

**Appendix A:****Taihape: Rangitīkei ki Rangipō and Porirua ki Manawatū:****Hearing protocols for the joint hearing concerning the Rangitīkei River**

May 2017

**1. Introduction**

- 1.1. The following hearing protocols are to be observed during the two-day hearing held jointly by the Porirua ki Manawatū and Taihape inquiries. These protocols outline the Tribunals' expectations around filing, cross-examination, and other procedural matters. It is important that counsel in both inquiries adhere to these protocols for the joint hearing to ensure that all relevant material is filed accurately on the correct record, or records, of inquiry.
- 1.2. These protocols will apply only to the joint sitting. For the remaining two days of the hearing week where the Taihape Tribunal will hear evidence from Taihape claimants, the hearing protocols for the Taihape inquiry will apply (Wai 2180, #2.6.1(b)).

**2. Hearing planning and logistics**

- 2.1. As advised in previous joint-directions, claimant counsel from both inquiries are to advise one co-ordinating counsel from each inquiry with the submission of a draft timetable on **17 May 2017**.
- 2.2. Co-ordinating counsel will be responsible for co-ordinating other claimant counsel, parties and witnesses, liaising with Tribunal staff on logistical matters, and performing any other tasks required to ensure the hearing runs smoothly.

**3. Te Reo Māori**

- 3.1. Counsel may address the Tribunals in Te Reo Māori or English. Te Reo Māori will be interpreted simultaneously.
- 3.2. If any witnesses wish to speak Te Reo Māori at length (ie. to kōrero entirely in Te Reo), the Tribunal would find it helpful to have this indicated in the draft and final timetable. We ask that parties make such intentions known to counsel co-ordinating the timetable.

**4. Filing dates**

- 4.1. As per the directions issued in each inquiry (Wai 2180, #2.6.2; Wai 2200, #2.5.141), the pre-hearing filing dates for the joint hearing are as follows:

<b>Filing</b>	<b>Who</b>	<b>Date</b>
Witness summaries	Technical witnesses	Wednesday 3 May 2017
Questions of clarification, requests to cross-examine witnesses with indications	Claimant counsel, unrepresented claimants and Crown counsel	Wednesday 10 May 2017
Draft hearing timetable	Coordinating counsel for the Wai 2200 and Wai 2180 inquiry	Wednesday 17 May 2017
Opening submissions to be presented in the forthcoming week	Claimant counsel, unrepresented claimants and Crown counsel	
Witness responses to questions of clarification	Technical witnesses	Wednesday 24 May 2017

Bundles of documents for cross-examination	Claimant counsel, unrepresented claimants and Crown counsel	
Final hearing timetable	Coordinating counsel for the Wai 2200 and Wai 2180 inquiry	

- 4.2. The following is a guide to expected filing after the hearing. Post-hearing directions will confirm the hard deadlines for this filing:

Documentation to be filed	Filing dates
Questions in writing from counsel and the Tribunal	12pm, two weeks following hearing
Post-hearing filing	12pm, three weeks following hearing
Witness responses to questions in writing	12pm, five weeks following hearing
Corrections to the hearing transcript	12pm, two weeks after the distribution of the transcript

- 4.3. Due to the joint nature of the hearing, some of the participating claims are located within a single inquiry while others straddle both. The filing of documents needs to reflect this in order to ensure that the material being filed on each record of inquiry is relevant solely to that inquiry. As a general rule, documents will only be filed on one record of inquiry rather than both – that being, the record for the inquiry into which the associated claim or claims have been aggregated or consolidated – with the following exceptions:

4.3.1. General documents that relate to both inquiry districts (such as report summaries and general openings); and

4.3.2. Documents filed on behalf of claims that have been aggregated into both inquiry districts.

- 4.4. An indicative summary of our filing expectations is shown in the table below. However, we ask that parties clearly denote in their submissions which claim(s) and/or inquiry(ies) their filing relates to:

Appended to the relevant record(s) of inquiry	Appended to both records of inquiry	Appended to the Taihape record of inquiry ONLY
<ul style="list-style-type: none"> <li>• Requests to cross-examine with indications</li> <li>• Pre-hearing questions of clarification for technical witnesses</li> <li>• Technical witness responses to pre-hearing questions of clarification</li> <li>• Bundles of documents for cross-examination</li> <li>• Specific opening submissions</li> <li>• Post-hearing questions in writing</li> <li>• Technical witness responses to post-hearing questions in writing</li> </ul>	<ul style="list-style-type: none"> <li>• Draft and final hearing timetables</li> <li>• Technical witness summaries</li> <li>• General opening submission</li> </ul>	<ul style="list-style-type: none"> <li>• Technical witness responses to the Taihape TSOI</li> </ul>

4.5. Additional filing instructions are discussed below.

## 5. Filing of witness summaries

5.1. All technical witnesses are expected to provide a written summary of their report by **3 May 2017**. The length of the summaries should take into account the length of time to present them at hearings. Our expectation is that report summaries should be no more than 30 minutes. Witnesses should ensure their presentations are timed before presentation at hearing.

5.2. All technical witnesses are also expected to file a separate document referring to the Taihape Tribunal's Statement of Issues (TSOI) questions that are relevant to their report.

## 6. Timetable

6.1. As stated above, draft and final timetables are to be submitted by co-ordinating counsel by **17 May 2017** and **24 May 2017** respectively.

6.2. Counsel should note that the Tribunals will generally sit for the following sessions:

<b>Session one</b>	9:00am – 11:00am
Kapu tī	11:00am – 11:20am
<b>Session two</b>	11.20am – 1:00pm
Kai	1:00pm – 1:40pm
<b>Session three</b>	1.40pm – 3.00pm
Kapu tī	3:00pm – 3.20pm
<b>Session four</b>	3.20pm – 5:00pm

## 7. Cross-examination of witnesses

7.1. Leave to cross-examine professional witnesses must be sought by counsel prior to the hearing week. To allow witnesses to sufficiently prepare, counsel are required to give indications as to the nature of the content of their questioning when seeking leave.

7.2. As stated above, all requests must be filed by **10 May 2017** to coincide with the filing of questions of clarification.

## 8. Opening submissions

8.1. Counsel have indicated their preference that a lead counsel be nominated to present a general opening submission on behalf of all claimants represented at the joint hearing.<sup>8</sup> The Tribunal supports this approach.

8.2. If other counsel wish to file further opening submissions on the specific take of their claimants, they may do so as well.

## 9. Order of questioning

9.1. The order of questioning of witnesses will be as follows:

Order of questioning
<ul style="list-style-type: none"> <li>• Lead counsel leads the witness</li> <li>• Tribunal asks questions</li> </ul>

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<sup>8</sup> Wai 2180, #3.2.9; Wai 2200, #3.1.832

Order of questioning
<ul style="list-style-type: none"> <li>• Claimant counsel cross-examine</li> <li>• Crown counsel cross-examines</li> <li>• Tribunal asks further questions (if required)</li> <li>• Lead counsel re-examines (if required)</li> </ul>

## 10. **Filing bundles of documents for cross examination**

- 10.1. These should be filed by **24 May 2017**. Counsel are not required to reproduce an entire document - only a relevant selection of pages to which witnesses will be referred to during the hearing.
- 10.2. As with all supporting documentation, the bundle must be paginated and fully indexed showing the title of each document, a description of the bundle's contents, and the documents' source or location.

## 11. **Answers to questions in writing**

- 11.1. Any witnesses asked to answer questions in writing, and where leave has been granted, are to provide the following within their responses:
  - 11.1.1. A heading for each set of questions referencing the author/s of the questions and including any document reference (if known). If the questions have come from Crown or claimant counsel, then reference should be made to the memorandum that they filed the questions within. If the questions have come from the Tribunal panel, reference should be made to the directions in which the respective questions were released;
  - 11.1.2. A list of the question/s being asked;
  - 11.1.3. A response to each question directly below the question; and
  - 11.1.4. Appropriate pagination (for later reference).

## 12. **Oral submissions during joint proceedings**

- 12.1. When counsel stand to give oral submissions (ie. register appearances, cross-examine, etc.), they should be mindful to state their name and any document numbers of relevance. When giving appearances, the Wai number(s) of the claim(s) counsel is representing should be stated clearly. Due to the complexity of joint proceedings, stating counsel's name, intention and relevant documents numbers on the record will give clarity to the records.
- 12.2. If counsel wish to address a specific Presiding Officer, or a specific Tribunal on what they believe to be an inquiry-specific issue, then they should also state this immediately before making their submission.

## 13. **Filing at hearing**

- 13.1. All documents to be referred to at hearing must be filed by the deadlines indicated in this document at paragraph 4.1.
- 13.2. In exceptional circumstances where documents cannot be filed before hearing, parties are to comply with the procedures outlined below. These requirements also apply to any documents filed after 12pm on the Friday prior to the hearing week.

- 13.3. Those intending to file documents at hearing (including memoranda and bundles of documents for cross-examination) should give advance notice to Tribunal staff and provide these documents preferably prior to 8:30am on the day of hearing, or during the break time preceding their appearance.
- 13.4. In accordance with paragraph 4.6(5) of the Tribunal's *Guide to Practice and Procedure*, parties must provide 12 hard copies of any document filed at hearing to the claims co-ordinator, at least one of which must be unbound, single-sided copy.
- 13.5. As with any standard submission of documentation, an electronic copy of documents submitted at hearing must be served on the electronic distribution list for the inquiry. This must include [WT.Registrar@justice.govt.nz](mailto:WT.Registrar@justice.govt.nz)
- 13.6. If parties are unable to file an electronic copy of the document/s in accordance with the above procedure (due to internet connectivity issues or the size of the document) before their appearance an electronic copy must be given to the Tribunal by handing a USB stick containing the document(s) to the claims co-ordinator. This will be treated as a working copy for the purposes of the hearing only. The document will be given a document number but will not be treated as official filing or become an official document until the completion of the hearing week where parties will then **file an electronic copy** in accordance with the procedure outlined in paragraph 13.5 above (or by sending a CD containing the document/s to the Tribunal's postal address).
- 13.7. If counsel wish to cross-examine a witness with a particular document already on the record of the inquiry, but the witness has not been advised before hearing, then counsel are expected to provide a copy of the document to the witness. They must also provide 12 copies for the Tribunal, Tribunal staff and Crown counsel.

#### 14. **Transcription**

- 14.1. Evidence and kōrero presented at the hearings will be transcribed in accordance with Waitangi Tribunal practice.
- 14.2. The transcript for the joint hearing will be released to parties as soon as it becomes available following hearing. Parties will then have two weeks to file any comments on the transcript by way of memorandum. This may include corrections of misspellings of places, people and events in their own kōrero only. The opportunity to review the draft transcript is not an opportunity to change, improve, moderate or enhance the kōrero given. Where claimants' corrections go to the substance of the transcript (including simultaneous interpretation), those amendments will be considered evidence and appended to the claimant's brief and/or a memorandum, depending on the nature of the submission.
- 14.3. Corrections received from parties will not be incorporated into the transcript itself. Instead, corrections will be appended to the transcript on both records of inquiry.

#### 15. **Media and recording proceedings**

- 15.1. Media intending to take photographs, or make audio or visual recordings, must obtain permission from the Presiding Officer prior to hearing. Media can make a formal request by filing the required form with the Registrar on [WT.Registrar@justice.govt.nz](mailto:WT.Registrar@justice.govt.nz) or with the inquiry claims co-ordinator at hearing. This must be one full working day before the date on which the record is to be made. Application forms and further information for media can be found on our website (<http://waitangitribunal.govt.nz/applications/media-applications/>) or in our *Guide to Practice and Procedure* (5.14).

15.2. Parties to the inquiry may use tape recorders or video cameras to keep their own, private record of the proceedings, but they must advise the Tribunal in advance of any intention to do so. Where claimants intend to broadcast or publish their recordings, they must first make a request to the Presiding Officer in the same manner as media representatives.

15.3. The Tribunal will make audio recordings of all formal proceedings and they will be placed on the Taihape record of inquiry. Parties will be notified of its availability via the distribution list.

16. **Photographs**

16.1. Tribunal staff will take photographs of all witnesses who present, the marae or venue where the hearing is held, and during site visits. These photographs may be used by the Tribunal for the report, or for other purposes.

16.2. If individuals do not want their photographs taken they must advise Tribunal staff prior to the hearing.