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IN THE WAITANGI TRIBUNAL **KEI MUA I TE TARAIPIUNARA**	**WAI 3325** **WAI 3279**
UNDER	**The Treaty of Waitangi Act 1975**
CONCERNING	**The Climate Change Priority Inquiry**
AND	**Te Upokorehe Future Generations Climate Change Claim**

OPENING SUBMISSIONS

Te Upokorehe Future Generations Climate Change Claim

Dated: 28 March 2025

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TĒNĀ, E TE TAIRAIPIUNARA,

1. These opening submissions are filed for the claimants in the Wai 3279 Te Upokorehe Future Generations Climate Change Claim.

2. The effects of climate change are not a distant threat—they are here.[1] More frequent and extreme weather events, unavoidable sea level rises,[2] an irreversible loss of biodiversity, and changing patterns of drought and erosion are already impacting the whenua and moana, and the people, flora and fauna who are tied to it.

3. The moral obligation to act—for those living and those yet to come—is clear. The science is unassailable. Action must be taken collectively, and immediately.

4. Te Upokorehe are an iwi who hold mana in the North-eastern Bay of Plenty. Their rohe extends from Maraetotara in the west, across the Ōhiwa Harbour, to the Waiotahe and Waioeka awa in the east and inland into the bush country of the upper Waiotahe Valley.

5. Crown responses to climate change reach deep into the rohe, the awa, the wāhi tapu, the pipi beds, and the kāinga of Te Upokorehe whānau. The Crown's policies, legislation, and regulation—through mechanisms like the emissions trading scheme (**ETS**), exotic afforestation incentives, and the resource management system—determine how Te Upokorehe can or cannot care for their own rohe.

6. Te Upokorehe hold intergenerational relationships with their whenua, moana, and awa. Their kaitiakitanga is expressed through daily practice: monitoring pipi beds, restoring native habitats, protecting wāhi tapu, and

[1] The Crown has, in the past, agreed. On 2 December 2020, the New Zealand Government declared a climate emergency, committing to urgent action to reduce emissions (Motions, Climate Change, Declaration of Emergency, sitting date: 2 Dec 2020). It is no longer clear that the Crown stands by that declaration. See other statements, for example Treasury *Te Tai Waiora -Wellbeing in Aotearoa New Zealand 2022* TSY.001.1033 at 1041. We can also look to the Written Statement of New Zealand concerning obligations of states in respect of climate change presented to the International Court of Justice dated 22 March 2024 where the seriousness of climate change and the need for a global response is emphasised. This is available at International Court of Justice, Latest Developments, Written Statement of New Zealand <https://www.icj-cij.org/sites/default/files/case-related/187/187-20240322-wri-37-00-en.pdf>.

[2] The IPCC's sixth Assessment Report (AR6) explores five emissions scenarios. Sea level rise approaching 2 m by 2100, 5 m by 2150 and 15 m by 2300 cannot be ruled out under SSP5-8.5.

teaching the next generation to live respectfully with the taiao. Simply put, Te Upokorehe walk the walk.

7. Everyone contributes to climate change. But its effects—and the burdens of mitigation and adaptation—disproportionately affect Māori. Yet rather than working alongside Te Upokorehe to address the harm being caused to them the Crown has actively undermined their role as kaitiaki. It has repeatedly failed to engage with them as a Treaty partner in environmental and climate-related decision-making. Funding and decision-making authority is directed elsewhere, while those with lived, inherited connections to the Te Upokorehe rohe are marginalised and under-resourced.[3]

8. The effects of climate change are already being felt in Te Upokorehe's rohe. Ōhiwa Harbour is silting up. Shellfish beds are at risk as sea temperatures rise. Taonga species are at risk. Sacred sites and urupā are crumbling under coastal erosion. Runoff from farming and forestry pollutes the waterways. Traditional sources of kai and resources are disappearing.

9. Te Upokorehe will speak of watching these changes unfold—of seeing tuna and birdlife vanish, and of explaining to tamariki why they can no longer gather resources and kai where their tipuna once did. Rather than simply gathering or making use of resources, Te Upokorehe now act as kaitiaki of what remains. When the environment is degraded, the ability to practise kaitiakitanga is diminished. For the younger generation, kaitiakitanga is something they live and learn—but climate change and Crown actions are closing those opportunities. The way of life for Te Upokorehe is under threat.

10. Climate change is a global crisis. It is reshaping ecosystems, displacing communities, causing huge financial costs,[4] and forcing an urgent rethink

[3] Documents obtained under the official information act shows that MFE engagement is directed at post-settlement governance entities. See BRF-5276: Mitigating Impacts with Iwi and Māori in ERP2 2 October 2024 for example.

[4] See, for example, Liz Moncrieff (Director, Severe Weather Integrated Reponses, Ministry for the Environment). "Supplementary Analysis Report: National Policy Statement - Natural Hazard Decision-Making" (24/07/2023) TSY.001.1815 notes that that climate change is projected to

of once bedrock assumptions about how nations care for their environments and their people. Aotearoa New Zealand, like all countries, must reduce emissions, build resilience, adapt—and do all of that in a way that is just.

11. At a macro level, the Crown has taken steps to address climate change and to establish a legislative and policy framework. It has committed to international climate change framework, including instruments such as the Paris Agreement under the United Nations Framework Convention on Climate Change. It has enacted the Climate Change Response Act 2002 (**CCRA**), including the Climate Change Response (Zero Carbon) Amendment Act 2019, adopted emissions reduction targets, set emissions budgets, issued Green Bonds,[5] and relies on the ETS as its primary tool for reducing emissions.

12. The science shows that these measures fall short of what is required:

    a. The Crown has failed to take meaningful action to reduce emissions at source. Key sectors—especially transport and agriculture—remain largely untouched. Instead, the Crown has relied heavily on exotic forestry offsets, delaying the required structural transformation and compounding risk. These issues are made opaque through misleading accounting practices, which misleads the public and avoids confronting the true scale of the climate crisis.

    b. The ETS itself is not working. Briefings to Ministers confirm that the ETS is "largely incentivising forestry removals (mainly exotic afforestation)" and that this is expected to continue, contributing to a long-term decline in the emissions price and weakening incentives for real decarbonisation in the energy and transport sector, and that under the current settings, the ETS will continue to drive land-use change without reducing gross

increase the fiscal cost of floods and storms. Storm damage due to climate change will increase 3–7% and floods by 4–12%, from present until 2050 at TSY.001.1825.

[5] Treasury "New Zealand Green Investment Finance Limited" Treasury website TSY.001.1960 and TSY.001.2138.

emissions at source.[6] Approximately 50% of the country's greenhouse gas emissions come from the agricultural sector, which is not included in the ETS.[7]

c. Section 3A of the CCRA sets out the Crown's responsibility to give effect to the principles of the Treaty of Waitangi. That includes a duty to engage with Māori. In the development of the Second Emissions Reduction Plan (**ERP2**) the Crown has failed to uphold that obligation. Aotearoa New Zealand's first Nationally Determined Contribution under the Paris Agreement requires an additional 97 million tonnes of emissions abatement between 2021 and 2030 above what was accounted for in the first two emissions budgets. ERP2 represented the Crown's key opportunity to close that gap through increased domestic action, but instead of rising to that challenge, the ERP2 signals an ongoing intention to rely on offshore mitigation. ERP2 does not set out a credible pathway to meet emissions budgets. It does not include a credible strategy to recognise and mitigate the impacts of emissions reductions on iwi and Māori, as required under s 5ZG of the CCRA. The plan weakens ambition, and was not developed with the level of consultation with Māori that the Act demands.

d. The National Adaptation Plan, required under s 5ZS of the CCRA, contains few binding commitments and lacks alignment with the lived experiences of Māori communities and the economic, social, health, environmental, ecological, and cultural effects of climate change on Māori. It references a platform for Māori climate action—but that platform appears to be un-or under-funded and inactive.

[6] BRF-4000 Becky Prebble "Ministerial governance of Climate work programme and the second emissions reduction plan" Appendix 4: Setting the strategic direction for ERP2 at 8–9.
[7] See Climate Change Performance Index "New Zealand" <https://ccpi.org/country/nzl/> and Melanie Craxton - *The value of taking a portfolio approach to climate policy* (October 2022) TSY.001.0001 at 5–6.

e. Among other issues, New Zealand's Second Nationally Determined Contribution under Art 4 of the Paris Agreement places too much reliance on offshore mitigation and forestry, rather than committing to immediate and substantive domestic emissions reductions. The level of ambition is set at the minimum possible level—"'below expectations' for a developed country and unlikely to meet the expectations of key partners and the international community".[8] It remains unclear whether the Government will purchase offshore carbon credits to meet its climate targets—although current policy settings suggest the targets are unlikely to be met without them. This uncertainty sends a troubling signal. To Te Upokorehe, already living with the impacts of climate change, it signals a lack of urgency. And to those who would prefer to delay or avoid real emissions reductions, it risks suggesting that inaction, or further pollution, will ultimately be excused.

13. In addition, and by way of example, the Crown has taken a series of steps that actively undermine climate action. It has lifted the ban on oil and gas exploration, delayed the introduction of agricultural emissions pricing by five years, promoted expanded mining activity, and introduced major cuts to climate action projects—without committing substantial new funding for environmental protection.[9]

14. While the Crown maintains that it wants to address climate harm, it is difficult to view this as more than performative institutional speech—where the Crown professes commitment, recognition, or prioritisation, but does not act.[10] In these circumstances, the laws and policies the

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8 See Eliose Gibson "New climate target 'below expectations' of partners, government warned" <https://www.rnz.co.nz/news/political/556438/new-climate-target-below-expectations-of-partners-government-warned>.

[9] Among these cuts was a $47.836 million reduction to the Agricultural Non-Carbon Dioxide Mitigation Programme in Budget 2024. This included the defunding of two key initiatives: *Accelerating Development of Agricultural Greenhouse Gas Mitigations* and *Matauranga Māori-based Approaches to Agricultural Emissions Reduction*, as recorded in the Budget 2024 Summary of Initiatives available at <https://budget.govt.nz/budget/pdfs/summary-initiatives/b24-sum-initiatives.pdf>. These decisions have collectively contributed to New Zealand's drop in the global Climate Change Performance Index, reflecting a perceived decline in the country's commitment to combating climate change.

[10] Sarah Ahmed "The Nonperformativity of Antiracism" (2006) Meridians 7(1) 104 at 104.

Crown creates and disseminates do not provide support; instead, they are experienced by Te Upokorehe as a continuation of long-standing structural violence—a modern extension of the harm that began with colonisation.

15. The macro and the micro are inseparable here. The health of the global climate system depends on the health of places like Ōhiwa and Waiotahe. And yet, while the Crown fails to take robust and ambitious action, Te Upokorehe are shut out of decision-making, denied the resources and authority to lead in their own place, and made to bear the consequences of a crisis they did not create.

16. Te Upokorehe are not seeking control over technical climate policy or a veto on legislation. Their evidence is not about emissions modelling or regulatory design. It is about place-based knowledge, lived experience, and generations of kaitiakitanga. But when climate policy reaches into their sphere, they expect a seat at the table designing it. The recommendations sought in this claim will support Te Upokorehe to build the institutional knowledge and capability needed to participate in that space on their own terms, while continuing to uphold their role as kaitiaki within their rohe.

Evidence to be Heard in Hearing Week 2

17. The Crown's failure to involve Te Upokorehe in climate decisions and resourcing has directly affected their lives, livelihoods, and ability to care for their environment. The Tribunal will hear evidence of this from the following Te Upokorehe witnesses in hearing week 2:

    a. Wallace Aramoana and Maude Edwards will provide evidence about who Te Upokorehe are, and of the loss and erosion of wāhi tapu, pa sites, and identity markers due to climate change. The Tribunal will hear that as the rohe changes, so too does the ability of Te Upokorehe to connect with those that have come before them, to pass on their mātauranga, and to maintain the mauri of their rohe. This evidence shows that climate change is not only a threat to the environment, it is a threat to whakapapa, identity, and survival.

b. Trevor Ransfield describes the environmental issues facing Te Upokorehe and the wide range of work they are doing to protect their rohe. It covers the impacts of erosion, storms, flooding, and rising sea levels on wāhi tapu, marae, fisheries, and native species. It outlines Te Upokorehe's work as kaitiaki monitoring pipi and birdlife, removing mangroves, controlling pests, and assisting with management significant sites like Onekawa Te Mawhai pā and the Ōhiwa Harbour. The evidence also highlights Te Upokorehe's involvement in clean energy projects, resource management planning, and environmental education for mokopuna.

c. Kahukore Baker will provide evidence of the stranding of pilot whales in Ōhiwa Harbour in 2014, the customary recovery process and how this became a profound expression of kaitiakitanga. She will explain Te Upokorehe's fear that climate change—through rising ocean temperatures, algal blooms, and disrupted food chains—will further harm these taonga species.

d. Gaylene Kohunui will explain the tikanga and kawa associated with harvesting kaimoana, and the environmental knowledge passed down within Te Upokorehe. Her evidence will demonstrate the role of kaitiaki as protectors and how climate change threatens the ecological balance that kaitiaki maintain.

e. Te Mauri Keno will give evidence of growing up in the rohe, surrounded by stories and lessons from his koro and wider whānau about how the environment once was, and how it is changing.

f. Suzette Klock will provide evidence of how she came to understand climate change and kaitiakitanga through her upbringing in Upokorehe. She will describe the impact of warming waters, pollution, and the decline of shellfish and birdlife in the rohe. Her evidence warns that inaction today will leave future generations without the resources to continue as kaitiaki.

g. Larian Tuari will speak about community clean-ups, environmental monitoring, and education programmes in which he and other tamariki are involved. His evidence shows both the passion of Upokorehe rangatahi and the need to

protect their ability to act as kaitiaki in the face of rapid climate and ecological change.

h. Ngaire Ngamoki will give evidence of the direct effects of climate change in the rohe—including erosion, flooding, and the destruction caused by forestry debris. She will explain her work in community resilience and emergency response, and detail Te Upokorehe planning for disaster management.

i. Christine Martin will provide evidence about the relationship of Te Upokorehe to the wai and the whenua, drawn from kōrero tuku iho and hui among kaumātua. Her evidence will support the claim that the Crown's failure to support and partner with Te Upokorehe is directly undermining their ability to uphold their responsibilities as kaitiaki. She also speaks to the structural violence experienced by Te Upokorehe where Crown actions—past and present—have disregarded Te Upokorehe tikanga and authority.

j. Aroha Wikotu will give evidence from the perspective of Rongopopoia Hapū about the impacts of climate change their rohe. She will describe increased flooding, sedimentation, and pollution from surrounding land use, and how climate change is compounding these issues.

18. In addition to evidence from Te Upokorehe members, Dr James Every-Palmer KC will present expert evidence on behalf of Te Waimate Taiamai ki Kaikohe Claims Alliance (Wai 421, 593, 869, 1247, 1383, 1890), Ngāti Ruapani ki Waikaremoana (Wai 3278), Te Upokorehe (Wai 3279), and Ngāti Porou ki Hauraki (Wai 3375). His evidence examines the level of ambition and adequacy of the Crown's climate change response, including its compliance with international and domestic obligations, its approach to emissions accounting, the structure and limitations of the ETS, and the Crown's continued overreliance on removals—particularly forestry offsets—rather than achieving real emissions reductions at source.

Principles and Duties, Findings and Recommendations Sought

Relevant principles and duties

19. The principles that Te Upokorehe say are relevant to this inquiry are set out in their Statement of Claim dated 11 July 2024. For Te Upokorehe te mātāpono o te tino rangatiratanga is fundamental to the development of effective and appropriate responses to climate change, which must be shaped by their own tikanga, priorities, and decision-making authority within their rohe.

20. In addition, Te Upokorehe say that the Crown owes Māori a fiduciary-like duty to protect the environment, grounded in both tikanga Māori and the principles of Te Tiriti o Waitangi. This duty of protection is analogous to the concept of nature's trust—a doctrine that recognises the state holds the natural world in trust for the benefit of present and future generations.[11]

21. Just as a fiduciary must act in the best interests of their beneficiaries, Te Upokorehe say that the Crown must act urgently and decisively to protect the climate and the environment as a whole, for the benefit of Māori living today, and for future generations.

A duty to protect the environment as a whole

22. In the past, the Crown has resisted arguments that it owes a duty to protect the environment as a whole. It has argued that its duty under Te Tiriti is limited to the protection of specific taonga—and that it does not have a general obligation to prevent broader environmental harm.[12]

23. Te Upokorehe considers that this narrow view of the Crown's duties under Te Tiriti fragments the natural world into discrete units that may or may not qualify as taonga, which is contrary to their tikanga.

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[11] Nature's trust is built on the "simple recognition that we are the living beneficiaries of a public trust—a priceless trust. This trust holds the waters, the air, the wildlife, the forests, the soils, and all that encompasses the web of life. Our ancestors drew their life from this trust, and so must our descendants" Mary Wood *Nature's Trust: Environmental Law for a New Ecological Age* (Cambridge University Press, New York, 2014) at 322.

[12] See, for example, Closing Submissions of the Crown, Ownership and Management of Environmental, Water and other Non-Land Resources, Issue 10, 11 October 2017 Wai 1040 #3.3.417 at 13–19.

24. The very nature of climate change shows the flaws in the Crown's reasoning. Climate change is not a conventional environmental issue. It is a crisis of global, intergenerational scope—so much so that new ways of conceptualising problems have been required to address it. It has been classified as a 'hyperobject': a phenomenon so vast and complex it cannot be fully understood or managed through traditional frameworks.[13] It is a 'superwicked' problem as it is a global problem, those who can act are those with the least incentive to do so, current policies reflect short time horizons, and there is a limited window of time in which to act.[14]

25. The nature of climate change affirms the relevance and necessity of Māori approaches that recognise interconnection, reciprocity, and collective responsibility. In the face of this threat, an argument that only select elements of the environment are protected by virtue of being taonga fails to reflect the holistic worldview that underpins tikanga Māori.

26. Despite the Crown's view, the Waitangi Tribunal has found that the Crown has a duty in respect of the environment broadly:[15]

> The fundamental relationship created by the Treaty means that the Crown has a duty to protect both the environment itself, and to protect Māori in their exercise of rangatiratanga over taonga.

27. Given this, the Tribunal should find that in the context of climate change—a threat of unprecedented scale and complexity—the environment must be recognised as a taonga in its entirety, and that the

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[13] Timothy Morton *Hyperobjects: Philosophy and Ecology after the End of the World* (University of Minesota Press, Minneapolis, 2013). Morton summarises the difficulty with conceptualisation of climate change well when he states that "it cannot be directly seen, but it can be thought and computed".

[14] Kelly Levin, Benjamin Cashore, Steven Bernstein and Graeme Auld "Overcoming the tragedy of super wicked problems: constraining our future selves to ameliorate global climate change" (2012) 45 Policy Sci 123 at 126–129 and Richard Lazarus "Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future" (2009) 94 Cornell L. Rev. 1153 at 1160–1161.

[15] Waitangi Tribunal *The Interim Report on the MV Rena and Motiti Island Claims* (Wai 2391 and Wai 2393, 2014) at 4.

Crown owes an active duty of protection not only to specific features of the environment, but to te taiao as an interconnected whole.

28. This interpretation is necessary to give proper effect to the relationship Māori hold with the environment, and to ensure that the Crown fulfils its Treaty obligations in the face of climate collapse. A fragmented approach is no longer justifiable, if it ever was.

Specific findings and recommendations sought

29. The Crown has left Te Upokorehe—both those living and those to come—vulnerable to significant and avoidable harm. This is a breach of the principles of active protection, and a breakdown of the partnership that Te Tiriti o Waitangi represents.

30. The claimants seek findings recognising the Crown's breaches of Te Tiriti and its principles, and recommendations that protect the whenua and taonga of Upokorehe and ensure that Māori are centrally involved in the design and delivery of Aotearoa's response to climate change.

31. Te Upokorehe are focused on outcomes which will empower them to protect their rohe and their people. After the claim is found well-founded, the claimants seek recommendations that:

    a. The Crown engage with Te Upokorehe in developing:

        i. A plan to achieve net-zero emissions of all greenhouse gases by 2050.

        ii. A plan to reach zero emissions from land, sea or air transport by 2035.

    b. The Crown commit to adding agriculture, animal processors and fertiliser companies to the ETS by 2025.

    c. The Crown commit to a ban on oil and gas exploration.

    d. The Crown resource Te Upokorehe to develop and implement climate adaptation and mitigation efforts within their own rohe according to their mātauranga.

e. The Crown work with Te Upokorehe to mitigate the disproportionate impacts of climate change mitigation on Māori, including for their taonga species and wāhi tapu.

f. The Crown work with Te Upokorehe to ensure that information, mapping and resources are provided to allow Te Upokorehe to exercise their rangatiratanga in their rohe and to participate in development of policies which affect them. The Crown must also provide funding for Māori centred research on climate change, while ensuring protections for Māori data.

g. The Crown provide funding for Te Upokorehe to continue to practice passing down mātauranga in kura, to allow the next generation to be better prepared to protect and preserve Māori customary knowledge and practices.

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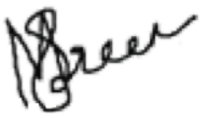

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