OFFICIAL

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 2607
Wai 3262

E PĀ ANA KI *CONCERNING*	te Treaty of Waitangi Act 1975
Ā, *AND*	a request for a priority inquiry by David Potter on behalf of all Māori (Wai 2607)
Ā, *AND*	an application for an urgent hearing by Emily Bailey, on behalf of herself and Climate Justice Taranaki (Wai 3262)

TE WHAKATAUNGA Ā TIAMANA TUARUA KAIWHAKAWĀ SARAH REEVES

DECISION OF THE DEPUTY CHAIRPERSON JUDGE SARAH REEVES

9 Huitanguru 2024

Hei tīmatanga kōrero / Introduction

1. This decision concerns two applications regarding climate change issues. The first is a renewed request for a priority inquiry by David Potter on behalf of all Māori (Wai 2607), and the second an application for an urgent inquiry by Emily Bailey, on behalf of herself and Climate Justice Taranaki (Wai 3262) (the applicants).

2. The Wai 2607 applicants submit that it is scientifically accepted that the main cause of climate change has been an increase in the amount of greenhouse gases in the atmosphere that have been caused by human activity.[1]

3. Globally, the main source of anthropogenic greenhouse gases has been CO2 (carbon dioxide) caused largely by burning of fossil fuels. Methane and nitrous oxide from agricultural activities and hydrofluorocarbons have also been significant contributors.[2]

4. New Zealand Parliament declared a "climate change emergency" on 2 December 2020 which recognised the devastating impact that volatile and extreme weather will have on New Zealand.[3] More recently, on 23 March 2023 the Secretary General of the United Nations said, "climate change is making our planet uninhabitable" and "2023 must be a year of transformation not tinkering".[4]

5. It is against this background that the applicants submit that the Crown has and continues to act in breach of its obligations towards Māori by failing to put in place policies that meaningfully address the threat of climate change to Māori, and that an urgent or priority inquiry is required into these issues.[5]

6. This decision is based on submissions and evidence provided as of June 2023, and does not deal with subsequent events such as the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 which came into force fully on 1 January 2024, the results of the appeals in relation to the climate change matters in the High Court, or any new/proposed policy of the Coalition Government.

Ko te hātepe ture o te tono nei / Background

7. In 2017, the Tribunal received an application for urgency from Cletus Maanu Paul, David Potter, and Andrew Peterson on behalf of the Mataatua District Māori Council in 2017.[6] This application was declined on the basis that Emissions Trading Scheme (ETS) policies and targets were subject to ongoing processes in which Māori would continue to have a role, and the Crown was still developing its domestic policies on climate matters. The application was accordingly dismissed.[7]

8. In 2019, the Wai 2607 applicants applied to have their claim heard as a priority on the basis that there would be significant delay in hearing the claim would cause irreversible prejudice to Māori as the Natural Resources and Environmental Management kaupapa inquiry was grouped eleventh in priority for hearing.[8]

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1 Wai 2607, #1.1.1.
2 Wai 2607, #3.1.9 at [10].
3 Wai 2607, #3.1.16 at [13]).
4 Wai 2607, #3.1.29.
5 Wai 2607, #3.1.16.
6 Wai 2607, #1.1.1 & #3.1.1.
7 Wai 2607, #2.5.4.
8 Wai 2607, #3.1.11 & #1.1.1(b).

9. At that time, the former Chairperson noted that the Tribunal was barred from inquiring into the matter as the matters raised in the statement of claim were the subject of the Climate Change Response (Emissions Trading Reform) Amendment Bill which was currently before the House.[9]

Renewed request for priority.

10. In February 2023, the Tribunal received a renewed application for priority by the Wai 2607 applicant in relation to the Crown's past and present climate change policies and the ETS.[10]

11. The Wai 2607 applicants contend that the criteria for priority have been satisfied as climate change is increasingly impacting Māori and all of Aotearoa as is demonstrated by the extreme storms and floods that have devastated large parts of the motu. Further, climate change continues to have an impact on Māori businesses including agricultural, horticultural and fisheries industries.[11]

12. The applicants are of the view that Māori have no alternative forum to bring claims relating to climate change. The Tribunal provides an opportunity to assess the Government's response to climate change from the perspective of Treaty obligations.

Application for urgency

13. On 13 March 2023, the Tribunal received a statement of claim and application for an urgent hearing by Emily Bailey on behalf of Climate Justice Taranaki.[12] The applicant submits that climate change presents an emergency for Māori communities which are disproportionately affected by climate change.

14. The applicants alleges that the Crown's actions to address climate change through general policies, the Climate Change Response Act 2002 (Response Act) and the ETS are likely to cause significant prejudice to Māori. [13]

15. In particular, the Wai 3262 applicants submit that the inadequacy of the Crown's current approach is demonstrated through recent extreme climate events, such as the Auckland Anniversary Floods and Cyclone Gabrielle. Decisions on land use in response to these events will be informed by Government policy settings that do not protect Māori communities. Therefore, ensuring a Treaty compliant response to these events is an urgent matter.[14]

16. The Tribunal has received numbers of memoranda and statements of claim in support of these applications which are attached as **Appendix A**.

17. On 4 May 2023, the Tribunal convened a judicial conference to discuss the request for prioritisation of the Natural resources and Environmental Management kaupapa inquiry and the Wai 3262 application for urgency.[15]

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9 Wai 2607, #2.5.6.
10 Wai 2607, #3.1.16.
11 Wai 2607, #3.1.16 at [16].
12 Wai 3262, #1.1.1, accompanied by the affidavit of Emily Tuhi-Ao Bailey and supporting documents Wai 3262, #3.1.1, #A1 & #A1(a).
13 Wai 3262, #1.1.1 at [7].
14 Wai 3262, #3.1.1 at [16].
15 Wai 2607, #2.5.8 & #2.5.9.

Emissions Trading Scheme

18. The Wai 2607 applicants submit that the ETS is insufficient in addressing the issues of climate change.[16] The applicants refer to the Emissions Reduction Plan (ERP) released in May 2022 which introduces the first three emissions budgets covering the period 2022 – 2035. Under these budgets greenhouse gas (GHG) emissions produced by New Zealand will continue to increase up to 2030 before modestly decreasing. This is alleged to fall significantly short of the GHG emission reductions required under the Paris Agreement[17] to keep temperature increases below 1.5°C.[18]

19. The Wai 3262 applicants also point to the Intergovernmental Panel on Climate Change (IPCC) scenarios for emissions reduction targets which they submit are profoundly inequitable and places large mitigation and adaptation requirements on already stressed minority communities, including Māori who have a low emissions profile.[19]

20. The applicants contend that the IPCC's Sixth Assessment Report (AR6) requires significant emission cuts between now and 2030, which contradicts the current Government emissions budget which involves an increase in emission by 2030 and modest decreases thereafter.[20]

21. In response, the Crown submit that New Zealand increased the ambition of its nationally determined contributions (NDC) under the Paris Agreement to align with the global effort following advice from the Climate Change Commission. The Crown contend that AR6 report only considers NDCs submitted before October 2021 and does not include the New Zealand's updated NDC has greater compatibility with contributing to global efforts to limit global warming.[21]

22. The applicants are concerned that the recent changes to the ETS will not be effective in driving down emissions with only about 25% of emitters having to purchase units for their emissions. The balance being mainly agriculture and trade exposed industries are completely or largely exempt.[22]

23. The ETS fails to limit the amount of free emissions allocated and to adequately monitor the quality, amount, and price of overseas units available for purchase. In addition, the Crown has removed agriculture from the scheme, placing more restrictions on Māori dominant areas such as forestry.[23]

24. The ERP intends to 'empower' Māori in dealing with climate change by supporting the development of a Māori Climate Change Strategy. The applicants contend that no plans or resources have been committed to operationalise this strategy.[24]

25. The Wai 3262 applicant similarly submits that current government reviews are not addressing larger questions such as the inter-generational trade-off that Māori communities are being incentivised to make with its remaining land under government policy. The applicant submits it is likely that a large percentage of Māori freehold land

16 Wai 2607, #1.1.1(c).
17 International Treaty on climate change, to which New Zealand is a state party.
18 Wai 2607 #3.1.16 at [13].
19 Wai 3262, #3.1.1 at [9].
20 Wai 2607, #3.1.24 at [9].
21 Wai 2607, #3.1.26 at [4.2].
22 Wai 2607, #3.1.16 [13]((f).
23 Wai 2607, #1.1.1(c) at [137].
24 Wai 2607, #3.1.16 at [13].

would be put into the ETS, with no possibility of removing the land from that scheme in the current government policy.[25]

26. It is submitted that these decisions become irreversible as global emissions budgets are exhausted or almost exhausted, due to the long residence of extra carbon dioxide in the atmosphere once land has been forested for sequestration. The applicant probes whether this approach is consistent with Treaty principles, or whether it merely exploits the historically vulnerable position Māori land has been placed in.[26]

27. The Crown submit in response that the AR6 highlights the importance of New Zealand's goals to reduce emissions and build resilience in communities. The report also outlines that the Crown will continue to review contributions to international climate change action, while considering the latest science, development of new technologies and the commitments New Zealand has made.[27]

28. The Crown also notes that through the National Adaptation Plan, the Emission Reduction Plan, and the Climate Adaptation Bill substantial changes will be made to reduce emissions and address complex issues associated with managed retreat.[28]

29. The Crown submit that the Māori Climate Platform is a key action point from the Emission Reduction Plan 2022, with a central role in ensuring continued Māori engagement in the setting of national climate change policies.[29]

30. The Crown submit they are in the process of reviewing the ETS, to assess whether changes are needed to prioritise emissions reductions, while supporting forestry and other removal activities.[30]

31. Finally, updates on pending policy and legislative work demonstrates that there are ongoing opportunities for Māori to participate in these processes especially in relation to ongoing work concerning:[31]
    (a) development of the Māori Climate Platform.
    (b) progression of the Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill.
    (c) consideration of proposals regarding the pricing of agricultural emissions
    (d) consideration of options to improve market governance of the ETS; and
    (e) amending the permanent forestry category in the ETS.

Akoako / Consultation

32. The Wai 2607 applicants submit that the Government has and continues to fail to fulfil its Treaty obligations to consult with Māori over climate change policies.[32] The applicant points to the Crown's position in response to their earlier application for urgency whereby Māori were to be consulted when the Government was to revise its 2030 NDC by 2020. Instead, no meaningful consultation took place (Wai 2607, #3.1.16 at [13]).[33]

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25 Wai 3262, #3.1.10 at [16].
26 Wai 3262, #3.1.10 at [17].
27 Wai 3262, #3.1.5 at [4].
28 Wai 3262, #3.1.5 at [4.3] – [4.4].
29 Wai 3262, #3.1.5 at [5] and #A9 at [5].
30 Wai 3262, #3.1.5 at [9].
31 Wai 3262, #3.1.5 at [8].
32 Wai 2607, #1.1.1(c) at [142].
33 Wai 2607, #3.1.16 at [13].

33. The IPCC AR6 report also states that meaningful participation in decision-making with indigenous peoples and local communities is required, which requires the recognition of the inherent rights of indigenous peoples.[34]

34. The Wai 2607 applicants submit that any previous consultation with Māori has been mostly restricted to providing information and seeking feedback from the Climate Change Iwi Leaders Group. In his affidavit, Mr Chris Insley notes that consultation has also been a 'tick box' exercise and feedback provided by Māori through this process does not seem to be considered.[35]

35. The Emission Reduction Plan and the Climate Change Adaption Plan states an intention to create a platform for Māori climate action and other structure for Māori representation on climate change issues but do not put any such structures in place or provide any funding for Māori action on climate change.[36]

36. In addition to the failure to properly consult Māori, the Government has failed to provide Māori with proper support to adapt to the effects of climate change. The applicants contend that Māori communities are increasingly dealing with the impacts of climate change, such as storms and floods, with little government support to protect these communities.[37]

37. The Crown submits that there have been and continue to be opportunities for Māori engagement and participation in the ongoing development and setting of New Zealand's climate change policies, particularly through the development of the Māori Climate Platform, which will ensure continued Māori engagement in the setting of climate policies.[38]

38. The Emission Reduction Plan provides for the establishment of an Interim Ministerial Advisory Committee (Interim Committee) to lead the transformation to a more enduring form, which will be developed with Māori.[39] The aim of this platform is to embed a partnership approach in our climate response and provide dedicated funding that enables Māori-led climate action planning and solutions which are well supported by the Government's climate policy response.[40]

39. Since 2021, the Crown has undertaken three rounds of public consultation on a range of policy options designed to improve the governance of the ETS and reduce trading risks. Analysis of the submissions is currently underway.[41]

40. The Crown submit that there are ongoing processes in terms of the domestic and international response to climate change targets where Māori will have an opportunity to influence Crown policies.[42]

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34 Wai 2607, #3.1.24 at [7] and Wai 2607, #A10(a) at C.3.6 and C.6.5.
35 Wai 2607, #A11 at [12].
36 Wai 2607, #.1.1.1(c) at [142(f)]
37 Wai 2607, #1.1.1(c) at [143].
38 Wai 2607, #3.1.26 at [6].
39 Wai 2607, #A9 at [10]).
40 Wai 2607, #A15 at [7].
41 Wai 2607, #A9 at [19].
42 Wai 2607, #3.1.18.

Climate Change Policy

41. The Wai 2607 applicants submit that the Crown has failed to take adequate steps to ensure that New Zealand sufficiently reduces GHG emissions to prevent global temperature rise that threatens Māori in the use of their land and resources.[43] The Crown has also failed to prioritise reduction of greenhouse gas emissions, instead advancing the economic interests of the highest emitters of greenhouse gas.

42. The applicants further submit that the Crown has failed to provide framework to sufficiently address New Zealand's efforts to address climate change through the Climate Change Response (Zero Carbon) Amendment Act 2019 (Zero Carbon Act).[44] The targets set out in the Zero Carbon Act and under the Climate Change Response Act 2002 are not linked to New Zealand's international obligations and fail to provide legal obligations to do so.

43. The Crown has failed to create policies banning onshore exploration permits, reduce, or otherwise limit Landcorp dairy production which has converted large areas of foresty into fairy farms, incentivise emissions reducing conduct, adequately invest in public transport and provide sufficient support to the expansion of renewable energy.[45]

44. The Wai 3262 applicant alleges that the Crown has failed to adequately address the ongoing and future inequitable impacts of climate change on Māori. Instead, the Crown has focused climate and environmental policy on advice which will further entrench existing inequalities, and on forestry which is a sector with high levels of Māori involvement.[46]

45. It is submitted that current government reviews in relation to climate change fail to address Treaty principles and Treaty related questions on a 'first principles' basis. [47] Therefore, there is no alternative forum with expertise in the application of the Treaty that is appropriate to consider the potential prejudice at the broad 'first principles' basis and provide recommendations at speed. [48]

46. The Crown submits there are no current or pending Crown policies that are irreversible or will remove the Tribunal's ability to inquire in the future.[49] The Crown is currently implementing the National Adaptation Plan and the Emissions Reduction Plan 2022 – 2025 which will make substantial changes to reduce emissions and meet emissions targets. In addition, the Crown plans to introduce a Climate Adaptation Bill to address managed retreat.[50]

47. Further the Crown does and will continue to review New Zealand's contributions to international climate change action, as demonstrated in the AR6 Report.

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43 Wai 2607, #1.1.1(c) at [114].
44 Wai 2607, #1.1.1(c) at [115].
45 Wai 2607, #1.1.1(c) at [138].
46 Wai 3262, #1.1.1 at [23](a) – (d).
47 Wai 3262, #3.1.8, at [16].
48 Wai 3262, #3.1.8 at [21] and #A1(a).
49 Wai 3262, #3.1.5 at [7].
50 Wai 2607, #3.1.26.

Forestation and Afforestation

48. According to the Climate Change Commission's Report, Māori collectives own 40% of forestry in Aotearoa and Māori make up a large portion of the workforce in forest related industries.[51] Despite these figures, the Wai 3262 applicants submit that the Crown's forestry schemes have a detrimental impact on Māori communities and restrict the ability of Māori to make decisions on how to use their own lands.[52]

49. The applicant submits that the Crown's current proposal on massive bio-equestration (reducing emissions through forest planting) will prevent many hectares of remaining Māori land from being used for any other purpose for centuries, to maintain short term growth in the timber export market, creating irreversible prejudice to Māori communities.[53]

50. A central element of the Government's climate change response includes major expansion in the planting of exotics, lowering the expansion of native forests, and afforestation (converting abandoned agricultural lands to forest).[54] Afforestation will impact and occupy thousands of hectares of Māori land directly, in the short and long term.[55]

51. The applicants contend that Crown has adopted emissions reduction budgets and plans that rely extensively on a major expansion of exotic forest planting, ignoring the major adaptation risks of this approach.[56] This approach also exempts major sectors such as agriculture from climate related policies, creating further inequity. These policies through the emissions reduction scenarios and the Zero Carbon Act inequitably place large adaptation and mitigation requirements on already stressed Māori communities who already have a low emissions profile.[57]

52. The Wai 2607 applicants also highlight the insufficient support for Māori business, particularly those relating to forestry in dealing with the impacts of climate change.[58]

53. It is submitted that the Productivity Commission have recognised that a rapid transition away from fossil fuels, substantial afforestation, and changes to agricultural production structure and methods will achieve low-emission goals for Aotearoa. The applicant reiterates that these changes will disproportionately affect Māori and can only be mitigated by Treaty-compliant Crown policy, practice, and legislation.[59]

54. The Wai 3262 applicants propose alternative approaches to mitigation as noted in Toitū Taranaki 2030, which are more in accord with Treaty principles.[60] It is submitted that an urgent inquiry into this matter would provide guidance to the Crown on how its current afforestation policy could become more Treaty compliant.[61]

55. The Crown contends that the applicants have not demonstrated significant or irreversible prejudice.[62] The land use settings and Crown's reforestation, afforestation and climate

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51 Wai 3262, #1.1.1 at [9].
52 Wai 3262, #3.1.6, at [10].
53 Wai 3262, #3.1.8, at [19].
54 Wai 3262, #3.1.1 at [9].
55 Wai 3262, #3.1.1 at [12].
56 Wai 3262, #3.1.1 at [22].
57 Wai 3262, #3.1.1 at [9].
58 Wai 2607, #1.1.1(c) at [143].
59 Wai 3262, #1.1.1 at [11].
60 Wai 3262, #3.1.8 at [17] – [18].
61 Wai 3262, #3.1.1 at [20].
62 Wai 3262, #3.1.4 at [17].

policies are currently and constantly under review.[63] Further, there remains opportunities for ongoing consultation and engagement.

Whakaora Kē / Alternative Remedies

56. The Wai 3262 applicants consider the severe impact on Māori communities from extreme weather events makes it imperative that the Tribunal commences an inquiry into the government's response to climate change.[64]

57. The applicants submit that the Tribunal should address issues of climate change response in either a standalone inquiry or as either the first stage of the Natural Resources and Environment kaupapa inquiry or as a prioritisation of part of it.[65]

58. The Crown submits that the claims should be heard after the hearing of two climate change related issues in the High Court that are on appeal, so that the result of these appeals in available for consideration. I note these appeals have now been determined. The Crown also submits that the current claims before the Tribunal does not lend itself to a discrete inquiry isolated from wider issues of environmental policy. [66]

59. The Crown note that the Court not directly considering consistency with Treaty principles in these appeals, nonetheless the findings would be directly relevant and provide an alternative process for the applicants.[67] The Crown therefore submits that the hearing of these claims should be delayed until after these appeals.[68]

60. The applicants contend that the Crown's suggestion that the Tribunal should await the outcome of court proceedings is misplaced. The Crown has previously stated that the courts have a limited role in reviewing those matters, and that it should be left to specialist bodies to consider.[69]

61. Further, none of the court proceedings referenced by the Crown focus on requirements of Treaty principles in relation to climate change. Therefore, the decisions would only have an indirect application and are not an alternative to an urgent hearing.[70]

62. The Crown submits that several alternative remedies remain available for the applicant, including engagement with the Crown regarding the development and review of climate change policies. Engagement could occur through the Native Afforestation Programme, the Cyclone Gabrielle Recovery Taskforce and, in due course, the Interim Ministerial Advisory Committee.[71] All of these forums enable input from local, iwi and business voices into decision making.[72]

63. The Crown submits that the applicants are not ready to proceed to an urgent hearing as substantial evidence is needed for proper consideration of this claim, given its complex nature, which was also recognised by the former Deputy Chairperson when declining the initial application for urgency.[73]

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63 Wai 3262, #3.1.4 at [18].
64 Wai 3262, #3.1.1 at [10].
65 At [13].
66 Wai 2607, #3.1.18 at [8].
67 At [24].
68 As the date of this decision the appeals referred to have been determined.
69 Wai 3262, #3.1.8 at [22] – [23].
70 At [23].
71 Wai 3262, #3.1.4 at [4] & [21].
72 At [24].
73 At [25].

64. In response, the applicants submit that most of the background information on climate change risk and emissions is already collected in the IPCC and the recent AR6 report. The background facts of the Government's policy response are also readily obtainable, and the information required for an urgent inquiry can mostly be found in the Climate Change Response Act 2002, the ETS, and in national set emissions budgets and adaptation plans.[74]

65. Finally, the Wai 3262 applicants submit that an urgent inquiry is needed, although alternatively supports the prioritisation of the Natural Resources and Environment Management kaupapa inquiry.[75]

Whaimana / Jurisdiction

66. The Tribunal has jurisdiction to inquire into these claims, pursuant to s 6 of the Treaty of Waitangi Act 1975 (Act). Section 6(1)(c) of the Act states the Tribunal can inquire into any policy or practice adopted by or on behalf of the Crown or proposed to be adopted by the Crown which is inconsistent with the principles of the Treaty and likely to prejudicially affect any Māori or group of Māori.[76]

67. Under schedule 2, clause 5(9) of the Act, the Tribunal "may regulate its procedure in such manner as it thinks fit." Courts have also recognised the "considerable latitude" accorded to the Tribunal regarding matters of procedure.[77] This is subject to two general qualifications; that the procedure must be within the relevant statutory regime,[78] and that the principles of natural justice are observed.[79]

68. The Tribunal's purpose is to contribute to a durable and fair resolution of Treaty claims and to restore and uphold the Treaty partnership between Māori and the Crown.[80] As such, the Tribunal is free to adopt an inquiry design as it sees fit to fulfil its duty to inquire into every claim.

Te Paearu mō Ngā Tono e rapu ana i te Whakaaroaro Ruku Tātari Ohotata a te Taraipiunara / Criteria for Applicants Seeking Urgent Inquiry

69. The Tribunal's *Guide to Practice and Procedure* states the following with regards to applications for an urgent hearing:

- *The claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies.*
- *There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and*
- *The claimants can demonstrate that they are ready to proceed urgently to a hearing.*
- *The claim or claims challenge an important current or pending Crown action or policy.*

74 Wai 3262, #3.1.10 at [12] – [13].
75 At [25].
76 Treaty of Waitangi Act 1975, s 6.
77 *Donnelly v Waitangi Tribunal* HC Wellington CIV-2009-485-2614, 1 March 2010, at [30].
78 Report of the Commission of Inquiry into Certain Matters Relating to Taxation 1997 AJHR H3 1:1:9.
79 *Re Erebus Royal Commission; Air New Zealand Ltd v Mahon* [1983] NZLR 662 at 671.
80 Waitangi Tribunal Strategic Direction 2014 – 2025.

- *An injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and*
- *Any other grounds justifying urgency have been made out.*

Kōrerorero / Discussion

70. This decision concerns two separate applications seeking inquiries by the Tribunal in relation to climate change. One application seeks an urgent inquiry and the other is a renewed request for a prioritised inquiry within the kaupapa inquiry programme.

71. An application for an urgent hearing will only be granted in exceptional circumstances, where the applicant can demonstrate that the Tribunal should prioritise a new urgent inquiry and divert its limited staff and resources from its programme of current inquiries to do so. The threshold is high, and the application will fail if the criteria set out above have not been established.

72. The Wai 3262 application does not currently meet the criteria to grant an urgent inquiry. Recently, the Tribunal has received many urgency applications relating to new and developing policy initiatives by the new Coalition Government which must be prioritised because of the likelihood of pending law reform. Furthermore, the complex and technical nature of the issues raised by climate change policy are not in my view amenable to an urgent inquiry. However, I acknowledge that both claims raise significant issues and that a priority kaupapa inquiry into climate change policy may be the most appropriate way to progress these claims.

A priority inquiry

73. When the kaupapa inquiry programme commenced in 2015, the former Chairperson was mindful that new kaupapa issues may arise where the issues raised in the claims do not fit within the currently planned inquiries and may be best designated for separate inquiry.[81]

74. Further, in a subsequent memorandum ('the 2019 memorandum'), the former Chairperson noted that the Tribunal is prepared to take a more targeted approach where this is more appropriate to the nature of the issue, to the grievances raised and remedies sought, or to the circumstances requiring a fast inquiry process for particular claims.[82] This targeted approach resulted in the Housing Policy and Services inquiry proceeding as a separate inquiry from the Social Services and Social Development claims, and Takutai Moana claims given priority as a separate inquiry from Natural resources and Environmental Management claims.

75. There is a similar argument to consolidate and prioritise Climate policy claims in a targeted kaupapa inquiry. The issues raised in these applications currently sit within two future kaupapa inquiries. These are the Economic Development kaupapa inquiry which will include claims concerning carbon taxation, emissions trading scheme, impact on Māori forestry and is scheduled as the tenth inquiry, and the Natural Resources and Management kaupapa inquiry which includes claims concerning climate change mitigation and is scheduled as the twelfth inquiry.

76. As set out by the Chairperson in the 2015 memorandum, 'changing circumstances will sometimes rebalance the relative priorities and require a reordering of the forward inquiry

81 At [23].

82 Memorandum of the Chairperson concerning the kaupapa inquiry programme, November 2019 at [14].

programme'. The approach to determine whether claims should be granted priority was developed and applied by the Chairperson in determining that priority inquiries should be initiated in both the Marine and Coastal Area (Takutai Moana) Act Inquiry (Wai 2660) and the Freshwater and Geothermal Resources Inquiry (Wai 2358).

77. Together with all relevant circumstances, the considerations for determining the order of priority for kaupapa claims are removal of the Tribunal's ability to inquire, the importance of the take to claimants, Māoridom and the nation, the seriousness of the alleged breach or prejudice, and the immediacy of the take or potential remedy.

78. The Wai 2607 applicants submit that the priority criteria have been met, namely in their submission there is an immediate need for a remedy as further delay will increasingly remove the ability of the Tribunal to make meaningful recommendations, the seriousness of the alleged breaches, and the importance of the take to Māori and the nation.

79. Claimant counsel submit that the circumstances of their claims support the case for calling an early inquiry into Climate change policy. On balance, I am inclined to agree. There is no current serious suggestion that the Tribunal's ability to inquire might be removed, however the applications contain a weight of interest in proceeding with an early targeted inquiry. The importance of the take is self-evident. A recent report by Te Puni Kōkiri *Understanding climate hazards for hapori Māori – insights for policy makers,* published in December 2023, highlights the disproportionate effects of climate change on Māori. It notes that while all New Zealanders will feel the impact of climate hazards, hapori Māori face heightened risks due to their geographical locations, and the industries they predominantly work in. Māori households, while facing similar exposure to climate hazards as the overall population, are projected to face greater risks due to higher proportion of Māori households at risk of poverty, health disparities, justice and protection concerns, and adaptability issues.[83] These are all matters that contribute to the seriousness of the alleged breach or prejudice.

80. In relation to immediacy of the take or potential remedies, climate policy is continuously being revised and reviewed, and the new coalition Government is showing no signs of being an exception to this approach. The Tribunal could assist by providing guidance on what Treaty principles are relevant in this context.

81. In terms of the significance of the issues raised to the Treaty relationship, the allegation is that that the Crown has not upheld its Treaty obligations in relation to development of climate change policy. Given the obligations that flow from the Treaty relationship, and the risk of heightened impact of climate change effects for Māori, consultation with Māori should be thorough, widespread, and meaningful and resulting policy developed to take Treaty principles into account.

82. Climate change is an existential threat not only to the claimants, but to Māori and the nation. All credible evidence points to climate change as a significant and potentially irreversible threat unless governments take urgent action. Māori have a unique and significant relationship with te taiao and the Tribunal can provide advice and guidance to the Crown as to interpretation of Treaty principles in this context.

83. Climate change is a major issue not just for Aotearoa/New Zealand but internationally as well. The New Zealand Government has declared a climate emergency and pledged to

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83 Te Puni Kokiri "Understanding climate hazards for hapori Māori – Insights for policy makers report" (15 December 2023) <www.tpk.govt.nz/en/mo-te-puni-kokiri/our-stories-and-media/understanding-climate-hazards-for-hapori-maori>.

take action to protect the planet.[84] What this means in terms of relevant Treaty principles and the actions that should be informed by those principles requires to be clarified.

84. On balance, I agree with claimant counsel that the Tribunal's consideration of climate change policy is likely to have greater effect if progressed in a timely way in a targeted kaupapa inquiry.

Kupu whakatau / Decision

85. For the reasons given, priority is granted for a kaupapa inquiry into climate change policy. The focus should, as raised by the various claims, be on the physical, spiritual, and socioeconomic impacts of climate change on Māori and the Crown's response. The priority inquiry should also focus on the relevant Treaty principles to be considered in climate change policy and recommendations for how the Crown should meaningfully engage and consult with Māori.

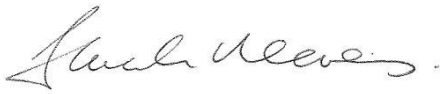
Next steps

86. The Chairperson will shortly appoint a presiding officer and panel members to the Tribunal panel that will conduct the inquiry and notify all parties accordingly.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3262 te Taranaki Climate Justice kereme me Wai 2607 Emissions Trading Scheme kereme.

The Registrar is to send a copy of this direction to all those on the distribution list for Wai 3262, *the Taranaki Climate Justice claim and the Wai 2607 Emissions Trading Scheme kereme.*

WHAKAPŪMAUTIA ki Whanganui-a-tara i te 9th o te Huitanguru 2024



Kaiwhakawā Sarah Reeves
Tiamana Tuarua
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

84 Minister for Climate Change "Climate emergency declaration will be matched with long-tem action" (press release, 2 December 2020) <www.beehive.govt.nz/release/climate-emergency-declaration-will-be-matched-long-term-action>.