

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. On 20 October 2014, I directed the Crown to file a memorandum updating the Tribunal on the Crown's proposed reforms for freshwater and geothermal resources following the meeting between Ministers and iwi leaders at Waitangi on 5 February 2015 (Wai 2358 #2.5.51).
2. Crown counsel filed this memorandum on 20 March 2015 (Wai 2358 #3.1.327). In the memorandum, the Crown sought an adjournment of Stage Two of this inquiry until 22 February 2016. In the Crown's submission, the Crown and the Freshwater Iwi Leaders Group should spend that period conducting a "collaborative and good faith process to arrive at policy options for further discussions and debate". The proposal is that the Crown and iwi leaders will provide other parties and the Tribunal with quarterly updates while this collaborative policy-development process is taking place, and that dialogue with the Iwi Leaders Group will be followed by wider consultation with Māori before final decisions are made.
3. In its memorandum, the Crown notes that it plans to introduce a Bill to amend the Resource Management Act 1991 in mid-2015 (incorporating reforms already signalled), and to put out policy options for water reform in January 2016, followed by a six to eight week consultation (including with Māori). Crown counsel submits that there may be multiple options for consultation, rather than a preferred option.
4. Crown counsel also advised that the Iwi Leaders Group supports the Crown's proposal for an adjournment while the collaborative process takes place, but the Tribunal did not receive a submission directly from counsel for the Iwi Leaders Group.
5. On 14 April 2015, the Tribunal received a memorandum from the claimants (Wai 2358 #3.1.239). In that memorandum, the claimants noted their opposition to any adjournment of Stage Two of this inquiry. In their view, Stage Two should continue as planned, working towards hearings in the final quarter of 2015. It appears from their submission that the claimants may now envisage a full inquiry into the original Stage Two issue questions, rather than the narrower inquiry into the agreed Crown-claimant issue question: "What further reforms need to be implemented by the Crown in order to ensure that Māori rights and interests in specific water resources as found by the Tribunal at Stage One are not limited to a greater extent than can be justified in terms of the Treaty?" (Wai 2358 #2.5.45)

6. Alternatively, the claimants seek an “urgent half-day fixture to determine whether it is appropriate to make interim findings that the process the Crown proposes in its memorandum is inconsistent with the principles of the Treaty and with the UN Declaration on the Rights of Indigenous Peoples” (Wai 2358 #3.1.239).
7. On 9 April 2015, Ms Kathy Ertel, counsel for interested parties, filed a submission opposing the Crown’s application for adjournment (Wai 2358 #3.1.238). Ms Ertel also made a request for a “timely discovery order” to obtain any documentation of the dialogue between the Crown and the Iwi Leaders Group.
8. Then, on 16 April 2015, a further submission was filed on behalf of interested parties by Ms Annette Sykes, supporting the claimants’ position and seeking an urgent judicial conference (Wai 2358 #3.1.240). The Tribunal received a third submission from interested parties on 20 April 2015, filed by Ms Janet Mason and Ms Alice Shelton, also opposing the application for adjournment (#3.1.241).
9. After considering these submissions, I am convening a judicial conference in Wellington on **Tuesday 2 June 2015** to hear the parties on whether: (i) the inquiry should be adjourned to 22 February 2016 as sought by the Crown; (ii) whether Stage Two should proceed to hearing as sought by the claimants; or (iii) whether an urgent hearing should be held as to the Treaty-compliance of the Crown’s proposed process, as sought in the alternative by the claimants.
10. In the interim, I hope that the Crown and claimants can discuss matters further and come to an agreed position, as they did previously in respect of the issue question for Stage Two.
11. The judicial conference will be held at the Tribunal offices, Wellington, commencing at 10am on **Tuesday 2 June 2015**.

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 23rd day of April 2015



Chief Judge W W Isaac
Presiding Officer
WAITANGI TRIBUNAL