

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 confirms oral directions given during the hearing of closing submissions, held at Waiwhetu Marae on 19 and 20 July 2012, and the Tribunal's response to Ms Sykes' request to file additional briefs of evidence on the Wai 2358 Record of Inquiry.

Confirmation of oral directions

2. The Tribunal requests that:
 - a) The Crown files details of any land which has hydro dams on it and is, pursuant to Section 27B of the State-Owned Enterprises Act 1986, subject to a memorialised title.
 - b) The Crown provides information about why Air New Zealand was not considered suitable, or could not be considered suitable, for partial privatisation in the September–December 2012 'slot'.
 - c) Ms Mason provide '*Property in thin air*' by Professor Gray, cited in *Yanner v Eaton* (1999) 201 CLR 351, referred to by Ms Mason in her closing submissions (Wai 2358, #3.3.13).
3. These responses are to be filed by **5.00pm, Wednesday 25 July 2012**.
4. On 20 July 2012, during the Crown's presentation of its closing submissions, the issue was raised of assurances from the Crown that are made during legal proceedings. Although it was stated that such assurances cannot be legally binding, it was submitted that they are nonetheless persuasive. In an exchange with the Tribunal, Crown counsel referred to certain matters as covered by various formal assurances, including the 21 February 2012 letter to Chief Judge Isaac from the Hon Bill English, Deputy Prime Minister, and the Hon Nick Smith, Minister for the Environment. In response to questions from the Tribunal, Mr Radich was unable to confirm that these assurances included one that no 'chilling effect' would arise from the possibility of litigation by overseas investors (as per the evidence of Professor Kelsey and Dr Ridings). Mr Radich said that he would need to seek instructions and would then advise the Tribunal of the Crown's position. This information should be provided by **5.00pm, Wednesday 25 July 2012**.

5. Ms Sykes sought leave to respond to the submissions made by the Crown in relation to assurances about the “chilling effect.” The leave sought is granted and Ms Sykes response is to be filed by **5.00pm, Friday 27 July 2012.**

Documents to be added to the Wai 2358 Record of Inquiry

6. During her opening submissions Ms Sykes, as counsel for some of the interested parties, relied on three briefs of evidence filed by parties in the Whanganui and Foreshore and Seabed inquiries. These were:
 - a) the brief of evidence of Turama Hawira (Wai 903, #L13);
 - b) the joint statement of evidence of Angeline Greensill and Sean Ellison (Wai 1071, #A50(a)); and
 - c) the statement of evidence of Hohepa Kereopa (Wai 1071, #A51(a)).
7. On 18 July 2012 Ms Sykes filed a memorandum seeking leave for these briefs of evidence to be added to the Wai 2358 record of inquiry. The Registrar is directed to transfer these documents to the Wai 2358 record of inquiry.

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 25th day of July 2012



Chief Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL