

WAITANGI TRIBUNAL

Wai 2460

CONCERNING

the Treaty of Waitangi Act 1975

ANDthe Ngāi Tahu Settlement
(Waitaha ki te Waipounamu)
claim**MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON**

The Registrar is directed to add to Wai 2460 an amended statement of claim received on 12 December 2024 and to record its date of receipt in the register of claims.

This amendment seeks to add further allegations to the claim concerning geothermal resources. These allegations include that the Crown breached the principles of the Treaty of Waitangi by:

- relinquishing the management of Waitaha and Ngāti Māmoē's ngāwhā to local authorities by way of the Resource Management Act 1991 (the RMA);
- undermining the relevance of te Tiriti o Waitangi to regional government decision-making concerning Ka Tapuwāe o Waiariki-o-āio and Te Ahi-a-Tamatea by way of the RMA;
- usurping the ownership of Waitaha and Ngāti Māmoē's ngāwhā by way of the RMA;
- failing to consult with and/or partner with Waitaha and Ngāti Māmoē over the development of statutory instruments, policies, practices, and actions taken and/or adopted by or on behalf of the Crown to manage and regulate Waitaha and Ngāti Māmoē's geothermal taonga; and
- failing to include Waitaha and Ngāti Māmoē when considering or granting concessions sought under the Conservation Act 1987.

The amendment also seeks to add further relief to the claim, including recommendations that the Crown:

- enters into a Mana Whakahono ā Rohe agreement with Waitaha and Ngāti Māmoē to manage the Ka Tapuwāe o Waiariki-o-āio and Te Ahi-a-Tamatea;
- implements legislation to allow Waitaha and Ngāti Māmoē to access their ngāwhā and related wāhi tapu;
- repeals section 354(1)(a) of the RMA so that its monopoly on the use of ngāwhā is no more;
- amends the RMA so that Waitaha and Ngāti Māmoē can co-govern the ngāwhā as kaitiaki and as propertied interests in that respect;
- amends the RMA so as to compel local authorities to implement the RMA's joint management provisions in order to give effect to co-governance;
- compensates Waitaha and Ngāti Māmoē for its legislation facilitated mismanagement of Waitaha and Ngāti Māmoē's ngāwhā, and/or its side wind legislative extinguishment of Waitaha and Ngāti Māmoē's proprietary-like te Tiriti o Waitangi and customary rights and interests in their ngāwhā, and/or other Crown acts that have caused the loss of

and/or the infringement of Waitaha and Ngāti Mamoe's rights and interests in their ngāwhā;

- amends section 14 of the Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991 to enable Waitaha and Ngāti Mamoe to collect royalties in relation to their ngāwhā;
- provides Waitaha and Ngāti Mamoe with their share of any royalties received from any of the geothermal taonga;
- vests Crown-owned or managed properties that contain geothermal taonga in Waitaha and Ngāti Mamoe either in fee simple, or fee simple but to be administered as reserves, or in fee simple but subject to conservation covenants;
- provides for rights of first refusal to privately owned properties with ngāwhā, to the relevant iwi, hapū and whānau;
- amends the RMA to require compulsory consultation with Waitaha and Ngāti Mamoe in relation to resource consents or other permits for use of the ngāwhā, with the failure to do so being made fatal to any such application;
- redrafts sections 5–8 of the RMA to provide stronger direction regarding the Tiriti-compliant outcomes by those exercising powers under the RMA;
- amends section 14(3)(c) of the RMA to apply to Waitaha and Ngāti Mamoe's rights in the ngāwhā;
- amends section 104 of the RMA so that the effects of geothermal development on cultural interests are given a greater weighting than the effects of geothermal development on other interests;
- provides national directives in consultation with Waitaha and Ngāti Mamoe with regard to the management of geothermal resources, so as to enable a consistent national regime;
- allows for Mana Whakahono ā Rohe to provide input into conservation management strategies, conservation management plans and national park management plans;
- allows for local authorities to recognise and provide for the vision, objectives, desired outcomes and values of the Mana Whakahono ā Rohe each time the authorities prepare an RMA planning document or review or vary an RMA planning document;
- provides Mana Whakahono ā Rohe with summaries of resource consent applications and copies of notices of applications;
- provides resources to Mana Whakahono ā Rohe to facilitate tangata whenua participation in matters governed by the RMA;
- provides a geothermal statutory acknowledgment regarding the cultural, historical, spiritual and traditional association and use of ngāwhā by tangata whenua, for each geothermal field in New Zealand;
- allows for the relevant consent authorities and the Environment Court to have regard to the geothermal statutory acknowledgments when dealing with ngāwhā;
- provides for the official geographic names of ngāwhā to be changed to their traditional te reo Māori names;
- supports and adequately funds the implementation of rāhui on the geothermal taonga so that Waitaha and Ngāti Mamoe's respective kaitiaki role thereto can be fulfilled;
- engages with tangata whenua when collecting scientific information from ngāwhā in relation to their intellectual property rights; and
- funds research into small scale geothermal energy projects or other geothermal-related development opportunities for tangata whenua within each geothermal field.

The claimants should note that historical claims within the Ngāi Tahu claim area have already been settled by the Ngāi Tahu Claims Settlement Act 1998 and the Tribunal can no longer inquire into these claims. This includes claims made by descendants from Waitaha and Ngāti Mamoe arising out of or relating to any loss of interests in natural and physical resources in the Ngāi Tahu claim area that occurred before 21 September 1992 and were caused by acts

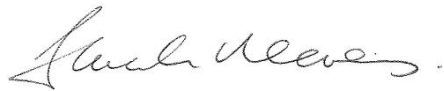
or omissions by or on behalf of the Crown or by or under legislation. This amendment is registered only to the extent that the Tribunal retains jurisdiction.

The amendment is to be entered on Wai 2460, the Ngāi Tahu Settlement (Waitaha ki te Waipounamu) claim, as document #1.1.1(a).

The Registrar is to send a copy of this direction to the claimants and give notice of the amendment to those on the notification list for:

- Wai 2460, the Ngāi Tahu Settlement (Waitaha ki te Waipounamu) claim; and
- Wai 2358, the National Freshwater and Geothermal Resources inquiry.

DATED at Auckland this 12th day of March 2025

A handwritten signature in cursive script, appearing to read 'Sarah Reeves'.

Judge Sarah Reeves
Deputy Chairperson

WAITANGI TRIBUNAL