BEFORE THE WAITANGI TRIBUNAL

WAI 3325
WAI 3382

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	the Climate Change Priority Inquiry (Wai 3325)
AND	
IN THE MATTER OF	a claim by **Mere Brooks, John Hooker, Alan Joseph Fred Hooker** and **Allen Webb** for and on behalf of **members of their respective hapū of Ngāruahine (WAI 3382)**

SUMMARISED AFFIDAVIT OF ALISON ANITAWARU COLE

Dated this 31st day of March 2025

RECEIVED
Waitangi Tribunal
31 Mar 25
Ministry of Justice
WELLINGTON

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SUMMARISED AFFIDAVIT OF ALISON ANITAWARU COLE

1. My name is Alison Anitawaru Cole and I reside on the takutai moana next to our awa, the Waingongoro, near our tauranga waka at Ōhawe in Taranaki. I join members of my whānau, hapū, and iwi (Ngāruahine) in maintaining ahi kā and as such, whom have a front row seats to the impacts of climate change in our rohe.

2. I am completing my PhD thesis examining tikanga and climate change at Victoria University Wellington Te Herenga Waka. The relevant chapters of my thesis informed my report as a tangata whenua witness. That report is annexed to my affidavit and forms part of this summarised affidavit.[1]

3. It was my Koro with whom I was whangai for much of my childhood who instilled in me the tikanga and kaitiakitanga which underpins all my mahi.

4. I previously worked as the inaugural General Manager Māori at the New Zealand Climate Change Commission (2022-2024). I represented the Climate Pou of the Iwi Chairs Forum at COP26 negotiations under the UN Framework Convention on Climate Change (2021). I have practiced international law within the United Nations specialising in international justice investigations, in particular, deployments documenting war crimes and crimes against humanity, including with respect to environmental crime and climate change.

Examples of Personal Observations of Local Climate Impacts

5. Climate change is causing a third wave of land confiscation by the Crown, as Māori land in our rohe is being eroded through climate impacts such as sea-level rise. This follows previous waves of confiscation: the first in the 1860s, when the Crown forcibly confiscated Māori land and later created reserves, and the second, when the Crown expropriated petroleum. Now, our land is disappearing due to climate change. Many aspects of ao Māori such as marae, infrastructure, wāhi tapū, and taonga species, are at risk. The Crown, which is

[1] *Exploring Tikanga and Climate Change: An Analysis of the Crown's Role in the Taranaki Petroleum Industry* by Alison Anitawaru Cole.

directly implicated in the climate change causing this erosion, must take action to return land to Māori.

6. Climate change is already threatening taonga species, such as the 2024 mass mortality event of ika along our awa due to the high river temperatures.[2] The Crown holds a duty under Article 2 of Te Tiriti to protect taonga species, amongst other threatened aspects of ao Māori.

7. My recommendations regarding climate change policy include the following:

   i. That the Crown immediately ceases enabling high emissions industries, including but not limited to cancelling all petroleum permits;

   ii. That the Crown work with Māori in assessing current and future threats from climate change as understood under tikanga from an ao Māori perspective;

   iii. The Crown work with Māori to provide for land back to Māori in compensation for whenua lost through all aspects of current and projected climate change impacts, as well as any loss of Māori land due to climate change mitigation or adaptation interventions;

   iv. That the Crown work with Māori to implement Crown-funded remediation related to the loss of Māori land, including wāhi tapū, and infrastructure (particularly marae and papakainga);

   v. That the Crown work with Māori to expand insurance frameworks to protect Māori infrastructure (particularly marae and papakainga), and in particular, expand public natural hazard cover insurance to protect Māori infrastructure (particularly marae and papakainga);

[2] https://www.trc.govt.nz/council/news-and-events/council-news/high-temperatures-and-low-river-flows-likely-caused-fish-deaths

vi. That the Crown work with Māori to address the impact of the prior lack of public insurance for marae in order to implement immediate insurance protections;

vii. That the Crown work with Māori in assessing appropriate Māori-led partnerships for establishing civil defence centres within marae and papakainga, including Crown-funded infrastructure for civil defence centres such as rainwater tanks and off-grid renewable electricity, and that the Crown work with appropriate Māori leadership and partnership at all levels of civil defence and emergency management functions;

viii. That the Crown work with Māori in assessing current and future threats to taonga species resulting from climate change and implement timely resilience solutions such as Crown-funded Māori-led remediation e.g. riparian planting and climate-controlled taonga species nurseries for particularly vulnerable species such as pīharau;

ix. That the Crown work with Māori in establishing Crown-funded Māori-led food sovereignty mechanisms such as seed banks and climate-resilience maara kai systems to ensure food growing and delivery mechanisms are appropriately strong in local rohe to sustain major shocks from climate change induced events such as extreme weather, drought, flooding, heat waves, and extreme wind;

x. That the Crown work with Māori in Crown-funded Māori-led energy sovereignty mechanisms such as distributed green energy systems, for instance, solar-voltaic networks and EV charging stations;

xi. That the Crown work with Māori to secure equitable transitions to economies achieving real gross zero emissions based on degrowth to limit consumption in favour of self-sufficiency, equity and wellbeing.

xii. That the Crown work with Māori to fund and support improved understanding of risk assessments and evacuation planning for mobility impaired and vulnerable communities (such as rangatahi and kaumatua), and Māori communities in or near at-risk natural hazard zones (such as kohanga reo, kaumatua housing, etc);

xiii. That the Crown ensure any rezoning, particularly related to managed retreat planning, is Māori-led as it relates to Māori communities;

xiv. That the Crown work with Māori to implement Māori-led and Māori focused climate risk assessment and monitoring, and emissions reduction planning and monitoring, with and alongside national processes;

xv. That the Crown invest in capability building among critical climate change disciplines for Māori through enabling dedicated educational pathways (e.g. through scholarships, research grants, funded internships) and ensure equitable representation of Māori in sectors related to public policy design and implementation e.g. public servants, academic leadership, planning officials and technical experts such as in law, economics, engineering, energy, and construction;

xvi. That the Crown work with Māori to address the underlying inequities which influence our populations resilience to climate change induced changes including across employment, healthcare, education and poverty;

xvii. That the Crown includes impact to ao Māori as a necessary consideration for all public policy decisions advancing climate change solutions, including through trainings of public servants to include these impacts within regulatory impact statements.

Examples of Personal Observations of the Crown

8. I have worked within Crown agencies on two occasions relating to climate law and policy. I am of course bound by confidentiality. I therefore can only refer to matters of public record.

United Nations Framework Convention on Climate Change (UNFCCC) and Conference of the Parties (COP)

9. In discussing my observations at COP26 in Glasgow, I only refer to events which were witnessed by members of civil society and are therefore within the public domain.

10. At COP26, Aotearoa's global role regarding indigenous rights was highlighted to me by delegates from around the world. Many delegates understood Aotearoa's reputation as a "clean and green" as closely linked to our Māori-led practices, policies, and innovations. I believe this is due to the role of kaitiakitanga within tikanga.

11. I co-sponsored an Amazon Indigenous peoples COP26 event, where I presented a paper on financial mechanisms for Treaty settlements in the context of modelling the new financial structure for the global carbon credit market. The Waitangi Tribunal's role in Aotearoa also sparked significant interest. It was clear to me how much Aotearoa has to offer in developing international climate law and policy, specifically due to the contributions of whānau, hapū, and iwi.

12. In the public forums, it was clear that despite my status as an iwi representative funded by MFAT, my role was akin to a civil society or corporate representative who chose to attend. Iwi representatives were excluded from kōrero about the scope of negotiations and the terms of the negotiation mandate. Our participation was through the public daily Q&A sessions with MFAT representatives and/or the Minister of Climate Change. In those forums open to civil society representatives, I expressed the urgent need to kōrero at the

depth on matters relating to indigenous peoples, especially on aligning tikanga and kaitiakitanga with global climate policy. There is vast opportunity for the Crown to partner with iwi representatives in this setting. It was clear however that at COP26, the Treaty partnership was limited to facilitating Māori attendance in a civil society sense.

13. I understand the role of kaitiakitanga is closely aligned with pursing ambition under the Paris Agreement. This matter is therefore an essential issue for the Crown to respect under Te Tiriti.

14. My recommendations regarding COP and UNFCCC include:

    i. That the Crown work with Māori in establishing a Māori Climate Ambassador within MFAT to work with the existing Ministry's Climate Ambassador;

    ii. That the Crown work with Māori in establishing a Māori climate policy negotiation team with sufficient seniority and resourcing to co-design UN negotiation mandates ahead of the Conference of the Parties (COP) annual negotiations under the UN Framework Convention on Climate Change;

    iii. That the Crown ensure Māori representatives are provided with access to the same to facilities and support as MFAT staff across all international convenings related to climate change.

Climate Change Response Act and the Climate Change Commission

15. In October 2022 I was appointed to the newly established role of General Manager Māori within the Senior Leadership Team reporting to the Chief Executive at the Climate Change Commission. Due to contractual and confidentiality matters, I am only referring to matters of fact which are within the public domain and I cannot share my personal opinion.

16. The Climate Change Response Act includes a mandatory consideration under section 5M(f) such that the Commission must consider, where relevant, across all "its functions and duties and exercising its powers" the following three aspects:

    i. the Crown-Māori relationship,
    ii. te ao Māori,
    iii. and specific effects on iwi and Māori.

17. This scope of this provision is of course a matter of legal interpretation. I undertook a programme of work, based on expert advice, to establish a team to help implement this mandatory consideration, particularly given the potential ramifications of "considering te ao Māori." The existence and disestablishment of this team can be verified through open source materials available publically online, however, I have not conducted a thorough investigation to verify if any further details are publically available, therefore, I cannot speak to any further aspects. As a result, I cannot provide any recommendations other than to note the mandatory nature of this consideration under the Climate Change Response Act.

Report on tikanga and climate change pertaining to the Crown's actions in the Taranaki petroleum industry

18. My report regarding tikanga and climate change as it pertains to the Crown's actions in the Taranaki petroleum industry draws on my research for my PhD research on tikanga and climate change, as well as research and analysis conducted in my capacity as uri of Ngāruahine. I acknowledge there is no singular experience and I am not seeking to represent reductive research but instead sharing whakairo that reflects my best understanding of the sources I have reviewed alongside my lived experience.

19. Based on my research, I find that kaitiakitanga is a central organising principle within tikanga and that maintaining mauri within te taiao is essential for safeguarding taonga katoa within ao Māori.[3]

Pūrākau: Te Kore, Te Pō, Te Ao Mārama & Mauri

20. Pūrākau describing the beginnings of the universe establish the core philosophical foundations of the tikanga legal frameworks applicable to climate change. These pūrākau often describe the dawn of time in terms of emerging stages of mauri and it is this mauri which continues to emanate from the past through all entities existing in the present and future.[4] Maintaining and nurturing this mauri within te taiao is the role of humanity as kaitiaki.[5]

21. As discussed in more detail in my report, pūrākau demonstrate the holistic ao Māori worldview where the macro experience (cosmic universe) and the micro experience (individual human) mirror each other and inter-relate through time and space.[6] This sets the foundation for viewing humanity as deeply dependent on, and interconnected with the natural world, such that harm to the environment and human-caused climate change can be thought of as major transgressions of tikanga and the laws of nature.

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[3] Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law.* UBC Press, p.71. See also Marsden, M., & Royal, T. A. C. (2003). *The woven universe: Selected writings of Rev. Māori Marsden*. Estate of Rev. Māori Marsden, pp. 67, 69. Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment : kaitiaki.* Huia, p.221.Roberts, M. (1995). Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology.* 2(7) at 14; Durie, E.T., (2017). Ngā wai o te Māori: ngā tikanga me ngā ture roia The waters of the Māori: Māori law and State law. *New Zealand Māori Council*. p.30. McCully, M. & Mutu, M. (2003) *Te Whānau Moana: ngā Kaupapa me ngā Tikanga Customs and Protocols* Reed Books, p.67.

[4] Marsden, M., & Royal, T. A. C. (2003). *The woven universe: Selected writings of Rev. Māori Marsden*. Estate of Rev. Māori Marsden, pp. 62-63.

[5] Kawharu, M. (2000). Kaitiakitanga: a Maori anthropological perspective of the Maori socio-environmental ethic of resource management. *The Journal of the Polynesian Society,* 109, p. 359. "[Kaitiakitanga incorporates] one universe, where all living things are connected. This includes animals, fish, plants, forests, sea and humans."

[6] See report at [10]. See in particular:
Peter, B. (1949). *The Coming of the Maori.* Maori Purposes Trust Fund Board. See also Smith, S.P. (1910) *History and Traditions of the Maoris of the West Coast North Island of New Zealand Prior to 1840.* Memoris of the Polynesian Society, pp.25-26;
Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 4.

22. The emergent mauri that began stirring from Te Kore through Te Pō developed across space and time into increasingly complex and nuanced phenomena. The journey of creation evolves into the phase wherein atua and their corresponding mauri emerge and take action. Atua can be understood on the deeper mauri energetic level similar to the description of the emergent mauri energies within the different phases of Te Pō. For example, Papatūānuku can represent the mauri of creativity and nurturing which is active within a sphere of nature associated with abundant diversity and flourishing.

23. Each of the atua born within the tight embrace of Ranginui and Papatūānuku are often associated with a specific domain of te taiao, demonstrating the central importance of nature within ao Māori philosophy and legal systems, such as Tāwhirimatua associated with the winds, and Hinemoana associated with the oceans. The creation of space for the flourishing of the mauri of ngā atua is depicted in pūrākau through the actions of Tāne, the atua associated with the ngahere, separating Rangi and Papa thereby releasing the mauri of ngā atua to flourish.[7]

24. According to some kōrero, one of the atua who disagreed with the course of action taken by Tāne was Whiro, who may therefore be thought of as representing the stagnant energy of inert mauri seeking to remain in the cramped dark conditions. Under some kōrero, Whiro can be understood as the atua associated with decay, death and destruction, which can be a necessary reality within te taiao to allow for new growth but can be regarded with a reverence bordering on fear. This is evident in descriptions of Whiro as "the embodiment of darkness and evil"[8] as encapsulated in the phrase "ko Whiro te pūtake o te kino o te ao."[9] Whiro is often associated with the darkness of the

[7] Bishop, G. (2021). *Atua: Māori Gods and Heros.* Penguin Random House. Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 8-10. Tapiata, H. (2024). *Atua Wāhine: The ancient wisdom of Māori goddesses.* Harper Collins Publishers. Cherrington, L., Kopua, D., Kopua, M. (2025) *Mahia Atua*. Huia. Murphy, N. (2024), *Intuitive Ritual.* He Puna Manawa Ltd. Kahukiwa, R. (2021) *Ngā Atua Māori Gods.* Oratia Books.
[8] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p.14. See also p. xiii – 24.
[9] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, pp. 64-65.

new moon and invokes the need for caution when mauri is depleted or out of balance.

25. At a mauri-level, the conflict between Tāne and Whiro can be understood as the conflict between constructive tika-action for the collective good (as represented by Tāne) and negative or destructive energies (as represented by Whiro).

26. Some pūrakau can be understood to forewarn of the power of certain atua with respect to extreme weather events related to climate change. In addition to Whiro, under some interpretations of pūrākau, Tangaroa of the seas and Tāwhirimātea of the winds also opposed the separation Rangi and Papa. Such pūrākau describe how Tangaroa expresses opposition to Tāne, as Tangaroa "constantly makes war against the land, swallowing up trees, land, shores and all things that people have made."[10] According to such tellings, atua aligned with Tangaroa assist in this opposition against Tāne, such as the atua Kiwa, controller of ocean, who married Parawhenuamea, the atua who commands the floods which can also overrun the whenua and trees within the domain of Tāne.[11]

27. Ultimately, these pūrākau record the triumph of Tāne in succeeding to bring forth the constructive mauri necessary for life on earth. I believe that this kōrero from our tūpuna holds deep wisdom relevant to the existential threats posed by climate change. If humanity does not adequately serve as kaitiaki and fails to nurture the mauri within te taiao ushered in by Tāne, it follows that we are at risk of contenting with the opposing mauri of Whiro, and the associated atua such as Tangaroa and Parawhenuamea, which breakdown and decompose the systems which caused the imbalance, namely, the models of consumption and natural-resource extraction which have caused climate change.

[10] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 27.
[11] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 68.

28. Many pūrākau tell the story Tāne battling Whiro to obtain the three kete or baskets of knowledge.[12] These kete are the source of all wisdom, philosophy, and ethical frameworks within ao Māori, and became the source and methodology by which tohunga shared teachings in whare wānanga. With Tāne's triumph in obtaining the kete, the foundation for the understandings of right and wrong action is built with the upright rooted energy of Tāne who made the difficult but just decision to separate Rangi and Papa. This reflects the alignment of mātauranga with collective well-being, and an attunement to the nuance required to enforce decisions for the better of the collective. That nuance can be seen across acts of kaitiakitanga, where individual preferences or desires are set aside in order to advance the hauora of the collective (for instance in upholding rāhui for replenishment of the mauri of te taiao).

29. The mōhio within the three kete "equip humans with the necessary skills and behaviours for living… for the greater benefit of society."[13] The three kete draw on the understandings of mauri unfolding from Te Kore through Te Pō and the manifestations through te taiao. Through the connection to mauri, this knowledge is deeply connected with the hauora of the whenua. Indeed, written records discussing the whare wānanga in the early 1900s document how the weakening of the teachings of kaitiakitanga under colonisation was negatively impacting both humans and the whenua: "[m]en now live in a wilderness; they are careless of these things; of everything… the [mind of man] is now in a state of confusion [literally, like a whirlwind], as are all his deeds; the land is the same."[14]

30. The three kete of knowledge each traverse both the metaphysical and physical domains (respectively, te Kauwae-runga and te Kauwae-raro).[15] This bifurcation again demonstrates the role of mauri in shaping tikanga, since the

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[12] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 47. See also https://sacred-texts.com/pac/lww/lww0.htm#page_vi_fr_*

[13] https://www.researchgate.net/publication/304647888_Tane%27s_Journey_to_Retrieve_Knowledge

[14] https://sacred-texts.com/pac/lww/lww2.htm

[15] https://sacred-texts.com/pac/lww/lww1.htm See also Marsden, M., & Royal, T. A. C. (2003). *The woven universe: Selected writings of Rev. Māori Marsden*. Estate of Rev. Māori Marsden, pp. 60-62. See also Best page 74.

physical world is always infused with knowledge of mauri and the metaphysical. The three kete themselves are discussed in more detail in my report.[16]

31. The kōrero in these pūrākau can be thought of as the original source code underpinning Māori law. Core to the pūrākau of ao Māori is the operation of mauri within the laws of nature. The corollary of this is the central importance of kaitiakitanga to tikanga in governing human actions in order to nurture and sustain mauri within te taiao. It follows therefore that grave environmental harm amounts to the gravest violation of these fundamental laws.

Tikanga: Kaitiakitanga and Rāhui

32. As expressed by Sir Hirini Moko Mead and Professor Pou Temara, tikanga "is the law that grew from and is very much embedded in our whenua (land)."[17] Kaitiakitanga is an essential conceptual regulator within tikanga.[18]

33. If tikanga had been the law of the land globally, I believe that climate change driven by human actions would likely have been avoided. Kaitiakitanga mandates actions that protect the environment. Despite the Supreme Court in the *Ellis v R* decision recognising tikanga as part of the common law of Aotearoa, it has adopted a "tikanga-as-an-ingredient approach"[19] on a "case by case basis".[20] This decision cements the prophecy of Moana Jackson that legislation and the Crown courts risk diminishing the application of tikanga by cherry-picking the most palatable concepts to the Crown.[21] With Crown law and tikanga diametrically opposed on the matter of environmental protection, it is no surprise that the Crown discards one the most important aspects of

[16] At [22] – [24].
[17] Ellis v R [2022] NZSC 114 [7 October 2022] 1 NZLR 239, Statement of Tikanga of Sir Hirini Moko Mead and Professor Pou Temara, 31 January 2020, para. 22.
[18] Tikanga can therefore be thought of as a living law, however, "[w]hile the practice of tikanga may adapt over time, the underlying principles of 'conceptual regulators' (as Justice Taihakurei Durie has called them)… do not." See Mikaere, A. (2013). *Colonising Myths - Maori Realities: He Rukuruku Whakaaro.* Huia NZ Ltd, p.109.
[19] Ellis v R [2022] NZSC 114 [7 October 2022] 1 NZLR 239, at para. 269
[20] Ellis v R [2022] NZSC 114 [7 October 2022] 1 NZLR 239, at para.183.
[21] Jackson, M. (1994). Changing realities: unchanging truths. *Australian Journal of Law and Society.* 10(115) p. 128, see also p. 116.

tikanga, namely, kaitiakitanga. The Crown bears responsibility under Te Tiriti for preventing respect of tikanga as a source of law upheld in the courts of Aotearoa and thereby nullifying the protective mechanisms of kaitiakitanga. This too constitutes a grave breach of Te Tiriti.

34. Kaitiakitanga comprises the acts of kaitiaki[22] who feed or nurture the mauri of te taiao under the "ethic of stewardship and guardianship, particularly in relation to the natural environment."[23] Within ao Māori, the significance of kaitiaki is amplified by whakapapa connections to te taiao such that "[t]he environment is also seen as an ancestral landscape."[24] Particularly for tangata whenua maintaining ahi kaa, kaitiakitanga is central to daily life because "each whānau or hapū is kaitiaki for the area in which they hold mana whenua, that is, their ancestral lands and seas. Should they fail to carry out their kaitiakitaga duties adequately, not only will mana be removed but harm will come to the members of the whānau and hapū."[25] As recorded in research by the Law Commission, the "responsibility to maintain mauri renders it a normative force" and "lapses in respect for mauri are 'hara' or wrongs"[26] which create imbalance which "spell doom."[27] In order to achieve these protective outcomes for the environment, kaitiakitanga naturally involves "managing people".[28] As such, "climate change is an issue that requires Māori to fulfil an inherent role as kaitiaki, proactively responding to the issues."[29]

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[22] Roberts, M. (1995). Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology.* 2(7) at 14; Durie, E.T., (2017). Ngā wai o te Māori: ngā tikanga me ngā ture roia The waters of the Māori: Māori law and State law. *New Zealand Māori Council*. p.30. McCully, M. & Mutu, M. (2003) *Te Whānau Moana: ngā Kaupapa me ngā Tikanga Customs and Protocols* Reed Books, p.67.

[23] Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law.* UBC Press, p.71. See also Marsden, M., & Royal, T. A. C. (2003). *The woven universe: Selected writings of Rev. Māori Marsden*. Estate of Rev. Māori Marsden, pp. 67, 69.

[24] Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment : kaitiaki.* Huia, p.221.

[25] Jones, C. (2016). *New Treaty, New Tradition: Reconciling New Zealand and Maori Law.* UBC Press, p.75.

[26] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para. 3.59.

[27] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para. 3.56.

[28] Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment: kaitiaki.* Huia, p.227. See also Harmsworth, G., Dixon, L. & Awatere, S. (2011). *Review paper: Improved reporting tools – Māori cultural monitoring approaches throughout Aotearoa.* Lincoln, Landcare Research: https://www.landcareresearch.co.nz/assets/Discover-Our-Research/Environment/Sustainable-society-policy/VMO/Review_Cultural_Monitoring.pdf

[29] Selby, R., Moore, P., & Mulholland, M. (2010). *Māori and the environment : kaitiaki.* Huia, p.116

35. Rāhui is one of the mechanisms by which kaikiakitanga maintains its normative force. Rāhui may be thought of as drawing a line in the sand,[30] particularly for the purpose of conserving or replenishing resources.[31] As an expression of kaitiakitanga, rāhui presupposes that the natural environment is not solely a sphere for natural resource extraction.

36. Violation of rāhui can invoke severe penalties: "The strictest form of rāhui involved special karakia designed to ensure very severe consequences (including death) for violation of the restriction (consequences which would be enforced by human agency when supernatural sanctions were ineffective – the term kairāmua was used to denote such a breach, and its perpetrator would be killed if caught)."[32]

37. Under the Māori legal system prior to colonisation, harm to the environment through violating rāhui was deemed to be so serious as to warrant the death penalty in some instances,[33] even when the death penalty would not always be considered the necessary utu in response to the killing of another human being.[34] The most severe penalty not only reflected the environmental harm in the present, but also the harm on future generations.

38. Kaitiakitanga is commonly regarded as increasingly necessary in the context of modern technologies which have enormously accelerated the demands placed on te taiao.[35] Modern technologies have also enabled the rapid increase in greenhouse gas emissions through the burning of fossil fuels which has locked in extreme destruction and extinction of taonga under climate change.

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[30] Mead, S. M. (2003). *Tikanga Māori : living by Māori values.* Huia, p.193.
[31] Marsden, M., & Royal, T. A. C. (2003). *The woven universe : selected writings of Rev. Māori Marsden.* Estate of Rev. Māori Marsden, p.49
[32] Benton, R., Frame, A., & Meredith, R. (Eds.), (2013). *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*. Te Mātāhauariki Research Institute, Victoria University Press, Wellington, p. 310.
[33] Benton, R., Frame, A., & Meredith, R. (Eds.), (2013). *Te Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law*. Te Mātāhauariki Research Institute, Victoria University Press, Wellington, p. 317.- 321.
[34] Church, I. (1992). *Heartland of Aotea : Māori and European in South Taranaki before the Taranaki Wars.* Hawera Historical Society, p.128.
[35] Marsden, M., & Royal, T. A. C. (2003). *The woven universe : selected writings of Rev. Māori Marsden.* Estate of Rev. Māori Marsden, p.5.2.

As a result, I believe it is necessary to advance kaitiakitanga through a rāhui on greenhouse gas emissions, and the extraction and use of fossil fuels.

39. The application of rāhui and kaitiakitanga operate within the tikanga framework of take-utu-ea,[36] where transgressions (take) require resolution (utu) to restore balance (ea). Once a rāhui is determined, the area becomes tapu which must be respected.[37] Not to do so would create an imbalance, a hara, which would risk negative implications for those concerned, until the hara (namely the "take" of the breach of the rāhui) was addressed through utu such that the balance is restored and the state of ea is achieved.

40. I believe that if our tūpuna could see today's climate change and the projections of catastrophic harm to te whenua me ngā tangata, it would undoubtedly be viewed as the greatest hara of all time. We inherited from our tūpuna the sense of time which is far removed from the short-term thinking focused on profit margins which has caused climate change. Instead, Māori walk backwards into the future alongside our tūpuna, who taught us to value our whakapapa from the past into the future, to make sure we strive to gift our mokopuna a secure future. To doom our mokopuna to a future of climatic chaos is unthinkable. Ko tēnei te pūtake o te kino o te ao. Pursuant to the tikanga addressing transgressions and hara, the Crown must join with Māori in shaping appropriate responses to restore balance in accordance with the process of take-utu-ea. I believe that under tikanga, the harms of climate change are so immense and comprehensively catastrophic as to represent the greatest hara requiring the greatest redress by the Crown.

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[36] Mead, S. M. (2003). *Tikanga Māori : living by Māori values.* Huia, p.27.
[37] https://www.lawcom.govt.nz/assets/Publications/StudyPapers/NZLC-SP24.pdf para.3.137 "A place or natural resource subject to a rāhui will have a right to protection and an immunity from interference. People have a duty to respect the rāhui and cannot access the place or natural resource. Therefore, a rāhui is a good example of a process for managing the powers and responsibilities associated with tapu, and of how tapu (by setting in place a prohibition) facilitates utu and ea."

Petroleum: Crown Confiscations

41. Under some understandings of pūrākau, oil seeps in Taranaki were associated with the decomposition of an atua below ground,[38] which can be interpreted as placing petroleum within the domain of Whiro, the atua associated with decay and decomposition such as occurs in the fossilisation process. Through this deep metaphysical connection to petroleum, Whiro holds the key to the destruction of humankind.

42. Early petroleum exploitation in Taranaki - where the first petroleum wells in the British Empire were drilled[39] – was deeply entangled with the Crown's theft of Māori land. It can be no coincidence that the Crown's comprehensive land theft throughout Taranaki, the region then known to hold Aotearoa's petroleum reservoirs,[40] coincided with the global oil rush[41] beginning in the 1860s.

43. In 1865, Crown politician E.M. Smith established Aotearoa's first petroleum well at Moturoa.[42] He established the Taranaki Petroleum Company and then obtained from the Taranaki Provincial Council, of which he was a member, both drilling approval as well as a lease over the confiscated Māori land[43] where the oil field was located. There is no indication he built any relationship with

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[38] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_94189464/Wai%20796%2C%20A038.pdf p.10. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.10. See also Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p. 18 citing Ernst Dieffenbach, Travels in New Zealand, John Murray, London, 1843, 134-5: "Written in 1841 The New Zealand Company scientist Ernst Dieffenbach visits Ngamotu where he notes some geological peculiarities and 'a strong smell of sulphuretted hydrogen gas.'"

[39] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.19. See also https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.9: "some of the earliest wells in the Western history of oil exploration were drilled in New Zealand in locations where oil seepages occurred."

[40] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.8 "This industry is situated moreover for the most part in Taranaki, an area of dense Maori settlement and where, of course, much Maori land was confiscated by the Crown."

[41] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.18, citing Dr Hector (1866) *Report by Dr Hector on the Petroleum found at Taranaki* AJHR A-3. See also Yergin, D. (1991) *The Prize* (1991) at pp. 18-34 on early development of the oil industry.

[42] See https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.11, and http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p.375.

[43] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.20.

mana whenua or sought to respect tikanga. Recalling that under tikanga, the whenua forms part of the whakapapa and tūpuna, to intentionally steal land to enable theft of the minerals within the land is tantamount to forced kidnap, torture, and dismemberment. This constitutes grave hara, not to mention the ensuing hara of climate change through global warming from the burning of fossil fuels. Mr Smith was allowed to begin drilling before his Crown lease was issued and he secured a waiver of the royalty fee.[44]

44. From the success of the initial well, commercial petroleum initiatives grew and the Crown began to profit from royalties on leases for petroleum issued on Crown-controlled land in Taranaki.[45]

45. The rapacious corporate greed to access Māori land throughout Taranaki extended even to the reserve land established in the 1880s, with "perpetual leases" being granted by the Public Trustee over Māori land, enabling the Pākehā leaseholders to establish leases to petroleum companies.[46]

46. The British Empire's developing strategic need for oil, particularly for the Royal Navy, aligned with Crown policies to exploit Māori land for profit. In the early 1900s, the Taranaki Petroleum Company, with the Crown's backing, expanded its operations, building the first oil refinery in Aotearoa on confiscated Māori land at Moturoa in 1913.[47] During World War I, the New Zealand government subsidised the production and refining of petroleum.[48]

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[44] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.20: "Drilling began at the end of 1865 and the lease was formally issued on 20 February 1866."; http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p.377.
[45] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.21.
[46] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.42. See also 39-41. Page 53: Clause 28(d) royalty income from petroleum won from Maori freehold and Maori customary land would be paid to the Maori Trustee in trust for the beneficial owners, silent on royalties from Maori reserved lands such as the West Coast reserves in Taranaki.
[47] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.12. See also http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p. 380: By 1915 they had produced 1,000,000 gallons of high-grade crude oil receiving £10,000 in bonuses. Citing NZ Govt, Gazette (December 1910) No 33 at 1167. NZ Govt, Report of the Department of Mines on the Goldfields of New Zealand, (1910) at 12. NZ Govt, New Zealand Official Yearbook, (1916) at 491.
[48] http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p.381 citing the Appropriation Act 1914 s 26. "The Mining Act 1908 was also amended to impose a condition in all future petroleum mining licenses giving the New Zealand government (or the British government) the right to purchase all

Crown-Corporate Collusion

47. Severak corporate entities worked closely with the Crown in establishing these legal regimes. For example, the Anglo-Persian Oil Company Ltd (later known as British Petroleum), as well as the British-Dutch petroleum consortium (later known as Shell) liaised directly with the Crown in seeking a legal regime that ensured government control over petroleum, enabling privileged access for these companies to the resource.[49] Māori concerns about kaitiakitanga were disregarded, and in 1926 legislation was passed that gave the Crown sole authority to issue petroleum leases and thereby allow these companies to explore and exploit the petroleum resource.[50] There was no pause for reflection on the extent of the hara involved in intensified exploration, not to mention the environmental damage to te taiao, layered upon the hara flowing from Crown's acts of stealing Māori land. Corporate representatives directly influenced the development of this legislation, underscoring the extent of the Crown-corporate collusion at the expense of Māori sovereignty and resources.[51]

48. The Crown's focus on securing petroleum resources for imperial purposes led to the systematic undermining of Māori land tenure, further entrenching Crown control and corporate exploitation while disregarding the environmental and cultural impacts on Māori communities.

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production at market rates and the power to take over the working and management of production, storage or refining facilities." Mining Amendment Act 1914, s 31.

[49] The Anglo-Persian Oil Co Ltd (British Petroleum) explicitly sought Crown commitments with the effect of excluding Māori interests, stating that: "[f]rom the imperial, and infinitely the more vital and important side, - upon a developed oil-supply, with secure harbours for the air and sea-craft of the white race in the Western Pacific, may yet depend the continued existence of the people of Australia and New Zealand as a British race" . See http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p.382, citing letter dated 11 January 1926 from Mr G L Tacon of Anglo-Persian Oil Co Ltd to the Minister of Mines: NZ National Archives, Mines Department Files (MD 1).
See also Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.49. Citing Cadman to Coates, 26 November 1926, MD I, 3/12 (Part 1), WNA.

[50] http://www.nzlii.org/nz/legis/hist_bill/pb19271002147/

[51] See report of Alison Cole at [56].

Crown Expropriation

49. In 1937, shortly after the expiry of the oil leases granted under the previous wave of Crown regulations, the Crown passed the Petroleum Act, entirely expropriating the petroleum resource.[52] It did so under urgency, thereby avoiding the usual democratic debate and review.[53] In the final debate, the Minister of Mines told the legislature that the government wanted "to remove every obstacle and give private enterprise the right to come here."[54] He advocated for the Crown to hurry up and "get the drills working [because to delay would risk] a national, if not an Empire disaster."[55] Despite concerns raised by government officials[56] and the Native Affairs Committee[57] about the Act's conflict with the Treaty of Waitangi, the Crown proceeded. This move amounted to a second wave of whenua confiscations through deeming petroleum at Crown asset. Now not only was the land stolen, but everything under the land was stolen too. At no point did the interests of tangata whenua feature in the process. At no point did the tikanga of kaitiakitanga over taonga and te taiao feature in the process. The wisdom of pūrākau and ngā atua was similarly locked out of the process.

50. In rejecting concerns under Te Tiriti, the Under-Secretary of Mines said that the nationalisation of petroleum "has already been recognised in British law.

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[52] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.20: "the district land registrar at New Plymouth reported to the Under-Secretary of Mines that 'quite a number of oil leases or grants to bore [had] in the past been granted in the district'."
See also:
https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.24.

[53] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.25.

[54] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.27.

[55] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.35

[56] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.62 citing GP Shepherd, Memorandum, 28 October 1937, MD 1, 3/12, Part 3, WNA. See also:

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.27.

[57] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.62 citing GP Shepherd, Memorandum, 28 October 1937, MD 1, 3/12, Part 3, WNA. See also:
https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.27.

Unless the same principles are established in New Zealand it appears almost certain that no major attempt will be made by private enterprise to discover petroleum".[58] His sentiments were echoed by the international oil companies, who filed a joint submission to the Gold Fields and Mines Committee in which they collectively expressed "considerable satisfaction" with the Crown's move to expropriate petroleum.[59]

Crown Capitalisation

51. The outbreak of WWII and the passing of the 1937 Petroleum Act spurred rapid petroleum exploration in Taranaki, with significant investments and the granting of numerous licences.[60] A consortium led by British Petroleum (BP) hit the massive Kapuni site located in the rohe of Ngāruahine in 1959.[61] Over the decades which followed the Petroleum Act, the Crown continued to support corporate interests, amending legislation to provide for compulsory land-taking for pipelines and easements, ocean and deep sea drilling, and revenue guarantees for petroleum companies.[62] This culminated in Crown involvement in petroleum operations through state-owned enterprises in the late 1970s, with state-owned Petrocorp securing substantial shares in major oil and gas fields as well as other petroleum infrastructure.[63] However, in the 1980s, the Crown largely privatised these assets, transferring public investment into private hands, leading to billions of dollars in profits for corporations. As a key illustration, pursuant to its sale of petroleum assets to Fletcher Challenge for $801.1million in 1988, the Crown maintained a residual 11 per cent stake in

[58] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.28.
[59] Boast, R.P. (2000). *Maori and Petroleum: A Report to the Waitangi Tribunal*, Wai 796 A012, p.61 citing Submission of Vacuum Oil, Shell, Taranaki Oil Fields Ltd, and Shale Oil Investigation Pty Ltd to Gold Fields and Mines Select Committee, November 1937, MD I, 3/12, Part 3, WNA Vacuum Oil, Shell, Taranaki Oil Fields Ltd).
[60] http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p.393. See also: Ministry of Commerce, (1995). *Energy and Resources Division: The Search for Petroleum in New Zealand.* Petroleum News, 28, p.31.
[61] Ministry of Commerce, (1995). *Energy and Resources Division: The Search for Petroleum in New Zealand.* Petroleum News, 28, pp.31-32.
[62] See report of Alison Cole at [63].
[63] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p. 16

the massive Kupe field in the rohe moana of Ngāruahine.[64] The extent of Crown subsiding corporate profit at the expense of tangata whenua exercising tikanga practices of kaitiakitanga can only be considered hara of the highest order.

52. The Crown's continued promotion of petroleum extraction, as enshrined in the 1991 Crown Minerals Act,[65] ignored the growing global awareness of climate change, further entrenching the Crown's favourability towards the petroleum industry while undermining environmental and Treaty obligations. The Crown Minerals Act, which remains the governing legal framework to this present day, has one of the weakest Treaty principles legal tests, with the Crown required to "have regard to the principles of the Treaty of Waitangi".[66]

Waitangi Tribunal claims and other legal actions

53. One of the first-ever Waitangi Tribunal reports was from Taranaki and related to claims submitted to the Tribunal in 1981 regarding the harm to te taiao caused by the petroleum industry.[67] This was followed by claims made by uri of Ngāruahine in 1999 against the Crown regarding the ownership and management of petroleum resources.[68] This came after the Tribunal's 1996 Taranaki report found that the scale of Crown harms against tangata whenua in Taranaki was so severe it amounted to a holocaust.[69] While negotiations for settlement were ongoing, Ngāruahine learned the Crown was selling its 11 per

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[64] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.17: "Other Crown interests including New Zealand Liquid Fuel Investments, Maui Gas, and the Synfuel plant, were sold to Fletcher Challenge and others in 1990 for $80.2 million." See also: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.17

[65] http://www.nzlii.org/nz/journals/OtaLawRw/1995/4.pdf p. 408 at 4-5, cl2.13: "'Fair financial return' was interpreted by the Government as: .... requir[ing] a balance to be found between royalty payments required by the Crown for extracting its petroleum resource and the regime's capacity to attract continuing investment. This balancing includes recognising the risks and potential gains to investors from petroleum exploration and mining. A regime which is unduly concessionary will result in the Crown not receiving a fair financial return on its petroleum resource, while an unduly harsh regime is likely to result in declining or no investment."

[66] https://www.legislation.govt.nz/act/public/1991/0070/latest/DLM246096.html

[67] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68496669/Motunui-Waitara%20Report%201983.pdf

[68] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf and https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf

[69] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68453721/Taranaki%201996.compressed.pdf p.312.

cent share in the Kupe petroleum field, which would remove it from the scope of settlement.[70] The Tribunal heard the claims under urgency. Though the Crown advised the Tribunal "that the Government of the day had not considered selling the Crown's interest and that no sale was imminent",[71] this turned out to be untrue when the Crown's sale of the 11 per cent interest took place shortly thereafter.[72]

54. The Tribunal found that the Crown's actions in selling these assets violated te Tiriti, as Ngāruahine retained an interest in the resources, which (including royalties and the Crown's stake in the Kupe field) should have been available for their Treaty settlement.[73]

55. For the Tribunal's subsequent inquiry into the management of the petroleum resource, in keeping with Ngāruahine tikanga, the claimants placed "significant emphasis on the need for enhanced Māori involvement in the management of the environmental effects of petroleum exploration."[74] The claimants asserted that "the law is biased against Māori interests in the natural world and in their culture… the interests of Māori in the natural world and in their culture are being denied and damaged, in breach of the principles of the Treaty of Waitangi and to the detriment of all New Zealanders."[75]

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[70] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.3: "had been suggestions that the Crown was about to divest itself of its 11 per cent non-contributory interest in the Kupe field offshore from Taranaki."

[71] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.3.

[72] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf p.7.

[73] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187177/Petroleum%20Report.pdf pp.2, 40, 65-68.
https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p.2.

[74] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p. 74. See also p.79: "The claimants' criticisms of the CMA's processes centre on four features: ьı the failure to consult tangata whenua on the policy issues that set the context for the Act's implementation; ьı the narrow scope of the Crown's consultation and the limited opportunities for it to occur; ьı the lack of Māori expertise in the process by which the Minister exercises the discretion to exclude land of particular importance to the mana of iwi; and ьı the absence of any requirement for petroleum permit holders to engage with tangata whenua and be accountable for the quality of that engagement."

[75] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p. 69.

56. The Tribunal found that "the point of much of the claimants' evidence was to demonstrate that dislocation from their traditional lands has not weakened their responsibilities as kaitiaki, to the contrary, the losses suffered have increased the pressure to protect what has been retained of their taonga, and yet the claimants struggle even to have an influence on decisions that determine their fate."[76]

57. The Tribunal's report criticised the Crown's failure to adequately involve Māori in managing the environmental impacts of petroleum. The Tribunal found systemic flaws in the regulatory frameworks which disproportionately affected Māori.[77]

58. The Tribunal concluded that the Crown's ongoing policies and actions to "minimise Māori interests" violated the Treaty of Waitangi, severely impacting the ability of Māori to exercise kaitiakitanga over their resources.[78] The Tribunal emphasised the impacts wherein "Māori cannot exercise kaitiakitanga to protect and conserve for future generations the taonga with which they have been entrusted… the result is the inexorable eroding of the spiritual and cultural relationships that Māori have with their resources, wāhi tapu, and taonga, in breach of the principles of the Treaty."[79]

59. Meanwhile, uri of Ngāruahine who have defended our interests in the Waitangi Tribunal have brought cases seeking judicial review of the Crown's decision to issue new petroleum permits (which is currently at the Supreme Court),[80] as well as submitting a request to open an investigation into climate change at the

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[76] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p.96.

[77] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p. xv also found limited capacity of Maori and Crown lack of "assistance" ie resourcing to do so, low engagement. P.147: recommended regional iwi advisory committees for input on petroleum.

[78] Ibid.

[79] https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68187775/PetroleumReportW.pdf p.165.

[80] https://climatecasechart.com/non-us-case/students-for-climate-solutions-inc-v-minister-of-energy-and-resources/

International Criminal Court as a crime against humanity[81] which I have provided with my affidavit.

Conclusion

60. The Crown has directly removed Māori from our whenua and negatively impacted the responsibility to act as kaitiaki through Crown-implemented confiscations and by enabling petroleum companies to extract resources which cause greenhouse gases. Kaitiakitanga has been further attacked through the Crown's suppression of tikanga as a source of law enabling strong environmental protections.

61. As a result of these violations of tikanga, climate change is causing irreparable harm to te taiao and ultimately is projected to cause the extinction of taonga species[82] and the destruction of all manner of natural phenomena, from awa disappearing through reduced flow due to increased temperatures, to ice sheets disappearing from maunga, and reefs dying from marine heatwaves. Such fundamental harms to the health of such entities is tantamount to grievous bodily harm and murder. Ultimately, climate change poses an "existential threat" to life on earth.[83]

62. Climate change is harming humans, as many contend with difficult living conditions linked to premature deaths which are only projected to worsen,[84] with lower socio-economic communities most likely to suffer more severe impacts.[85] Meanwhile, conditions of life for many taonga species are projected to become impossible.[86] Indeed, we are already encountering the Sixth

[81] https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20221208_19343_points-of-claim.pdf
[82] https://waimaori.maori.nz/vulnerability-assessment-reports-for-freshwater-taonga-species-to-climate-change/
[83] William Ripple et al, 2023 State of the Climate Report: Entering Uncharted Territory, *BioScience* (2023). DOI: 10.1093/biosci/biad080
[84] Bressler, R.D. The mortality cost of carbon. *Nat Commun* 12, 4467 (2021). https://doi.org/10.1038/s41467-021-24487-w
[85] https://openknowledge.worldbank.org/server/api/core/bitstreams/aa3a35e0-2a20-5d9c-8872-191c6b72a9b9/content
[86] https://waimaori.maori.nz/vulnerability-assessment-reports-for-freshwater-taonga-species-to-climate-change/

Extinction and the first extinction to be caused by a singular species on earth: humankind.

63. Some pūrākau tell us that the failure of Whiro in the battle with Tāne to obtain the three kete of knowledge led to Whiro's banishment to the house of death in the underworld alongside Hine-nui-te-pō and Rūaumoko from whence calamities are sent to humanity in continuation of the promise of Whiro: "māku te poautinitini – I will uphold the disease, death, troubles of humankind."[87] Meto or extinction is described as the most extreme of all calamities wrought by Whiro.[88] With the Sixth Extinction upon us, we are undoubtedly witnessing tohu signalling the retreat of the era of Tāne and the approach of a new era: the era of Whiro and climate chaos.

64. The scale of harm extends beyond any form of international criminal act yet encountered by humanity. Climate change risks implementing speciocide – the genocide of entire species including potentially our own.[89] Such grievous harms demand that the Crown meet the "take" with the appropriate utu to achieve the state of ea.

65. However, heartbreakingly, ea cannot be achieved when there is no known ability to remove the emissions overload currently in the atmosphere in time to avert catastrophic tipping points.[90] The Crown must therefore remediate through concrete and immediate steps to address mitigation and adaptation in a manner which upholds Māori interests under Te Tiriti. I have addressed these in my recommendations at paragraphs [7] and [14].

66. While we fight to ensure the proper acts of kaitiakitanga under tikanga, the laws of nature continue operating at the metaphysical mauri level. The failings in kaitiakitanga are accumulating towards global tipping points, and I believe we are on the verge of transitioning from the era of Tāne into the era of Whiro. As

[87] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 64-65.
[88] Reed, A. W., Rev. by Calman, R. (2004). *Reed book of Māori mythology.* Reed Publishing, p. 90.
[89] https://essc.org.ph/content/archives/2210
[90] https://earth.org/tipping-points-of-climate-change/

fossil fuel emissions grow heavy in the atmosphere, Whiro is securing their preferred state of nature as expressed since the time Whiro objected to Tāne separating Rangi and Papa. Ranginui is returning to embrace Papatūānuku as the skies become thick with extreme weather events and Whiro's allies unleash the chaos of storm floods and gale force winds.

67. The mauri necessary to sustain the era of Tāne, where life flourishes, must be sufficiently nurtured by the creatures of the world as we know it, specifically, the human kaitiaki who must act appropriately towards our tuakana species to maintain the hauora of the natural world. We must act with urgency to restore the mauri throughout te taiao and avert the impending climate catastrophe.