

WAITANGI TRIBUNAL

Wai 2358

CONCERNING

the Treaty of Waitangi Act 1975

ANDthe National Fresh Water and
Geothermal Resources Inquiry**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER**

1. This memorandum-directions addresses issues raised during the teleconference held on 28 May 2012 to discuss how Stage one of this inquiry will proceed.

Hearing Timetable

2. At the teleconference it was suggested by the Tribunal that the hearing time be divided between the parties with the claimants and the Crown having two days each and the interested parties having one day.
3. During discussions it became evident that the claimants required more than two days and the interested parties may require less than one day but needed time to consider the claimant submissions and evidence to be filed on 15 June 2012 before a final assessment could be made.
4. In light of the discussions that took place, it was agreed to adjourn the teleconference until **10am, Wednesday 20 June 2012** to enable parties to make a more informed decision as to the hearing time required.
5. All parties seeking to participate in the teleconference are to provide their contact phone numbers to the Registrar via email: wt.registrar@justice.govt.nz or by phone: (04) 914 3046 no later than **9am, Monday 18 June 2012**.
6. Pending this teleconference, and to assist parties in finalising decisions regarding the hearing, the Tribunal can signal that it is minded to proceed with an amended hearing timetable as follows:

Dates	Who
Monday 9 July to Wednesday 11 July 2012	Claimants
Thursday 12 July 2012	Interested Parties
Friday 13 July and Monday 16 July 2012	Crown
Thursday 19 and Friday 20 July 2012	Closings (all parties)

<i>Dates</i>	<i>Who</i>
Monday 23 July 2012	Claimant reply in writing

7. To assist with an efficient and effective hearing, counsel for the claimants and interested parties appearing in support of the claimants should file questions in writing of each other's evidence prior to the hearing. The Tribunal expects that such questions would be limited to matters of clarification.
8. It is proposed that counsel for interested parties file any questions regarding the claimant's evidence by **12pm, Friday 22 June 2012** and counsel for the claimants file any questions regarding the interested parties' evidence by **12pm, Friday 29 June 2012**.

Venue

9. Regarding a venue for this hearing week, we note that Ms Hall has suggested Waiwhetu Marae. Ms Hall submitted that this venue could comfortably house the numbers expected, which she advised would be in the region of 100-150 attendees per day. Tribunal staff are currently assessing this option along with other venues in the Wellington region capable of accommodating such numbers and will advise parties in due course.

Participation of Interested Parties

10. In previous memorandum-directions dated 15 May 2012 (Wai 2357/2358, #2.5.20) the Tribunal said it would continue to monitor and determine the nature and extent of further participation by interested parties throughout the inquiry.
11. To date, we have continued to allow parties to register their interest in this inquiry and participate in line with the Tribunal's directions. There are currently 86 parties that have signalled such an interest.
12. Any further party that seeks to participate in stage one of this inquiry has until **12pm, Friday 8 June 2012** to advise the Tribunal of its intention. No one will be permitted to participate if they fail to comply with this direction.
13. During the teleconference there was also discussion about the possibility of a coordinating counsel for those interested parties who are supporting the claims. The Tribunal endorses this suggestion as it would be beneficial for both the Tribunal and all parties concerned if the submissions and evidence of the interested parties were, as far as possible, presented in a coordinated manner. We also stress the importance of this coordinating counsel working with claimant counsel to avoid duplication of submissions and evidence.
14. Interested parties who are maintaining a watching brief but who do not necessarily support the claimants are unlikely to need the services of a coordinating counsel.

Funding

15. During the conference Ms Sykes drew the Tribunal's attention to the current lack of legal aid for interested parties and the resulting problems in their preparation for this inquiry.
16. We acknowledge this concern and note that the Tribunal welcomes the active participation of interested parties in this inquiry and has timetabled the hearing in light

of this. Any technical evidence that they may wish to produce may be of vital importance to this inquiry and we are concerned that the quality of such evidence may be hindered if counsel have no access to funding.

Wai 144 Ngāti Ruapani urgency decision

17. On 15 May 2012, Mr Castle and Dr Phillipson adjourned the Wai 144 Ngāti Ruapani application for urgency (Wai 144 #2.114). In their decision, they noted that the Wai 144 claimants have an alternative remedy available to them in the present Wai 2358 proceedings. They decided:

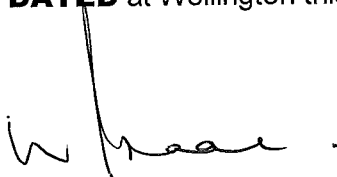
In essence, the first two questions proposed for inquiry in the Ngāti Ruapani application are, as we noted earlier: before its sale of shares, ought the Crown to disclose the possibility of Tribunal resumption orders for land owned by Genesis Energy; and ought the Crown to disclose the possibility that share values could drop if the Tribunal upheld Ngāti Ruapani claims to property rights in the water used by Genesis Energy? In her original submission on the Wai 2357/2358 urgency application, Ms Ertel referred to the placing of a memorial on the shares, equivalent to a section 27B memorial. This was later refined to a pre-sale disclosure to purchasers of shares in Genesis Energy that the value of those shares might be affected if the Tribunal made binding resumption orders (section 27B) or if the Tribunal upheld Ngāti Ruapani claims to a proprietary interest in the water of Lake Waikaremoana. ...

Here, we note that the first two issue questions posed by the claimants for an urgent hearing of Wai 144 can be dealt with in principle in the Wai 2357/2358 inquiry, with respect to Mighty River Power and the other three companies (including Genesis Energy). On 27 April 2012, the Wai 2357/2358 Tribunal delivered its decision to hold its inquiry in stages. The first stage, scheduled for hearing in July 2012, to be followed by a preliminary report, will focus on issues raised by the proposed share sales. We see no reason why the Wai 144 Ngāti Ruapani claimants cannot raise these issues in that urgent inquiry and have them determined in principle in that forum, well in advance of any actual issue of a prospectus for share sales in Genesis Energy, and within the time already set aside for hearing Wai 2357/2358 (including interested parties). The question of how much hearing time might be made available to the Wai 144 Ngāti Ruapani claimants as an interested party would be a matter to be decided in that inquiry. We note claimant counsel's observation to us that their issues can mostly be addressed in legal submissions and so will require little hearing time.

18. Should the Wai 144 Ngāti Ruapani claimants now wish to have these issues addressed in stage one of this inquiry, counsel for Wai 144 is directed to file a memorandum by **12pm, Friday 8 June 2012.**

The Registrar is directed to send a copy of this direction to counsel for the claimants, Crown counsel and all those on the distribution list for Wai 2358, the National Fresh Water and Geothermal Resources Inquiry.

DATED at Wellington this 30th day of May 2012.



Chief Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL

National Freshwater and Geothermal Resources inquiry: Timetable

<i>Inquiry milestone/event</i>	<i>who</i>	<i>deadline</i>
Submissions on stage two primary issues and any sub issue matters	All inquiry parties	12pm, 9 May 2012
List of case examples	Claimants and other parties	
Case example evidence	Claimants	12pm, 18 May 2012
Judicial teleconference on stage one hearing process issues		28 May 2012
Final date for parties to register interest in this inquiry	Other parties	12pm, 8 June 2012
Wai 144 claimants to file memorandum addressing issues raised in their separate application for urgency	Wai 144 claimants	
Claimant expert group and any other evidence	Claimants	12pm, 15 June 2012
Opening submissions on stage one issues		
List of evidence and witnesses for stage one hearing		
Judicial teleconference on stage one hearing process issues		20 June 2012
All evidence	Other parties	12pm, 22 June 2012
Opening submissions on stage one issues		
List of evidence and witnesses for stage one hearing		
Filing of written questions of clarification	Other parties	12pm, 22 June 2012
Crown evidence	Crown	12pm, 29 June 2012
Opening submissions on stage one issues		
List of evidence and Crown witnesses for stage one hearing		
List of claimant and other party witnesses it seeks to cross examine		

<i>Inquiry milestone/event</i>	<i>who</i>	<i>deadline</i>
Filing of written questions of clarification	Claimant	12pm, 29 June 2012
List of Crown and other party witnesses they seek to cross examine	Claimant	12pm, 4 July 2012
Apply for leave to cross-examine claimant and Crown witnesses specifying who	Other parties	
Stage One Hearings	Claimant	9 to 11 July 2012
	Other parties	12 July 2012
	Crown	13 and 16 July 2012
	Closing submissions	19 and 20 July 2012
Claimants written reply submissions	Claimants	12pm, 23 July 2012