

**IN THE WAITANGI TRIBUNAL**

Wai 3381

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Geothermal Resources  
(Ngāti Tūwharetoa and Ngā  
Hapū o Ngāti Tūwharetoa)  
claim

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**DECISION OF DEPUTY CHAIRPERSON JUDGE SARAH REEVES**

13 September 2024

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## Introduction

1. This decision concerns an application by Te Kotahitanga o Ngāti Tūwharetoa (TKNT) for a priority hearing of the Geothermal Resources (Ngāti Tūwharetoa and Ngā Hapū o Ngāti Tūwharetoa) claim (Wai 3381) in stage 3 of the National Freshwater and Geothermal Resources claim.

### *Background*

2. The National Freshwater and Geothermal Resources Claim commenced in 2012, and stage three concerning geothermal issues commenced in March 2021 (Wai 2358). It was at that stage, TKNT was confirmed as an interested party to the inquiry (Wai 2358, #2.6.75(a)).
3. Te Kotahitanga o Ngāti Tūwharetoa (TKNT) is a post-settlement governance entity established to receive the settlement of Ngāti Tūwharetoa's historical Treaty of Waitangi claims and have participated as an interested party to the inquiry since 2021 (Wai 2358, #3.2.383).
4. At the 8 July 2024 judicial conference for the inquiry, counsel for the applicants invited the Tribunal to hold their hearings scheduled for 9–13 December 2024 at Tāpeka Marae, Waihi. The Tribunal accepted this invitation on 23 August 2024 by memorandum-direction (Wai 2358, #2.6.110).

### *Request for consolidation.*

5. On 24 June 2024, the Tribunal received a statement of claim from Karen Feint KC, counsel for Tā Tumu te Heuheu Tukino VIII on behalf of Ngāti Tūwharetoa, and Wiari Milton Rauhina, Chairman of Te Kotahitanga o Ngāti Tūwharetoa, on behalf of 'ngā hapū o Ngāti Tūwharetoa' seeking to have their claim consolidated within the National Freshwater and Geothermal Resources inquiry (Wai 3381, #1.1.1).<sup>1</sup>
6. The claim was registered as the Geothermal Resources (Ngāti Tūwharetoa and Ngā Hapū o Ngāti Tūwharetoa) claim (Wai 3381, #2.1.1).
7. The Wai 3381 claimants submitted they hold customary title and customary rights and responsibilities in 'Te Ahi Tāmou' within the rohe of Ngāti Tūwharetoa. Te Ahi Tāmou is comprised of the geothermal resource features, geothermal fields and systems, and the subterranean resources located in the Ōrākei Kōrako, Mōkai, Rotokawa, Wairakei-Tauhara, Horomatangi, Waitetoko, Motuopa, Tokaanu-Waihi-Hipaua, and the Tongariro geothermal fields (Wai 3381, #1.1.1).
8. In the memorandum accompanying the statement of claim, counsel sought leave for the Wai 3381 claim to be consolidated within stage three of the National Freshwater and Geothermal Resources inquiry to be granted full claimant status (Wai 3381, #3.1.1 at [5] & Wai 2358, #3.3.103 at [6]–[7]).
9. Counsel sought consolidation of the claim in stage three of the inquiry on the basis that the Tribunal would benefit from hearing evidence of ngā uri o Ngātoroirangi, and it would

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<sup>1</sup> 'Ngā Hapū o Ngāti Tūwharetoa': Ngāti Haa, Ngāti Hikairo ki Tongariro, Ngāti Hine, Ngāti Hinemihi, Ngāti Hineure, Ngāto Kurauia, Ngāti Manunui, Ngāti Moekino Ngāti Parekaawa, Ngāti Rauhoto, Ngāti Rongomai, Ngāti Ruingarangi, Ngāto Tarakaiahi, Ngāti Tarakaiahi, Ngāti Te Kohera, Ngāti Te Maunga, Ngāti Te Rangiita, Ngāti Te Urunga, Ngāti Tūrangitukua, Ngāti Turumakina, Ngāti Tūtemohuta, Ngāti Tūtewhā, Ngāti Waewae, Ngāti Wairangi, Ngāti Wheoro, Te Kapa o Te Rangiita, and Ngāi Tamarangi mō Te Wai Ū o Tūwharetoa.

be the most efficacious and an efficient use of resources for all geothermal claims to be dealt with in the same inquiry (Wai 3381, #3.1.2 at [2]).

10. On 14 August 2024, after receiving submissions from parties to the National Freshwater and Geothermal Resources inquiry and submissions in reply, Presiding Officer Judge Wilson Isaac declined Wai 3381's application for consolidation. Judge Isaac acknowledged Tūwharetoa's right to have their Wai 3381 claim heard by the Tribunal in due course. However, the request for consolidation was declined, for the following reasons (Wai 2358, #2.6.108 at [68]):
  - (a) the National Freshwater and Geothermal Resources inquiry is intended to inquire into Māori rights and interests as guaranteed by Te Tiriti o Waitangi generally, and that there would not be capacity in the Wai 2358 inquiry to make the claim-specific findings of Wai 3381.
  - (b) consolidation of the Wai 3381 claim within stage three of the inquiry would necessitate an adjustment in the timetable of the inquiry as well as a significant increase in time and costs for all parties.
  - (c) There is no prejudice to Wai 3381's claim if it were not to be consolidated and would avoid prejudice to other parties who might similarly want specific findings and recommendations for their other claims.

#### *Application for priority*

11. On 30 August 2024, the Tribunal received an application for priority hearing from Karen Feint KC, counsel for the Wai 3381 claim (Wai 3381, #3.1.2). The application requested a priority hearing of their claim on 9–13 December 2024, at Tāpeka Marae, Waihi, either by:
  - (a) a separate panel be appointed to sit alongside the National Freshwater and Geothermal Resources panel; or
  - (b) that the current inquiry panel be appointed to inquire into the Tūwharetoa claim.
12. Counsel stated that the decision was made to file the claim due to increasing concern at the current coalition government's proposed legislative programme and policies, in particular, the proposed Fast-Track Approvals Bill and potential power generation projects (Wai 3381, #3.1.2 at [2]).
13. Concerning Tūwharetoa's invitation to hold the December 2024 hearing at Tāpeka Marae, counsel submits this now places Ngāti Tūwharetoa in an 'awkward position'; with Wai 3381 hosting a hearing in relation to geothermal claims, but their own claim not being heard. Counsel is concerned that a further future hearing will have to be hosted in relation to Wai 3381's claim, requiring all parties and the Crown to present their evidence, already filed in Wai 2358, again (Wai 3381, #3.1.2 at [4]).
14. Counsel submits that this further future hearing will require additional cost to hear the same issues as the National Freshwater and Geothermal Resources inquiry, as well as the presentation of deeply personal kōrero of Wai 3381 witnesses which is a source of deep mamae and not something they wish to repeat (Wai 3381, #3.1.2 at [4]).
15. Counsel's suggestion is that the panel appointed to inquire into the Wai 3381 claim should sit jointly alongside the National Freshwater and Geothermal Resources inquiry panel in December 2024, or alternatively be the same panel as the Wai 2358 inquiry, to avoid the duplication of time, effort, and resources (Wai 3381, #3.1.2 at [5]).

16. Counsel has indicated that TKNT is holding a hui with ngā hapū o Ngāti Tūwharetoa on 14 September 2024 to discuss the outcome of their priority application and their continued level of participation in the remaining Wai 2358 inquiry (Wai 3381, #3.1.2).
17. In memorandum-directions of 2 September 2024, I directed parties to the Wai 2358 inquiry and the Crown to file submissions on the priority application no later than 6 September 2024. I further directed that the applicant was to file submissions in reply by 10 September 2024 (Wai 3381, #2.5.1 & Wai 2358, #2.6.112).
18. Summarised below are the submissions received from parties.

### **Summary of submissions**

#### *Crown*

19. On 6 September 2024 I granted an extension to Tim Stephens KC, counsel for the Crown, to file submissions of the Crown (Wai 3381, #3.1.5).
20. On 9 September 2024 the Tribunal received a memorandum from Crown counsel stating the Crown's opposition to the priority application of Tūwharetoa and TKNT (Wai 3381, #3.1.9).
21. The Crown opposes the application for largely the same reasons set out in the Tribunal's decision declining the consolidation request. There is concern that the late notification of the claim and its consolidation might be prejudicial to other parties and also circumvent the usual manner in which the Tribunal prioritises claims. The Crown also acknowledged the impact consolidation might have on the inquiry timetable due to the need for new submissions and new evidence to be filed (Wai 2358, #3.2.565 & Wai 3381, #3.1.9).
22. Crown counsel acknowledges the strong opposition of the other parties to the Wai 2358 inquiry to the priority application. The Crown is concerned that prioritisation of Tūwharetoa's claim would be 'unworkable' and would require enlarged scope of evidence and submissions from the Crown and the other parties participating in the Wai 2358 inquiry (Wai 3381, #3.1.9).
23. Counsel for the Crown does acknowledge the importance of Tūwharetoa's participation in the Wai 2358 inquiry, and the benefit their participation provides for the Tribunal's final report. The Crown submits, however, that this benefit can be realised by Tūwharetoa remaining as an interested party (Wai 3381, #3.1.9).

#### *Kāhui Legal - joint memorandum*

24. On 6 September 2024, the Tribunal received a joint memorandum of counsel from Paul Majurey of Holm Majurey Law, Tania Waikato and Tyler Paki of Kāhui Legal, and Andrew Irwin of Clifton Chambers, on behalf of the following interested parties to the Wai 2358 inquiry (Wai 3381, #3.1.3):
  - (a) Ngāti Tahu – Ngāti Whaoa Rūnanga Trust.
  - (b) Tauhara North No.2 Trust.
  - (c) The Proprietors of Taheke 8C & Adjoining Blocks Incorporation.
  - (d) Ngāti Tahu Tribal Lands Trust.
  - (e) Paeroa South B2B1 Trust.

- (f) Tahorakuri A1 Sec 33B Ahu Whenua Trust.
  - (g) Tutukau East Z Trust.
  - (h) Te Toke Marae.
  - (i) Mataarae Marae.
  - (j) Ohāki Marae; and
  - (k) Waimahana Marae
- (the parties)

25. Counsel advises that the parties oppose the priority application (Wai 2358, #3.1.3) and submit that, on its face, the priority application seeks to circumvent and effectively relitigate the Tribunal's decision to decline Tūwharetoa's consolidation request in the National Freshwater and Geothermal Resources inquiry. The Tribunal declined consolidation for a number of reasons, including (Wai 3381, #3.1.3 & Wai 2358 #2.6.108):

- (a) the Wai 3381 claim was filed on 24 June 2024: 12 years after commencement of the inquiry, and Tūwharetoa missing the respective inquiry deadlines over this time.
- (b) there would be no capacity within the National Freshwater and Geothermal Resources inquiry, as it has been conceptualised over the past 12 years, to make Tūwharetoa-specific findings (or any claim-specific findings).
- (c) any claim for customary rights or interests in specific geothermal resources in the Wai 3381 claim does not fall within the scope of the current inquiry issue questions.
- (d) there is no prejudice to Tūwharetoa if they remain as interested parties to this inquiry, and it would avoid prejudice to other parties to this inquiry who may want similar findings; and
- (e) the Tribunal, for completeness, confirmed that the decision to decline consolidation into the inquiry did not prevent the Wai 3381 claim being heard at a later date, along with other iwi or hapū specific geothermal claims.

26. Counsel submit that the priority application is seeking to achieve the same result as the consolidation request, and the priority application should thus be declined on the same grounds (Wai 3381, #3.1.3).

27. Further, counsel draw attention to the fact that Tūwharetoa's request has come 'extremely' late in the Wai 2358 inquiry, and accepting their priority request now is unfair and prejudicial to other parties in a number of ways. Firstly, it appears Tūwharetoa is attempting to 'jump the queue', which has already been held by the Wai 2358 Tribunal as unfair to the existing claimants (Wai 3381, #3.1.3).

28. Secondly, allowing the priority application within the National Freshwater and Geothermal Resources inquiry without going through 'the usual Tribunal processes' will prejudice the rights of other parties, and deprive them of their opportunity to have their own interests heard. Such processes include allowing other parties to join the Tūwharetoa application; have an established scope of inquiry; allow parties to provide opening submissions and file evidence-in-chief in relation to the scope of the inquiry, and undertake full and fair cross-examination of the Tūwharetoa witnesses with an evidential platform and legal submissions that would normally go to issues of cross-examination (Wai 3381, #3.1.3 at [12]).

29. It will be prejudicial to competing claimants in counsel's submissions, if Tūwharetoa's application is given priority in the Wai 2358 hearing without evidence on any competing claims also being heard. There is no saving of time, effort or cost in allowing this 'parallel process' to occur, except to Tūwharetoa (Wai 3381, #3.1.3, at [15]).
30. Counsel submits that should priority be given to Tūwharetoa's claim alongside the Wai 2358 inquiry, natural justice dictates that all parties should be given the same opportunity to also file their contemporary claims and have them heard. Counsel submits, as indicated in the submissions made opposing consolidation of Tūwharetoa, there will be a 'floodgates' from other parties in this inquiry also seeking to file and have heard their contemporary claims in a wide-range of geothermal resources which will place the Tribunal's resources under extreme, if not untenable, strain, which is a clear reason for declining the priority application (Wai 2358, #3.1.3 at [16]-[17]).
31. Counsel assert that allowing the Tūwharetoa claim to be heard during the inquiry will require other parties to respond in detail to Tūwharetoa's evidence, rather than responding to evidence provided by TKNT thus far on the limited generic questions of the inquiry. This will significantly extend and broaden the time required for hearing this evidence beyond the week allocated, and other parties' opportunity for cross-examination would take place in an 'extremely prejudiced' context. Consequently, in counsels' submissions, this will unfairly broaden the scope of issues, and will force parties to participate in dual inquiries simultaneously without the benefit of the usual preceding steps (Wai 3381, #3.1.3).
32. Therefore, there is no capacity, and would be inappropriate, to make the claim specific findings and recommendations sought by Tūwharetoa within the Wai 2358 inquiry (Wai 3381, #3.1.3).
33. Moreover, counsel submit, Tūwharetoa has not provided any reasons why their claim should be considered as an 'exceptional request' of such to circumvent the Tribunal's usual manner of prioritising claims. Notably for counsel, the application has not been made in respect of the *Guide to Practice's* four factors when assessing priority applications. Counsel submit these four grounds support their submissions opposing the priority application (Wai 3381, #3.1.3):
- (a) *The readiness of the claim to proceed*: it is assumed from their application Tūwharetoa is ready to proceed, but other parties affected by the Tūwharetoa claim are not.
  - (b) *The time it has been outstanding on the register*: Wai 3381 was only filed on 21 June 2024, meaning it has been only on the Register for three months, a short period of time in comparison to the Tūāropaki Trust's claim over the Mōkai Geothermal field, which has been outstanding since 1994.
  - (c) *The availability of hearing time allowed by gaps in the hearing of active inquiries*: there is no 'gap' in the Wai 2358 inquiry to hear all of Tūwharetoa's evidence, instead it will broaden the time it will take to hear the evidence due to the extensive cross-examination that will be required of the Tūwharetoa witnesses.
  - (d) *Any other relevant factors*: the parties refer to the grounds outlined in their memorandum, including the prejudice to other parties.
34. The *Guide to Practice* provides that the Tribunal 'will grant such applications in exceptional cases only'. Counsel assert that Tūwharetoa's application, namely 'avoiding of duplication of time, effort and resources' does not make this an exceptional case.

Wai 2460, Wai 2377, Wai 762, Wai 1716 & Wai 1196

35. On 6 September 2024, the Tribunal received a memorandum from Siasoi Loa and Victoria Tumai on behalf of the following interested parties (Wai 3381, #3.1.7):

- (a) Anthony Whareraupo Olsen on behalf of the iwi Waitaha and Kāti Māmoe (Wai 2460);
- (b) Bryce Peda Aldridge on behalf of himself and on behalf of the late Nuki Aldridge, and Te Taumata o Tangitu – the Tahawai (Aldridge) claim (Wai 2377);
- (c) Te Urunga Aroha Evelyn Kereopa on behalf of her whānau, whose hapū are Ngāti Tūrangitukua among other Ngāti Tūwharetoa hapū (Wai 762);
- (d) Ian Mitchell on behalf of Ngāti Hineira and Te Uri Taniwha of Ngā Puhi (Wai 1716); and
- (e) Merle Ormsby, Tiaho Pillot, and Daniel Ormsby on behalf of themselves, and the descendants of Te Taawhi Patena Mariu and Rauaiterangi Mary Patena (Wai 1196).

(the parties)

36. Counsel advises that the parties object to the applicant's request for a priority hearing on the same grounds as set out in Kāhui Legal's submissions (Wai 3381, #3.1.7).

#### *Tūaropaki Trust*

37. On 6 September 2024, the Tribunal received a memorandum from Tara Hauraki and Tyler Paki, on behalf of the Tūaropaki Trust (the Trust), opposing the priority application of Tūwharetoa (Wai 3381, #3.1.8).

38. Counsel advise that the priority application should be declined for the same concerns expressed by the Trust on Tūwharetoa's consolidation application. Firstly, the substantial delay in the filing of Tūwharetoa's claim within the Wai 2358 inquiry, despite having ample time since commencement of the inquiry. Counsel now advise that due to the delay, the Trust would have limited opportunity to respond to the claim if the Wai 2358 inquiry timetable is to be maintained (Wai 3381, #3.1.8).

39. Counsel for the Trust submitted that consolidation, and now priority, would require the Wai 2358 inquiry parties to engage with the Tūwharetoa claim and evidence in a 'substantially different manner' than envisaged by the Wai 2358 inquiry. Counsel advised that the Wai 2358 issues are generic in nature and do not anticipate an investigation into the specific rights and interests claimed over particular resources (Wai 3381, #3.1.8).

40. Further, counsel submits it would be 'fundamentally unfair' and 'at odds with how participation has been addressed in the Wai 2358 inquiry to date', if Tūwharetoa's request is prioritised, especially since the Trust's claim has been before the Tribunal since 1994 (Wai 3381, #3.1.8).

41. Counsel assert that Tūwharetoa's claim gives rise to 'significant new factual issues' which the Trust would be required to consider and respond to with its own evidence on an urgent basis, despite the Tūwharetoa claim not being urgent.

42. Upon these grounds counsel submit that the Tūwharetoa application does not meet the Tribunal's 'very high threshold' for priority, particularly as their application was made largely on the grounds of convenience (Wai 3381, #3.1.8).

43. Finally, counsel refutes Tūwharetoa's statement that the interests of the Trust and Tūwharetoa align, and therefore the Trust would suffer no prejudice should Tūwharetoa's

claim be heard. Counsel for the Trust feel strongly that while there is a natural alignment between the Trust and Tūwharetoa on certain issues, the Trust has a relationship with the Mōkai geothermal field that is distinct from Tūwharetoa (Wai 3381, #3.1.8).

44. Counsel for the Trust, therefore, opposes the priority application and seeks leave to file further submissions should Tūwharetoa further particularise its application by way of reply.

*Sixth Wai 235 Claimants & Wai 914*

45. On 6 September 2024 the Tribunal received a memorandum from Bryce Lyall and Hannah Swedlund, on behalf of:

- (a) Nuki Aldridge (deceased), Ron Wihongi (deceased), Ani Martin, and Natalie Kay Martin, Sixth Wai 2358 Claimants on behalf of themselves and as owners in Lake Omapere; and
- (b) Gilbert Kiharoa Parker (deceased), Marianne Huhana Renee Parker, Hone Tiatoa and Dion Parker for Waimate Taiamai (Wai 914).

(the parties)

46. Counsel for the parties advise that they will abide the decision of the Tribunal on this matter (Wai 3381, #3.1.6).

*Reply submissions for Tūwharetoa.*

47. On 12 September 2024 the Tribunal received a memorandum from Karen Feint KC, as directed, filing submissions in reply for Wai 3381. (Wai 3381, #3.1.10).

48. Counsel submits that, albeit the Tribunal declined the application for consolidation, it also stated the Tribunal is 'obligated to hear the Wai 3381 claim', Tūwharetoa are entitled to request how its claim should proceed, as it has done in the priority application (Wai 3381, #3.1.10).

49. Counsel submit that the position taken by the parties in opposition is 'regrettable'. The application was suggested as a practical and pragmatic step to avoid the duplication of time, effort, and resources, avoid witnesses having to re-present deeply personal kōrero, and avoid duplication of filed evidence (Wai 3381, #3.1.10).

50. Further, counsel advise that Tūwharetoa is increasingly concerned over the current coalition government's proposals, including the Fast-Track Approvals Bill which could include geothermal projects. Therefore, it is submitted there is no basis to regard the priority application as 'disrespectful', 'not tika' or 'perilously close to being an abuse of process'.

51. Accordingly, counsel assert that Tūwharetoa's priority application should be granted.

**Decision**

52. The issue for determination is whether the Wai 3381 claim should be granted priority within stage three of the current inquiry or otherwise on such terms as I consider in the best interests of the wider National Freshwater and Geothermal Resources inquiry.

53. In support of their application, counsel for Wai 3381 raises concerns about the potential impact of the current coalition government's proposed Fast-Track Approvals Bill and potential power generation projects on Tūwharetoa's geothermal interests. Counsel requests that the Tribunal hold a priority hearing of Wai 3381 claims when it sits at Tāpeka



Marae in Waihi, in December 2024 to avoid duplication of time, effort, and resources. The Wai 3381 claimants are also anxious to avoid the intense *mamae* involved in presenting deeply personal *kōrero*.

54. It is suggested that the panel appointed to inquire into the Wai 3381 claim should sit jointly alongside the National Freshwater and Geothermal Resources inquiry panel at that hearing, or alternatively be the same panel as the National Freshwater and Geothermal Resources inquiry (Wai 3381, #3.1.2 at [5]).
55. Other grounds raised in support are broadly those raised in the application for consolidation. That is, the Tribunal is obliged to inquire into every claim before it, and the issues raised by the claim fall within the scope of the inquiry albeit with a specific *Ngāti Tūwharetoa* emphasis.
56. Both the Crown and other parties to the National Freshwater and Geothermal Resources inquiry strongly oppose the application for priority in terms of late notification and prejudicial outcomes if the Wai 3381 claims are heard without evidence on competing claims being heard. The Crown also notes the effect of an enlarged scope of evidence and submissions that would be required if the Wai 3381 claims are heard in December 2024.
57. In his decision declining consolidation, Judge Isaac acknowledged that the Wai 3381 claimants have a right to have their specific claims concerning geothermal resources heard by the Tribunal. The application was declined because there was no capacity in the inquiry as conceptualised to make the specific findings and recommendations sought, although the issues raised fall within the scope of the current issue questions and Wai 3381 claims continued participation as an interested party was appropriate.
58. Judge Isaac also went on to confirm that declining the consolidation application did not prevent the Wai 3381 claimants from seeking a hearing of the specific findings and recommendations in the Wai 3381 statement of claim at a later date, along with other *iwi* or *hapū*-specific geothermal claims.
59. The Tribunal has a set of criteria it relies on when assessing applications for priority by a claimant whose claim is not currently included in an inquiry. These are set out in the *Guide to Practice and Procedure of the Waitangi Tribunal*:<sup>2</sup>
  - (a) the readiness of claimants to proceed.
  - (b) the time that a claim has been outstanding on the register.
  - (c) the availability of hearing time allowed by gaps in the hearing of active inquiries; and
  - (d) any other relevant factors.
60. I do not consider that granting a priority hearing of the Wai 3381 claims in December 2024 is in the best interests of the wider National Freshwater and Geothermal Resources inquiry for reasons previously stated:
  - (a) the late stage at which this application comes before the Tribunal.
  - (b) the prejudice to other claims if the Wai 3381 claim is prioritised.

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<sup>2</sup> Waitangi Tribunal, *Guide to the Practice and Procedure of the Waitangi Tribunal* (2023) at [3.15]–[3.17].

- (c) the purported efficiency of prioritising this application within the inquiry, in regard to resourcing, time for other parties to prepare and participate, and the possibility of a ‘floodgates’ of applications.

61. For these reasons, the December 2024 hearing should proceed as conceptualised in the current statement of issues. However, there are other relevant factors that in my view support the granting of priority to the Wai 3381 claimants to have their claims heard at a later stage in the National Freshwater and Geothermal Resources inquiry along with other iwi or hapū-specific geothermal claims.
62. Tūwharetoa have significant interests in Te Ahi Tāmou and their participation in the Wai 2358 inquiry is important not least because of the wide range of evidence they will be able to present which will benefit the final report of the National Freshwater and Geothermal Resources inquiry and its findings on rights and interests of all Māori in geothermal resources. That evidence should be heard alongside similar evidence from other iwi and hapū who have specific geothermal claims.
63. A further consideration is that the priority application does not need to fit within the scope of the statement of issues for stage three of the National Freshwater and Geothermal Resources inquiry, as the consolidation request would have had to. The nature of the Wai 3381 consolidation request and application as ‘not appropriate for a kaupapa inquiry’ was one of the most significant considerations in declining the consolidation request in Judge Isaac’s decision (Wai 2358, #2.6.108 at [67]).
64. I must balance the merits of this application, with the concerns raised by the other parties in their submissions and the practical considerations of hearing the application in December with the National Freshwater and Geothermal Resources inquiry.
65. Therefore, I grant the application for priority in part and refer Wai 3381 claim to the Wai 2358, National Freshwater and Geothermal Resources inquiry panel to determine the timing and basis upon which there should be a hearing of the specific findings and recommendations sought, including other parties who may similarly want specific relief for their claims over and above the more general findings and recommendations that can be made under the stage three questions.
66. Accordingly, pursuant to cl 8(2) of the Second Schedule to the Treaty of Waitangi Act 1975, I direct that the application for a priority hearing of the Geothermal Resources (Ngāti Tūwharetoa and Ngā Hapū o Ngāti Tūwharetoa) claim (Wai 3381) claim is referred for determination to Judge Wilson Isaac as Presiding Officer, along with members: Tā Pou Temara, Dr Grant Phillipson, Dr Robyn Anderson and Ron Crosby of the National Freshwater and Geothermal Resources (Wai 2358) inquiry panel.

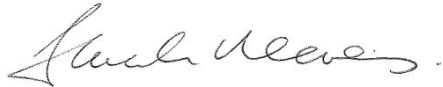
### **Next steps**

67. The Presiding Officer and panel will communicate to parties next steps for the inquiry. I direct it is within their discretion to confirm any particulars of the priority inquiry in future memorandum-directions.

The Registrar is to send this direction to all those on the notification list for:

- Wai 3381, the Geothermal Resources (Ngāti Tūwharetoa and Ngā Hapū o Ngāti Tūwharetoa) claim; and
- Wai 2358, the National Freshwater and Geothermal Resources inquiry.

**DATED** at Wellington this 13<sup>th</sup> day of September 2024

A handwritten signature in black ink, appearing to read 'Sarah Reeves'.

Judge Sarah Reeves  
Deputy Chairperson

**WAITANGI TRIBUNAL**