

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 the issues raised by counsel for Wai 144 Ngāti Ruapani in her memorandum of 6 June 2012, and also the claimants' request for an extension for the filing of their opening submissions.

The Wai 144 Ngāti Ruapani issues

2. On 15 May 2012, Mr Castle and Dr Phillipson adjourned the Wai 144 application for an urgent hearing on matters relating to the Government's proposed sale of shares in Genesis Energy. They observed that the Wai 144 Ngāti Ruapani claimants could raise their issues as interested parties in the Wai 2358 proceedings. In their decision, Mr Castle and Dr Phillipson suggested that these matters could be dealt with in principle for all four power companies, well in advance of any sale of shares in Genesis Energy, rather than warranting an immediate and urgent inquiry into Ngāti Ruapani's claim (Wai 144, #2.114).
3. On 30 May 2012, I issued memorandum-directions dealing with matters for the Wai 2358 stage one inquiry. Among other things, I directed counsel for the Wai 144 Ngāti Ruapani claimants to file a memorandum by Friday 8 June, clarifying whether they now wished to raise their share-sale issues as part of the Wai 2358 inquiry (Wai 2358, #2.5.23).
4. Ms Ertel filed a memorandum on 6 June (Wai 2358, #3.1.121). She requested that the Wai 144 claimants be 'added as a party to the claim instead of having interested party status', and that the following issue questions be added to the stage one inquiry:
 - a) Before its sale of shares, ought the Crown to disclose the possibility of Tribunal resumption orders for land owned by Genesis Energy; and
 - b) 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; and
 - c) Do the principles of the Treaty require the Crown to develop a mechanism to protect the claims of Ngāti Ruapani to a proprietary right in water used by Genesis Energy Ltd to generate electricity when it sells shares to third parties in Genesis Energy Ltd?

5. In essence, these proposed questions relate to the issue of what disclosures the Crown should properly make during the course of offering shares for sale, and whether a special mechanism is necessary to protect Māori claims during the course of such a sale of shares. In the Wai 2358 inquiry, the Tribunal is considering such matters on a generic basis for all four power companies, on the basis of a claim brought by the New Zealand Māori Council for the benefit of all Māori. The present inquiry is not directed at making particular findings for particular iwi.
6. The third question posed by Ngāti Ruapani (point (c) above) is already encompassed in our stage one issue questions. We consider that points (a) and (b) above should be added as sub-issue questions to our Stage one issue question (b), but in a more generic fashion, as follows:
 - b) Does the sale of up to 49 per cent of shares in power-generating SOE companies affect the Crown's ability to recognise these rights and remedy their breach, where such breach is proven?
 - i Before its sale of shares, ought the Crown to disclose the possibility of Tribunal resumption orders for memorialised land owned by the mixed ownership model power companies?
 - ii Ought the Crown to disclose the possibility that share values could drop if the Tribunal upheld Māori claims to property rights in the water used by the mixed ownership model power companies?
7. Having regard to the adjourned decision in respect of an urgent hearing of the Wai 144 Ngāti Ruapani claim, I note that their role in the Wai 2358 inquiry is that of an interested party in support of the New Zealand Māori Council claim, which has been filed for the benefit of all Māori (including Ngāti Ruapani). The Wai 144 claimants' issues will be dealt with on a generic basis as sub-issues in this stage one inquiry, and those claimants will participate equally in the proceedings and in any benefits arising from those proceedings. And, as noted in the urgency decision, they may then seek to revive their application for an urgent hearing of Wai 144 in relation to any specific Ruapani issues which may still require determination. As a result, their request for full party status in the Wai 2358 inquiry is declined.
8. Given that no other party has expressed a view to date on the inclusion of the issues raised by Ngāti Ruapani, we would assume that the issues will be dealt with as above, and can be addressed by the claimants, the Crown, and other interested parties in the submissions already due to be filed.

The claimants' request for an extension for the filing of their opening submissions

9. On 8 June 2012, the Tribunal received a memorandum from counsel for the claimants (Wai 2358 # 3.1.132). Ms Hall and Mr Geiringer advised that the report of the experts' group has been delayed. Consequently, it will still be filed as scheduled on 15 June 2012, but the claimants will not have received it early enough to file their opening submissions on the same date. The claimants therefore requested an extension to midday on Tuesday 19 June 2012 for the filing of their opening submissions, noting that a subsequent extension for the filing of other opening submissions would not prevent the hearing from beginning as scheduled on Monday 9 July 2012.
10. We accept that the claimants cannot file their opening submissions on time and grant the extension to **midday, Tuesday 19 June 2012**. We also accept the claimants' suggestion that subsequent filing of opening submissions can be similarly extended without delaying the hearings. **If the parties need it**, then interested parties may file their opening submissions by **midday, Tuesday 26 June 2012**, and the Crown may file

its opening submissions by **midday, Tuesday 3 July 2012**. No further extensions, however, will be granted.

11. The filing of evidence is not included in this extension, and all parties must still meet the original filing dates for their evidence.

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 11th day of June 2012

A handwritten signature in black ink, appearing to read 'W Isaac', with a vertical line extending upwards from the first letter 'W'.

Chief Judge W W Isaac
Presiding Officer

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