
BEFORE THE WAITANGI TRIBUNAL

WAI 2357
WAI 2358

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Claim by SIR GRAHAM LATIMER AND
OTHERS in respect of Māori proprietary
interests and rights to access and use of
water and geothermal resources

CROWN MEMORANDUM

27 April 2012

RECEIVED
Waitangi Tribunal
27 Apr 2012
Ministry of Justice WELLINGTON

CROWN LAW

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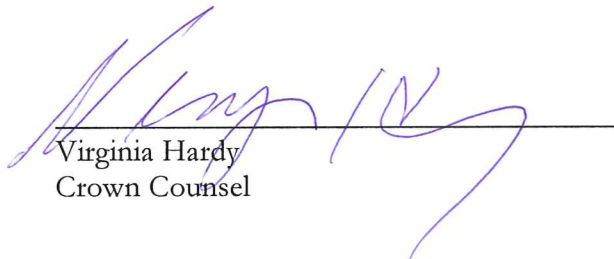
V L Hardy / J Gough

MAY IT PLEASE THE TRIBUNAL:

1. The purpose of this memorandum is to outline a brief response to the memorandum of 24 April 2012 filed by the Wai 2357 and Wai 2358 claimants.
2. The memorandum of the claimants is said to be a reduction to writing of the submissions made at hearing.
3. The Crown of course relies on the submissions filed and made orally at the hearing.
4. However, counsel wants to respond to the claimants' allegation again rehearsed in their most recent memorandum that the Crown is here acting in bad faith.
5. To repeat, the Crown from its earliest memorandum in February this year, has explained government's intention to commence share sales in Mighty River Power in the third quarter of 2012. That is necessarily contingent on the relevant legislation being enacted. And the Crown noted that the Tribunal itself had declined, in its decision granting urgency, to recommend a halt in the Crown steps towards share sale.
6. The claimants continue to misrepresent the Crown's position (paragraph 6); the Crown's position is that the share sale is intended for the third quarter of 2012. Government is not prepared to commit to a deferral to accommodate an extended hearing process. The Crown relies on the claimants' submissions made prior to the granting of urgency that they were ready to proceed to an urgent hearing in advance of any IPO. The Crown assumes that that submission was made to the Tribunal in good faith by the claimants.
7. The Crown explained at some length its reasons for opposing the proposal of the claimants for a short interim hearing based on scant evidence to occur in June and does not propose to reiterate those submissions.
8. For completeness sake, the timetable that was discussed with the Tribunal toward the end of the judicial conference ran as follows:
 - 8.1 Claimants to file evidence by 18 May 2012 along with all other parties who generally support the claimants' stance.

- 8.2 The Crown to file its response within 2 weeks. As the Crown has signalled, this is likely to focus on the issue of the linkage of the proprietary rights claims and the share sales as well as any relevant aspects of policy development over rights and interest recognition.
 - 8.3 Short right of reply.
 - 8.4 There will then be a hearing in June of up to 2 weeks (the claimants indicating that a full 2 weeks would not be necessary), with closings within that hearing process.
 - 8.5 A Tribunal report in the month of July 2012.
9. The Crown also relies on its submissions as to the appropriate issues. These involved a modest adjustment of those proposed by the Tribunal in its memorandum of 19 April.
10. The Crown repeats that a focused hearing would be one assisted by a Tribunal direction that the claimants more fully articulate their claim in advance of filing evidence. As the Tribunal pointed out, a clear articulation of the rights claimed, by whom, what relief is sought and how the rights argued for relate to any Mighty River share sale is essential.
11. As the Crown currently apprehends it, the case studies and the expert panel itself do not seem tailored to that inquiry.

27 April 2012


Virginia Hardy
Crown Counsel

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel