note counsel's comments above at [13] and [29] – [30]. I am surprised that the inclusion of homelessness issues in the stage two inquiry is now identified as a constraint, given that the matter was raised on several occasions in the Tribunal's stage one report *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (*Kāinga Kore*). In *Kāinga Kore*, we cautioned, for instance, that:

> […] we must not lose sight of the influence of these broader issues on homelessness as the housing inquiry progresses', noting that such issues are 'entrenched and underlying factors that a priority report is not best suited to address.[2]

52. We further observed that we had 'delivered a limited assessment of Crown actions impacting on Māori homelessness' and 'for that reason, we look[ed] forward to the rest of our inquiry.'[3] In those circumstances, it should have been apparent from the outset that the issue of homelessness would be revisited in the stage two inquiry. We also accepted in *Kāinga Kore* that updated data on homelessness would be necessary to determine whether the measures implemented by the Crown had been effective.

53. In this regard, we stated that:

> Undoubtedly, this report will not be our last word on homelessness, because the issue will remain inescapably present as we move ahead. We will, in a later report, be able to assess whether there has been any improvement in the 2023 census figures on severe housing deprivation, whether the numbers of people on the housing register and receiving Emergency Housing Special Needs Grants have reduced, whether there has been an

[2] Waitangi Tribunal, *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wellington, Legislation Direct, 2024), p. 113.
[3] Waitangi Tribunal, *Kāinga Kore*: *The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness*, p.193.

> increase in both the number of State houses and their proportion within the total housing stock, and so on. Looking back, we will be able to discern and remark upon longer-term trends that have led to the current housing crisis Māori face, and ascribe responsibility where it is due.[4]

54. In relation to local government issues, I confirm – as I have previously advised – that the parties will have an opportunity to make submissions during the hearings phase as to whether, and if so how, the Tribunal should consider local government issues and its role within Māori housing. The Tribunal will consider those submissions in preparing its final report (Wai 2750, #2.6.70 at [37]). As we noted in *Kāinga Kore*:

> […] the claimants raised a number of issues with regard to building on whenua Māori that will be dealt with in the main stage of the inquiry. By this we mean the role of local government, both historically and today, the difficulties presented by the Resource Management Act, and so on.[5]

55. Accordingly, there will be no early determination regarding whether, and if so how, the Tribunal will address local government issues and its role within Māori housing without first hearing from the parties.

56. In response to the comments of Messrs Lambert and Alexander and Mses Panoho-Navaja and Madsen at [36], I agree that it may be sensible to have one hearing week set aside as a fully accessible hearing, adopting the hearing structure elements of the Wai 2575 disability protocol.

57. Finally, I consider that it would be helpful for the parties to give due consideration to the possible usefulness of a small number of site visits conducted as part of the stage two hearing phase.

58. Given counsel will shortly supply more granular submissions on stage two hearing requirements, I confirm that the current date provided for the filing of a revised stage two hearing plan, which is currently due by 16 September 2026, is now vacated (Wai 2750, #2.6.70 at [63]).

59. I will seek a revised hearing plan following our forthcoming judicial conference, and any ensuing further directions the panel is able to provide regarding the conduct of the stage two hearings.

Crown statement of response

Crown memoranda

60. On 29 July 2026, counsel for the Crown filed a memorandum addressing the Crown's statement of response and other administrative and inquiry planning matters. Counsel seek (Wai 2750, #3.2.475 at [11] – [12]):

    (a) a deferral of the current filing date of 31 July 2026 set for the Crown's statement of response to the stage two claims; and

    (b) leave to update the Tribunal on the Crown's progress towards the completion of its statement of response and its nature, along with a suggested revised filing date, by 31 August 2026.

[4] Waitangi Tribunal, *Kāinga Kore*: *The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness*, p. 193.
[5] Waitangi Tribunal, *Kāinga Kore*: *The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness*, p. 171.

61. Counsel advise that, while the Crown is 'well underway in its detailed analysis of amended claims and the statement of issues', further time is required to finalise the Crown's statement of response, and to indicate any early concessions, within the timeframes set by the Tribunal (Wai 2750, #3.2.475 at [6] – [7]).

62. Counsel submit that this delay is chiefly due to the involvement of approximately 19 Crown agencies, departments and entities which hold information relevant to the stage two inquiry. Counsel further note that they are required to seek Cabinet approval for any Crown concessions or acknowledgements (Wai 2750, #3.2.475 at [6]).

63. Finally, counsel advise they shortly intend to meet with claimant counsel to discuss inquiry planning matters to ensure that the Crown's statement of response may positively inform inquiry planning efficiencies, including the possible further refining of the stage two inquiry issues (Wai 2750, #3.2.475 at [8] – [10]).

64. On 31 August 2026, Messrs Whittington and Kleinsman filed a further memorandum advising that the Crown requires further time to provide what counsel describe as 'a helpful indication' regarding the timing and nature of its statement of response (Wai 2750, #3.2.480 at [3]).

65. Counsel note that they have scheduled a hui with claimant coordinating counsel for 3 September 2026 to progress discussions about broader hearing planning matters (Wai 2750, #3.2.480 at [2]).

66. Accordingly, counsel seek leave to file an update on the Crown's progress towards the completion of its statement of response and its nature, along with a suggested revised filing date, by 17 September 2026 (Wai 2750, #3.2.480 at [4]).

Decision

67. I have considered the Crown's request.

68. I confirm that leave is granted for the filing date of 31 July 2026 currently set for the Crown's statement of response to be deferred.

69. Counsel for the Crown should accordingly update the Tribunal on the Crown's progress towards the completion of its statement of response to the stage two claims, including its proposed form and a suggested revised filing date, by no later than **5 pm, Thursday 17 September 2026**.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 2750, the Housing Policy and Services Kaupapa Inquiry.

The Registrar is to send a copy of this direction to all those on the distribution list for Wai 2750, the Housing Policy and Services Kaupapa Inquiry.

WHAKAPŪMAUTIA ki Rotorua i te 2 o te Hepetema 2026

Kaiwhakawā Matua Tuarua C T Coxhead
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI