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 REGARDING MINIMUM VIABLE HEARING REQUIREMENTS FOR STAGE TWO AND RELATED MATTERS

Dated this 7th day of October 2026

RECEIVED
Waitangi Tribunal
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WELLINGTON

WACKROW PANOHO & ASSOCIATES
Level 5, 50 Kitchener Street
Po Box 461
AUCKLAND
Solicitor Acting: Coral Panoho-Navaja / Neuton Lambert / Jack C Alexander / Alice Madsen
Ph. (09) 379 5026
Email: coral@wpalawyers.co.nz / neuton@wpalawyers.co.nz / jack@wpalawyers.co.nz / alice@wpalawyers.co.nz

MAY IT PLEASE THE TRIBUNAL:

1. This Joint Memorandum of Counsel ("**JMoC**") is filed by claimant co-ordinating counsel.

2. In Memorandum-Directions dated 2 Hepetema 2026, Presiding Officer Judge C T Coxhead confirmed a Judicial Conference ("**JC**") would be convened to discuss forward inquiry planning and directed claimant co-ordinating counsel to confer with counsel for the parties and file more detailed submissions on the minimum viable requirements for the stage two inquiry hearing phase by no later than 5pm, Wednesday 7 October 2026.[1]

3. In Memorandum-Directions dated 14 Hepetema 2026, his Honour confirmed the JC will be convened at 10am on Tuesday 13 October 2026 at the Tribunal's Offices in Wellington,[2] and advised the following agenda for the JC:[3]

    3.1. Minimum viable requirements for the stage two inquiry.

        a) Further hearing time sought.

        b) The viability of conducting site visits.

        c) Evidential and witness requirements.

        d) Suggested hearing structure and locations.

        e) Accessibility requirements.

        f) Revised hearing plan (including filing timeframes).

        g) Any other requirements.

    3.2. Update (if necessary) on the Crown's statement of response and related matters.

    3.3. Any other matters.

[1] Wai 2750, #2.6.071 at [43].
[2] Wai 2750, #2.6.072 at [8].
[3] Wai 2750, #2.6.072(a).

4. Claimant co-ordinating counsel have conferred with claimant counsel and in this JMoC address each of the items in the JC agenda in turn. A list of claimant counsel in support of this JMoC is provided at Appendix A.

5. We understand that some claimant counsel may also file separate submissions where they take an alternative position on the matters set out in this JMoC and/or wish to raise any other minimum viable requirements or relevant matters for the Tribunal's consideration.

6. In preparing these submissions, claimant co-ordinating counsel have kept counsel for the Crown apprised of the joint position of claimant counsel. It is understood that counsel for the Crown intend to speak to the JC agenda items and the matters raised in this JMoC in oral submission at the JC.

7. Claimant co-ordinating counsel will also be available to further discuss these submissions at the JC.

I. Minimum Viable Requirements

Further hearing time sought

8. Counsel maintain the view that the current allocation of six hearing weeks may not be sufficient to complete the rest of the inquiry.[4]

9. By way of comparison, a total of four hearing weeks were held in Stage One of the inquiry which had 79 participating claims and 21 interested parties.[5] That priority inquiry was narrow in scope and did not include any Tribunal-commissioned research.[6]

10. In contrast, there are 165 eligible claims participating in Stage Two and seven research reports.[7] Given that there are twice as many claims

[4] Wai 2750, #3.2.476 at [8 – 10].
[5] Waitangi Tribunal, *Kāinga Kore The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wellington, Legislation Direct, 2024) at 1.3 – 1.4, p 13 – 14. There were two claimant evidence hearing weeks, one Crown evidence hearing week, four days of claimant closing submissions and one day of Crown closing submissions.
[6] At xiv and 1.2.2, p 10.
[7] Wai 2750, #2.6.067(a), #2.6.054 at [3], #2.6.064 at [1] and [3]. Claimant counsel advise at least 9 claims have withdrawn from the Inquiry.

participating in Stage Two which covers a much broader scope of issues, a rudimentary estimate would suggest that at least eight hearing weeks would be required to complete the inquiry.

11. However, it is difficult to quantify the exact amount of further hearing time required in advance of the hearing procedure being determined and the evidence being filed.

12. Counsel consider there are a number of interrelated variables which are likely to inform the minimum viable requirements for the Stage Two hearings, including at least:

    12.1. The number of claimant and Crown witnesses;

    12.2. The extent of the evidence each witness intends to provide;

    12.3. The extent to which the evidence of the witnesses raises questions for the Tribunal and the parties, and/or requires a reply from the parties;

    12.4. The number of witnesses the Tribunal determines are required to appear at the hearings for questioning;

    12.5. The location and availability of the witnesses;

    12.6. The extent to which claimant counsel and counsel for the Crown wish to test the evidence of the Tribunal-commissioned researchers;

    12.7. The extent of the parties' submissions;

    12.8. The location and number of any agreed site visits;

    12.9. The amount of hearing time available for the presentation and testing of evidence, and presentation of submissions after accounting for any agreed hearing procedures and protocols (including accessibility protocols);

    12.10. The extent to which the interests, positions, and/or evidence of the parties overlap such that they are capable of being advanced jointly or in a co-ordinated manner;

12.11. The timing and extent of discovery provided by the Crown; and,

12.12. The issues resolved or agreed as a result of the Crown Statement of Response, any Crown concessions and/or acknowledgements, and/or any alternative resolution pathways.

13. Clearly the extent to which each of these variables will influence the minimum viable hearing requirements will be largely informed by the evidence which is ultimately filed.

14. Accordingly, counsel suggest that one practical approach to establish the minimum viable hearing requirements might be to have all claimant evidence for the inquiry filed simultaneously in mid-2027 in advance of the hearings beginning ("the **Evidence First** approach").

15. Following the filing of claimant evidence, the Tribunal could determine the final list of witnesses required to appear for questioning, which would in turn allow for the hearings to be planned more particularly and with a greater degree of certainty.[8] The Tribunal and the parties would then be able to establish the amount of further hearing time required, if any.

16. Counsel anticipate the greater certainty provided by the Evidence First approach would also support the Tribunal to consider and determine what action it will take, if any, should it be established that resourcing for further hearing time is required to ensure the viability of the inquiry.[9]

17. It is acknowledged the Evidence First approach proposes a significant workload on the Tribunal to review the entirety of claimant evidence for the inquiry at the same time. If the Tribunal considers the Evidence First approach unworkable or impractical on those grounds, then counsel suggest there may be a workable middle ground which appropriately balances the benefits and risks of the Evidence First approach and a more orthodox inquiry approach.

[8] The benefits of the Evidence First approach in terms of the various other matters of hearing planning are set out more particularly below with respect to each of the relevant JC agenda items.
[9] Wai 2750, #2.6.071 at [44].

18. In the alternative, if the Tribunal wishes to have final confirmation of the number of hearing weeks for the inquiry earlier than is possible under the Evidence First approach, claimant co-ordinating counsel have sought general indications from claimant counsel as to the anticipated scope of the evidence the claimants are likely to file.

19. Claimant counsel representing a total of 83 of the 165 participating claims responded in time for the filing of this JMoC. Those able to provide a general indication advise between 55 – 70 witnesses are likely to file evidence in Stage Two, with:[10]

    19.1. 38 claims likely to give evidence on Whenua Māori issues;

    19.2. 28 claims likely to give evidence on Whānau Kāinga issues;

    19.3. 31 claims likely to give evidence on Hauora issues; and,

    19.4. 34 claims likely to give evidence on Te Ao Kāinga issues.

20. Claimant co-ordinating counsel will provide an update on these figures at the JC should any further claimant evidence indications be advised following the filing of this JMoC.

Site Visits

21. Claimant co-ordinating counsel are not currently aware of any particular site visits proposed or sought by claimant counsel. However, claimant counsel support site visits in principle where they would materially assist the Tribunal in its inquiry and where any time utilised for site visits is proportional in terms of the breadth of the issues in the inquiry and the total hearing time available.

22. As a general observation, some hearing venues may offer particularly workable site visits where they are connected or adjacent to relevant housing locations. For example, where a Marae venue has kuia/kaumātua housing and/or papakāinga on site or nearby.

[10] Counsel for 28 claims indicated the likely number of witnesses that will file evidence in support of their claim. Counsel for 49 claims indicated which pakitara their evidence is likely to relate to.

23. Some claimant counsel have suggested the Tribunal and the parties may wish to consider whether virtual site visits through video evidence may offer a practical alternative to in-person site visits where it is not viable to incorporate a particular site visit, or visits, into the hearings programme.

Evidential and witness requirements

24. Counsel acknowledge the Tribunal's indications as to its preferred evidential and witness requirements.[11] Counsel remain generally supportive of these measures where they are carefully balanced against the need to ensure claimants are able to participate meaningfully in the inquiry.[12]

25. Counsel wish to clarify that the Tribunal's proposal that 'lead counsel' will be used to coordinate witness cross-examination is only supported to the extent that it applies to claimant counsel cross-examination of Crown and technical witnesses, including the Tribunal-commissioned researchers. Whether a 'lead counsel' approach is appropriate for claimant counsel cross-examination of claimant witness should be considered on a case-by-case basis.

26. Otherwise, as is noted above, counsel consider the extent to which any evidential and witness requirements are necessary, and the appropriate balance of the same, will be highly dependent on the evidence that is ultimately filed.

27. To illustrate the point, the Tribunal has indicated that evidence will be taken as read, with the majority of time at hearing reserved for cross-examination and Tribunal questions for witnesses that are required to appear.[13] However, the parties will not be in a position to ascertain the amount of cross-examination time required (and approved by the Tribunal)[14] until after they have considered the evidence and the Tribunal has decided which witnesses are required to appear.

[11] Wai 2750, #2.6.070 at [65 – 68].
[12] Wai 2750, #3.2.476 at [12 – 14].
[13] Wai 2750, #2.6.070 at [67(a), (c), and (e-f)].
[14] At [67(f)].

28. Likewise, the extent to which the presentation of reply evidence will need to be accounted for in the hearing programme will not be known until the Crown has filed its evidence.[15]

29. While general indications as to the widest range of possible evidential and witness requirements can be provided before the evidence is filed, finalising these matters before then risks time and resources being expended on matters which are ultimately unnecessary.

30. The Evidence First approach would enable the parties to finalise the evidential and witness requirements in light of the actual evidence and in tandem with the final witness list. This would ensure that an appropriate approach can be established and maintained throughout the hearings phase.

Hearing structure

31. Similarly, although the claimants remain broadly supportive of the inquiry proceeding on a thematic basis to the extent that is possible,[16] the extent to which that is, in fact, possible is dependent on the final witness list.

32. The current draft hearing plan organises the claimant evidence hearing weeks on the basis of the pakitara as follows:[17]

    32.1. Four weeks for Whenua Māori;

    32.2. Three weeks for Whānau Kāinga;

    32.3. Two weeks for Hauora;

    32.4. Two weeks for Te Ao Kāinga;

    32.5. Two weeks for Crown evidence;

    32.6. Two weeks for claimant closing submissions; and,

    32.7. One week for Crown closing submissions.

[15] At [68(e)].
[16] At [68(b)].
[17] Wai 2750, #3.2.439(b).

33. The presentations of the seven Tribunal-commissioned research reports are allocated to separate claimant evidence hearing weeks for the pakitara each report is most relevant to.

34. If the Tribunal wishes to maintain that structure, one possible revised hearing plan might be as follows:

    34.1. One claimant evidence hearing week set aside for each of the four pakitara with the seven research report presentations spread as evenly as possible across those four weeks;

    34.2. One hearing week for Crown evidence; and,

    34.3. One hearing week for Claimant and Crown closing submissions.

35. However, that approach does not leave room for reply evidence or site visits. It also risks the available hearing resources being utilised sub-optimally where there is not an even distribution of evidence filed and witnesses required to appear across the pakitara.

36. Under an orthodox inquiry approach, the claimants seeking to present at a particular hearing week will file their evidence in advance of that fixture, with the hearing timetable then finalised based on the participating witnesses. Consequently, decisions on witness allocation made in earlier hearing weeks will need to be made without an understanding of the evidence yet to be filed for later weeks. This means that witnesses presenting in later weeks may not have the same opportunity to be heard as those presenting in earlier weeks where there are too many or too few witnesses required to appear for earlier pakitara than can be accommodated in a single hearing week.

37. For example, if too many witnesses are required to appear for the Whenua Māori hearing week, some witnesses may need to be deferred to the following hearing week, leaving less hearing time available in those later weeks. If it transpires that the later weeks are also overfilled, then the impact on hearing time available will compound as the inquiry progresses. Later witnesses may then be subject to additional presentation restrictions, or greater scrutiny as to who is required to appear, compared to witnesses appearing in earlier weeks.

38. Similarly, if too few witnesses are required to appear for the Whenua Māori hearing week, there a risk that the Tribunal and the parties will be unable to utilise any excess time to mitigate against the risk of later hearing weeks being overfilled. As witnesses intending to present in later weeks would not have filed any evidence at that time, the Tribunal would be unable to identify additional required witnesses to fill the excess time. If it eventually turns out that too many witnesses are required to appear for the Te Ao Kāinga hearing week, the opportunity to accommodate the surplus witnesses in earlier weeks would have already passed.

39. In contrast, under the Evidence First approach the Tribunal and the parties will be able to organise the hearings around the pakitara with far greater particularity and certainty, down to the level of transitioning between pakitara within a single hearing day. This would ensure that those witnesses appearing in later hearing weeks are not prejudiced by the allocation of excess hearing time in earlier weeks.

Hearing locations

40. Claimant counsel advise the following claimant hearing venue preferences for the Stage Two hearings:

Rohe / Location	# of claims
Te Tai Tokerau / Northland	11
Kaitaia	1
Mangamuka	1
Kerikeri	3
Kaikohe	1
Whangārei	2
Tāmaki Makaurau / Auckland	12
Waikato	2
Waingaro	1
Tauranga	1
Te Waiariki / Bay of Plenty – Rotorua - Taupō	3
Taumarunui	2
Tūrangi	1
Taranaki	1

Heretaunga – Ahuriri / Hastings – Napier	2
Whanganui	2
Te Papaioea / Palmerston North	2
Taitoko / Levin	2
Ōtaki	1
Te Ika a Maui / North Island	1
Lower North Island	1
No preference	1
AVL	2
Evidence taken as read	1

41. Counsel consider the Evidence First approach would also support the Tribunal and the parties to maintain a hybrid approach to the hearings phase where hearings are organised by theme but also held in locations convenient and relevant to the claimants. Any trends in the preferred hearing venues of the final witness list could be used to inform the final hearing week locations.

42. Additionally, the ability to clearly identify the relevant pakitara of each witness' evidence on the final hearing week timetables under the Evidence First approach could mitigate the risk of any disruption to the Tribunal's thematic analysis of the issues that might be caused by witnesses that wish to present at a particular hearing venue on different themes.

43. In order to make more hearing time available for claimant evidence, claimant counsel have also discussed, at a high level, the possibility of having the Tribunal-commissioned researchers present their reports via AVL, and/or the closing submissions being presented via AVL. We note that these proposals are not supported by all claimant counsel, and they are put forward here to the extent that they might assist the Tribunal to determine the Stage Two hearing structure.

Accessibility

44. Counsel propose that certain accessibility requirements be adopted across all hearing weeks, with accommodation for specific needs adopted as required. The proposed baseline accessibility requirements are:

44.1. Wheelchair accessible venues through ramps, lifts and accessible wharepaku;

44.2. Accommodation for whānau support at hearings to assist Kaikōrero with communication and accessibility needs, including assisting with responses to any questioning arising from counsel and the Tribunal; and,

44.3. Accessible pānui issued in advance of each hearing week.

45. Currently, claimant counsel advise nine claims have witnesses with accessibility needs. Once the final witness list is determined, the nature and extent of any necessary additional accessibility requirements will become clear, however these are likely to include New Zealand Sign Language interpreters, flexibility around break times and sitting times, advance provision of questions in writing, and the opportunity to provide answers in writing following the hearing.

46. Given that some accessibility requirements can impact upon the amount of daily hearing time available in a hearing week, counsel consider the Evidence First approach will put the parties and the Tribunal in the best position to ensure that any such impact caused by the necessary accessibility requirements can be distributed equitably across the whole hearings phase.

47. In principle, counsel continue to support one hearing week being designated as having additional accessibility requirements, should that approach be supported by the required witnesses with accessibility requirements. As previously advised, counsel consider that week should not be confined to only witnesses with accessibility needs, but instead be opt-in with witnesses choosing to participate rather than being assigned on the basis of their accessibility needs.

48. Papakura Marae in Tāmaki Makaurau has been identified as a preferable venue for such an accessible hearing week based on preliminary indications from claimant counsel with claimants and witnesses that have accessibility requirements.

Revised Hearing Plan

49. Counsel consider a revised hearing plan setting out at least the following matters can be drafted following the JC:

    49.1. The timing of hearing days each week (e.g. presentation slots, break times, in-principle pōwhiri allocations, karakia, etc);

    49.2. The timing of the presentation of the Tribunal-commissioned research reports;

    49.3. The broad sequencing of the themes; and,

    49.4. A general allocation of hearing time between claimant evidence, Crown evidence and the presentation of legal submissions.

50. A timeline for producing a more particular revised hearing plan will be dependent on the substantive decisions the Tribunal makes about the matters set out above and the overall approach to the inquiry.

Any other requirements

51. There are no other requirements that counsel seek to raise on a joint basis, however individual counsel may raise other matters for consideration in separate submissions.

II. Update on Crown Statement of Response and Related Matters

52. Counsel confirm the joint position of claimant counsel is that a Crown statement of response on all Stage Two issues is required in advance of the commencement of hearings.[18] As the claimants will be permitted to provide the entirety of their evidence in a single presentation regardless of the theme of the hearing week they appear in,[19] the live issues for the entire inquiry must be agreed sufficiently in advance of the hearings to enable claimants to prepare and file evidence for the first hearing week.

[18] Wai 2750, #2.6.073 at [18].
[19] Wai 2750, #2.6.060 at [23 – 24].

53. Accordingly, counsel welcome the proposal made by counsel for the Crown and confirmed by the Tribunal for the Crown's statement of response to be filed by 5pm, Monday 14 December 2026.[20]

54. Similarly, claimant counsel tautoko the Tribunal's indication that it would welcome any Crown concessions able to be made by the same date, or arising in the course of the inquiry.[21] Claimant counsel consider any such Crown concessions that are able to be made sufficiently in advance of the hearings to allow the claimants to make any consequential amendments arising to their evidence would be particularly beneficial to the inquiry.

III. Any other matters

Gap-filling research

55. Counsel acknowledge that the Tribunal does not presently intend to commission further research.[22]

56. Counsel nonetheless seek to reserve the ability to undertake targeted gap-filling research where a gap is identified that existing research does not address, as distinct from updating research. The areas raised by claimant counsel so far include research regarding rangatahi and whānau hauā.

Claimant participation

57. In light of the indications around the availability of Tribunal resourcing for the inquiry, claimant co-ordinating counsel have discussed with counsel for the Crown possible avenues to increase claimant participation in the inquiry outside of appearing at hearings. This has included:

    57.1. Utilising Crown funding currently available for claimant preparatory hui for hearings to convene claimant hui or wānanga in advance of each hearing week. This could enable claimants not required to appear at hearings to kōrero with those that will appear at the hearings on their experiences and claim issues; and,

[20] Wai 2750, #2.6.073 at [19], [22].
[21] At [23].
[22] Wai 2750, #2.6.071 at [49].

57.2. Claimant hui and/or wānanga convened with the support of MCERT in advance of the hearing phase beginning, to allow for additional claimant coordination and as an avenue for enhancing the Crown's understanding of the position of the claimants in advance of the hearings.

Directions

58. Counsel understand pursuing some of the proposals put forward in this JMoC will require a degree of further coordination between the Tribunal and the parties.

59. If the Tribunal is minded to adopt the Evidence First approach and the hearings are more particularly planned after that time, some consideration of the requisite content of the Tribunal's directions is likely to be required to ensure that the claimants can utilise Legal Aid and Crown funding to prepare that evidence.

60. Similarly, if the parties and Tribunal agree to convene claimant wānanga in advance of each hearing week as proposed in paragraph [57.1] above, Tribunal directions may also be required to ensure that resourcing can be made available for that purpose under the Crown's current claimant funding guidelines.

Jurisdictional matters

61. Counsel consider there may be some utility in considering any jurisdictional issues that might arise in Stage Two in light of the Tribunal's Stage One findings as the Tribunal carries out its more comprehensive inquiry into homelessness issues.

62. It is noted that the Tribunal was restrained in the findings it was prepared to make in Stage One in anticipation of the more substantive inquiry to follow.[23] However, as the Tribunal observed in *Kāinga Kore*, some of the evidence led in Stage One necessarily strayed beyond the scope of that priority inquiry.[24] Accordingly, the amount of evidence that the parties seek to lead in Stage Two might be reduced if the parties can agree upon the extent to which evidence from Stage One might be utilised in Stage Two.

Dated: this 7th day of October 2026

N Lambert / J C Alexander / A Madsen

Claimant Co-ordinating Counsel

[23] *Kāinga Kore* at 5, p 194.
[24] At 4.2.1.1, p 108.