

**IN THE WAITANGI TRIBUNAL**

**Wai 3325  
Wai**

**IN THE MATTER OF** the Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF** the Climate Change Priority Inquiry

**BY** Jane Mihingarangi Ruka, on behalf  
of the Grandmother Council of the  
Waitaha Nation, including the three  
hapū of Ngāti Kurawaka, Ngāti  
Rakaiwaka, and Ngāti Pakauwaka  
("the Claimants")

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**STATEMENT OF CLAIM**

**10 July 2024**

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<b>RECEIVED</b> Waitangi Tribunal
<b>11 Jul 24</b>
Ministry of Justice WELLINGTON

## **THE CLAIMANTS BY THEIR COUNSEL SAY:**

### **I: THE CLAIMANTS**

- 1.** This Statement of Claim (“SoC”) is filed on behalf of Jane Mihingarangi Ruka, on behalf of the Waitaha Executive Grandmother Council, which includes the three hapū of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka (“the Claimants”).
- 2.** The Claimants represent various tribal groupings spread throughout Aotearoa New Zealand, belonging to the Iwi of Waitaha. They are a group of grandmothers who have come together under the banner of the Waitaha Nation. The Claimants whakapapa back to the three waka, Mamari, Ngātokimatawhaorua, and Uruao.
- 3.** The Claimants’ aim is to address the needs of the Waitaha people, as well as the needs of their wider Māori community and to address, amongst other things, the lack of protection of their Taiao by the Crown and lack of consultation with Iwi authorities. They are Claimants in the historical claim numbered Wai 1940, and have participated in several Waitangi Tribunal inquiries, including the following:
  - a.** Te Paparahi o Te Raki Inquiry (Wai 1040);
  - b.** the National Freshwater and Geothermal Resources Inquiry (Wai 2358);
  - c.** the Military Veterans’ Kaupapa Inquiry (Wai 2500);
  - d.** the Health Services and Outcomes Kaupapa Inquiry (Wai 2575);
  - e.** the Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry (Wai 2660);
  - f.** the Mana Wāhine Kaupapa Inquiry (Wai 2700);
  - g.** the Housing Policy and Services Kaupapa Inquiry (Wai 2750);
  - h.** the Inquiry into the Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800);
  - i.** Te Rau o te Tika: the Justice System Kaupapa Inquiry (Wai 3060); and
  - j.** the Constitutional Kaupapa Inquiry (Wai 3300).

4. Since time immemorial the Claimants and their tupuna have actively cared for and safeguarded their Taonga and their environment, as Kaitiaki. It is their inherent responsibility as Kaitiaki to advocate for the protection of the environment as guaranteed by te Tiriti o Waitangi.

## **II: THE CLAIM**

5. The Claimants are Māori for the purposes of section 6(1) of the Treaty of Waitangi Act 1975 (“the ToW Act”).
6. The Claimants claim that they have been, continue to be, and are likely to be prejudicially affected by the various actions of the Crown in breach of the Treaty of Waitangi/ te Tiriti o Waitangi (“te Tiriti/the Treaty”).
7. The Claimants rely upon the findings made in Stage 1 of Te Paparahi o Te Raki Inquiry (“the Ngāpuhi Inquiry”), which include:

In February 1840, the Rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, Rangatira retained their authority over their Hapū and territories, while Hobson was given authority to control Pākehā.<sup>1</sup>

8. In this SoC, the word “Partnership” is used to mean the Partnership envisaged under te Tiriti/the Treaty, which was elucidated by the Tribunal in Stage One of the Ngāpuhi Inquiry, as comprising three distinct spheres of authority, namely:
  - a. the British Crown governing its subjects over land legitimately acquired by it or them (“British Authority”);
  - b. Māori Tino Rangatiratanga over Māori peoples, lands and other Taonga (“Māori Authority”); and
  - c. a partnership, to be discussed and agreed where Māori and English peoples intermingled (“Shared Authority”).

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<sup>1</sup> Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014), at 527.

- 9.** The essence of this Claim is that the Crown, by way of its legislation, policies and practices in relation to the establishment, structural framework, administration, and operation of all aspects of New Zealand's climate change system has breached te Tiriti/the Treaty by:
- a.** failing to respect, recognise and protect the right of Māori to exercise Tino Rangatiratanga, in accordance with Tikanga Māori, over their own Taonga, and their own environment, and environmental development;
  - b.** failing to actively protect and ensure Tiriti/Treaty compliant outcomes for Māori, in particular by jeopardising the right of current and future generations of Māori to pursue their rights to sustainably develop their lands and other Taonga;
  - c.** failing to engage with Māori in Tiriti/Treaty consistent ways when pursuing remedies and solutions for the climate change crisis; and
  - d.** failing to actively protect the Taonga and other interests of the Claimants.
- 10.** The Claimants are suffering significant, irreversible, and ongoing prejudice as a result of the effect of the Crown's acts and omissions, and as detailed in this SoC.
- 11.** The impacts on Māori include;
- a.** *physical*
    - i.** land and water which are Taonga have become polluted;
    - ii.** loss of homes, marae, cultural taonga, wahitapu and urupā;
    - iii.** food sources are being affected;
    - iv.** polluted water has limited clean drinking water;
    - v.** an increase in abnormal weather events such as the East Coast flooding in 2023;
    - vi.** a loss of biodiversity;

- b.**     *spiritual*
  - i.**     climate change has affected the balance of our Atua, causing a destabilisation of Māori spiritual, mental, and physical wellbeing;
- c.**     *cultural*
  - i.**     loss of Taonga;
  - ii.**    loss of strong spiritual ties to the land through whakapapa;
  - iii.**   negative effects on the wellbeing of whanau, hapu, and iwi when the whenua (Te Taiao) is harmed;
- d.**     *socioeconomic*
  - i.**     primary industry jobs which are reliant on the environment are at risk; and
  - ii.**    the poor and homeless are pushed further into the destitution.

**12.** The Claimants seek to be resourced to perform their obligations of Kaitiakitanga within their rohe, and to have a seat at the table to ensure the Crown meets its wider Tiriti/Treaty obligations with regard to mitigation and adaption.

### **III: BACKGROUND**

#### **III(a) Historical Background**

**13.** The Claimants say that, since time immemorial, Māori have collectively exercised Tino Rangatiratanga over their own communities, regulating their own society in accordance with an extensive body of regulatory laws called Tikanga Māori.

**14.** In 1840, certain Rangatira signed te Tiriti/the Treaty, which guaranteed Māori Tino Rangatiratanga over their Taonga. The Crown has not, since 1840, legitimately acquired, in any way, the authority/Tino Rangatiratanga which Māori have exercised, and are entitled to continue to exercise, over their own lands and peoples.

15. Nevertheless, after the execution of te Tiriti/the Treaty, the British Crown usurped the authority of Māori under te Tiriti/the Treaty, and attempted to enforce its regime of governance over all Māori in Aotearoa New Zealand and over all of their Taonga. Lands and other resources, as well as control over communities, were illegally taken. Any signs of Māori resistance were met with aggression and acts of war and violence, and the Māori people were stripped of their language and culture.
16. Their body of laws, Tikanga Māori, was forcibly subjugated under the dominant Westminster framework of laws and governance which had been introduced by the British Crown. The Westminster framework was then utilised as a mechanism to facilitate the alienation of Māori lands and other Taonga, and to further subdue any resistance.
17. Māori did not cede their Tino Rangatiratanga to the Crown. The Crown's imposition of Kāwanatanga over them was a grave breach of te Tiriti/the Treaty. In imposing its laws over them, the Crown forced Māori to abandon their own constitutional and legal systems, social structures, and their own holistic ways of living, and instead imposed its own constitutional, legal, social, cultural, and economic norms. Doing so resulted in widespread social, cultural, health and economic devastation for the Claimants.
18. In 1975, the Crown, in recognition of the fact that it had breached te Tiriti/the Treaty and, in doing so, had been responsible for causing great and widespread harm to Māori, established the Waitangi Tribunal and entered into Tiriti/Treaty settlement discussions and negotiations with various Māori Hapū and Iwi groups. This constituted an attempt to recognise its breaches of te Tiriti/the Treaty, and the wrongs it had perpetrated over the Māori people, including its illegitimate acquisitions of Taonga which had hitherto been the responsibility of Māori.
19. The specific whakapapa, cultural identity, history, conflict resolution and justice systems, of whānau and Hapū, are Taonga under te Tiriti/the Treaty. Māori at an individual, whānau, and Hapū level must be able to exercise their rights in a way that supports the protection of these Taonga, and this right of

exercise rests solely and legitimately with those Māori themselves, not the Crown, and not large Iwi groupings.

20. The Claimants allege that the current Crown laws, policies and conduct are in breach of te Tiriti/the Treaty.

### **III(b) Climate Change and the International Framework**

21. It is “unequivocal” that global temperatures will increase between 1.5°C to 2°C in the 21st century unless significant steps are taken to ameliorate the effects of human-induced climate change.<sup>2</sup> Human-induced climate change is primarily caused by the emission of greenhouse gases, particularly carbon dioxide and methane gases.
22. A varied range of human and industrial activities contribute to climate change, including agriculture, transport, energy and deforestation. These activities pose distinct challenges in terms of reducing the carbon emissions they produce.
23. One of the key ways this impact can be ameliorated is through sequestration of carbon into forests as plants absorb carbon dioxide.
24. As the climate emergency concerns global impacts, states have developed international instruments to ensure accountability and coordination of global efforts in mitigation.
25. The first important instrument New Zealand ratified was the United Nations Framework Convention on Climate Change in 1992 (“UNFCCC”),<sup>3</sup> which recognised that human activities were having a significant impact on the climate and encouraged states to take action to stabilise the effect on the environment.

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<sup>2</sup> *Lawyers for Climate Action New Zealand Inc v Climate Change Commission* [2022] NZHC 3064 at [18].

<sup>3</sup> United Nations Framework Convention on Climate Change 1771 UNTS 107 (opened for signature 4 June 1992, entered into force 21 March 1994) The UNFCCC was ratified in the Climate Change Response Act 2002, sch 1.

- 26.** In 1998 New Zealand became a signatory to the Kyoto Protocol to the UNFCCC,<sup>4</sup> which established legally binding targets by which states were required to reduce their greenhouse gas emissions. The Kyoto Protocol also established rules regarding afforestation and deforestation. In particular, the Kyoto Protocol differentiates between pre-1990 forests and post-1989 forests: where pre-1990 forests are deforested, owners are responsible for carbon emissions resulting from that deforestation.<sup>5</sup> This has impacted the way in which forests are planted in Aotearoa.
- 27.** The Paris Agreement of 2015 saw New Zealand signing up to the goal of “limiting global warming to well below 2°C above pre-industrial levels”<sup>6</sup> and included requirements for each state to set their own targets and report on their Nationally Determined Contributions (“NDC”).
- 28.** Additionally, the United Nations Declaration on the Rights of Indigenous Peoples is of particular relevance, given that Aotearoa endorsed it in 2010. Article 29(1) states that:
- Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
- 29.** Whilst not binding, this was acknowledged by the Tribunal as being “[p]erhaps the most important international instrument ever for Māori people.”<sup>7</sup> For Māori this means not only must the Crown engage policies that will meet the international community’s expectations of conservation, but also policies that are in line with traditional views on kaitiakitanga.
- 30.** In the United Nations COP28 National Statement for New Zealand, Hon Simon Watts made a commitment for the whole of New Zealand:

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<sup>4</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 162 (opened for signature 11 December 1997, entered into force 16 February 2005).

<sup>5</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change 2303 UNTS 162 (opened for signature 11 December 1997, entered into force 16 February 2005) article 3.

<sup>6</sup> Paris Agreement under the United Nations Framework Convention on Climate Change 3156 UNTS 79 (opened for signature 22 April 2016, entered into force 4 November 2016).

<sup>7</sup> Waitangi Tribunal *Ko Aotearoa Tēnei*, at 233.

New Zealand has an ambitious NDC to reduce net greenhouse gas emissions by 50 per cent below gross 2005 levels by 2030. We are committed to achieving this, and our 2050 domestic net zero target, by tackling the key drivers of emissions, and working with the private sector so they make transformative investments:

- A. in resilient infrastructure;
- B. in renewable energy and cleaner low-carbon fuels; and
- C. in new technologies to reduce agricultural emissions and capture carbon.<sup>8</sup>

31. These broad statements made to international audiences would require Te Tiriti partners to be included in helping meet these targets. The Crown must consider both He Whakaputanga and Te Tiriti when forming its policy response to address the impacts of climate change on Māori, yet it is not doing so.

### **III(c) Steps the Crown has taken to target Climate Change**

32. One of the key measures Aotearoa has taken to reduce climate impact was the introduction of the national emissions trading scheme (“ETS”) as a price-based disincentive intended to cover all sectors eventually.<sup>9</sup>

33. The ETS Scheme is administered under the Climate Change Response Act 2002 (“CCR Act”). Under the scheme, units must be surrendered by each emitter responsible. The process began with the forestry sector in 2008, with the last sectors, namely, waste and agriculture, intended to be fully joined into the scheme by 2013.<sup>10</sup>

34. The Climate Change Response (Zero Carbon) Amendment Act 2019 (“CCR Zero Carbon Act”) was enacted in 2019 in order to incorporate Aotearoa’s domestic responsibilities under the Paris Agreement.<sup>11</sup> The CCR Zero Carbon Act set out the target of net zero greenhouse gas emissions by 2050 and set up

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<sup>8</sup> Hon Simon Watts, “COP28 National Statement for New Zealand” (9 December 2023) <[COP28 National Statement for New Zealand | Beehive.govt.nz](#)>

<sup>9</sup> Vernon Rive *The Laws of New Zealand* “Climate Change, New Zealand Emissions Trading Scheme” October 2019.

<sup>10</sup> Vernon Rive “Climate Change, New Zealand Emissions Trading Scheme” (October 2019) *The Laws of New Zealand* at 79.

<sup>11</sup> Climate Change Response (Zero Carbon) Amendment Act 2019, s 3.

the Climate Change Commission (“the Commission”) to recommend to government how to achieve that aim.<sup>12</sup>

35. In December 2020, Parliament declared a “climate emergency” and recognised that greenhouse gas emissions would need to reduce by 45 per cent below 2010 levels in order to limit any increase in temperature to below 1.5°C.<sup>13</sup>
36. Through the policy and legislative actions the Crown has taken, climate change considerations have been made relevant for the legal and economic sectors. However, because the guidelines are non-specific, they have failed to set out any pathway detailing how to achieve meaningful change, nor how to mitigate the likely severe effects of climate change.<sup>14</sup> Despite the enactments of legislation over the past few years, Aotearoa’s current policies are still viewed as being “highly insufficient” to meet the Paris Agreement targets.<sup>15</sup>

### ***Emissions Trading Scheme***

37. The Crown’s focus has been on the adoption of the ETS as a financial mechanism to deter emitters and to meet Aotearoa’s obligations under the Paris Agreement. Emitters can gain units (“Carbon Credits”) through either free allocations or by auction and must then surrender them in proportion to the quantity of emissions they produce.
38. The scheme sets out a regulatory limit for each sector, which is translated into a market price, thereby intended to reduce emissions through changing people’s behaviour.<sup>16</sup> However certain industries, such as agricultural emitters, are still not required to submit Carbon Credits for their activities and if Carbon

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<sup>12</sup> Climate Change Response (Zero Carbon) Amendment Act 2019, s 5Q.

<sup>13</sup> New Zealand Parliament – Motions, Climate Change <Motions — Climate Change—Declaration of Emergency - New Zealand Parliament (www.parliament.nz)>

<sup>14</sup> Barry Barton; Jennifer Champion “Climate Change Legislation” in Donald Zillman, Lee Godden, LeRoy Paddock, and Martha Roggenkamp (eds) *Innovation in Energy Law and Technology : Dynamic Solutions for Energy Transitions*. (Oxford University Press Incorporated, Oxford, 2018) at 25.

<sup>15</sup> Climate Action Tracker “New Zealand” (5 May 2024) <<https://climateactiontracker.org/countries/new-zealand/>>.

<sup>16</sup> Ministry for the Environment “About the New Zealand Emissions Trading Scheme” <<https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/ets/about-nz-ets/>>.

Credits are not sold at auction, they can simply carry over to the next quarter's quota.

39. Businesses engaged in carbon removal activities, such as forestry are then eligible to be awarded Carbon Credits, thus foresters contribute to the supply of Carbon Credits available.
40. The ETS, in line with the Kyoto Protocols' categorisation, classes forests as either pre-1990 or post-1989. However, although some owners of pre-1990 exotic forest were given compensation Carbon Credits, there was no compensation provided for indigenous forest.
41. The scheme relies on forestry as key to its operation, as many businesses purchase Carbon Credits directly from Foresters. It therefore favours the planting of exotic pine species due to the measurability and financial benefits of planting pine, as opposed to transitioning land to indigenous native plants.
42. The Crown has ultimate power over the market and controls demand for Carbon Credits. For instance, the auction system allows the Crown to directly control the price of Carbon Credits. In 2009 the allowance for a Fixed Price Option meant emitters could pay only \$35 for emitting a tonne of carbon.<sup>17</sup> However, in 2023, the Crown increased the price twice for foresters involved in the scheme.<sup>18</sup>
43. In 2022, despite advice from the Commission to increase the price of Carbon Credits in order to encourage dramatic emissions reductions, this recommendation was turned down by the Crown.
44. As well as not acting on the advice of the Commission, the current government has continued this lack of concern by sticking to the 'split gas approach' which excuses agriculture from being accountable for emissions, as stated in the

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<sup>17</sup> Ministry for the Environment "The role of price controls in the NZ ETS"  
<<https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/ets/about-nz-ets/>>

<sup>18</sup> Ministry for Primary Industries, "Forestry in the ETS: Proposed updates to cost recovery settings"  
<<https://www.mpi.govt.nz/consultations/forestry-in-the-ets-proposed-updates-to-cost-recovery-settings/>>

National-Act Coalition Agreement,<sup>19</sup> and detailed further in National’s policy document “Reducing Agricultural Emissions.”<sup>20</sup> The original intent to integrate agricultural emissions into the scheme in 2013 was to have brought Aotearoa into line with international obligations. The continued refusal to take urgent action is negatively affecting the environment.

45. The Coalition Government has gone even further, by not just delaying bringing agriculture into the ETS Scheme, but actively scrapping the plans detailed in the report by the He Waka Eke Noa partnership.<sup>21</sup> It has promised to amend the CCR Act to remove agriculture, animal processors and fertiliser companies from entering the ETS in 2025.<sup>22</sup> The current government has granted a free pass to the agricultural sector, and instead is relying on ‘methane vaccines.’
46. The Government-led initiative of He Waka Eke Noa was set up as a joint working group of Dairy NZ and other primary sector groups<sup>23</sup> who partnered with iwi. It was established in 2019 and published a report, *He Waka Eke Noa – Our Future in Our Hands* with recommendations in 2019. The establishment of He Waka Eke Noa finally allowed for collaboration and some level of agreement between industry and iwi groups.
47. The Coalition Government is scrapping He Waka Eke Noa and instead setting up a new working group to "constructively tackle" biogenic methane.<sup>24</sup> The Coalition Government will amend the CCR Act to remove agriculture from entering into the ETS in 2025, in line with commitments made by the National Party prior to the 2023 elections.<sup>25</sup> The scrapping of He Waka Eke Noa is yet another government decision that has removed the right of Māori to participate and be engaged in the climate change process.

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<sup>19</sup> Coalition Agreement between the National Party and the ACT Party.

<sup>20</sup> New Zealand National Party “Reducing Agricultural Emissions” (accessed 17 June 2024) <<https://www.national.org.nz/reducingagriculturalemissions>>.

<sup>21</sup> Dairy New Zealand *He Waka Eke Noa- Our future in Our Hands* (July 2019).

<sup>22</sup> RNZ “Coalition exempts farmers from ETS, sets up fresh working group” (New Zealand, 11 June 2024) <[Coalition exempts farmers from ETS, sets up fresh working group | RNZ News](#)>.

<sup>23</sup> Federated Farmers, Beef and Lamb NZ, Apiculture, DCANZ, Deer Industry NZ, FOMA, FAR, Horticulture NZ, Irrigation NZ, Meat Industry Association.

<sup>24</sup> RNZ “Coalition exempts farmers from ETS, sets up fresh working group” (New Zealand, 11 June 2024) <[Coalition exempts farmers from ETS, sets up fresh working group | RNZ News](#)>.

<sup>25</sup> New Zealand National Party “Reducing Agricultural Emissions” (accessed 17 June 2024) <https://www.national.org.nz/reducingagriculturalemissions> at 2.

## *Māori Forestry*

48. Māori have acted as Kaitiaki over the land and environment on behalf of tupuna and have an inherited responsibility to maintain the Mauri of their whenua. Through Kaitiakitanga and Rangatiratanga Māori have used, benefitted from, protected and respected the Ngahere.
49. Māori now own 40 per cent of all forestry resources in Aotearoa<sup>26</sup> and also make up a large proportion of the forestry-related workforce.<sup>27</sup>
50. This is partially a reflection of the longstanding Crown practice of settling Treaty claims by, inter alia, transferring Crown owned forestry assets to Māori.
51. Māori as significant owners of forestry assets have a particularly strong and disproportionate interest in the ETS. Significant Māori forestry and marginal land ownership places these communities in an optimal position to participate in the ETS. Engaging Māori in the ETS acknowledges and empowers Kaitiakitanga over remaining lands. It strengthens connections to ancestral lands through active participation in environmental stewardship. Participation furthers Tino Rangatiratanga, the rights of tangata whenua to continue traditional practices, including forestry, which today are still deeply rooted in sustainability and holistic land management practices passed down through the generations. This knowledge contributes to Aotearoa's workforce skills in effective tree planting and forest management, ensuring long-term carbon sequestration.
52. Māori participation in the ETS brings economic opportunity to Māori communities. Forestry offsets represent a significant export earner as Māori ownership of ETS registered forests is a major source of potential income, provided they get the opportunity to plant sufficient forestry to meet Aotearoa's NDC and to export. Forestry, particularly actively managed exotic to indigenous transitional forests, also provides significant opportunities for employment in forestry-related activities such as creating lightwells for native

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<sup>26</sup> Climate Change Commission, *NZ ETS Settings 2023–2027 Final Report*, (July 2022) at 79.

<sup>27</sup> Climate Change Commission, *NZ ETS Settings 2023–2027 Final Report*, (July 2022) at 79.

plantings, fencing and ongoing predator management strategies that bolster rural economies.

### ***Impact on Coastal Communities***

- 53.** Māori communities often have significant coastlines within their rohe and many of their communities are located on the coast. Ongoing sea level rises and more severe coastal storms due to climate change are likely to affect coastal communities more severely in years to come.
- 54.** Recent estimates predict sea level rises could accelerate to as much as 10 cms per year in coming decades. Factors such as El Niño/La Niña weather cycles can also increase sea levels by up to 0.15 to 0.25 m.<sup>28</sup>
- 55.** As sea levels rise, there will be increased intensity of storm surges, flooding, erosion and damage to coastal areas.<sup>29</sup> The impacts will be heightened by low investment in infrastructure in rural areas, with vulnerable clean water resources, geothermal resources, housing, roading and settlements and infrastructure built close to waterways, awa, floodplains and coastal areas. This situation will be worse in areas where communities have negligible or no insurance cover.<sup>30</sup>
- 56.** Māori face further barriers to adaptation including a lack of access to technical knowledge on which to make decisions, lack of participation opportunities in planning arrangements, lack of capital for infrastructure and design, and poor infrastructure and services in remote and isolated settlements.
- 57.** For Māori to be able to further fulfil their obligations of kaitiakitanga to their people and the wider community in the event of natural disasters, the Crown must recognise and uphold their tino rangatiratanga rights, but the Crown has

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<sup>28</sup> Northland Regional Council *Introduction to Hazards* (May 2022).

<sup>29</sup> Northland Regional Council *Introduction to Hazards* (May 2022).

<sup>30</sup> Darren N. King, Guy Penny and Charlotte Severne “The climate change matrix facing Māori society” in Jones K and others (eds) *Climate Change Adaptation in New Zealand* (New Zealand Climate Change Centre, Wellington, 2010) 100 at 106.

not. It is only through communities' own initiatives for climate projects and strategies that any urgent action is taking place in these areas.<sup>31</sup>

- 58.** These inadequate mitigation and adaptation actions and policies are not sufficient to prevent or mitigate the worst effects of climate change for Aotearoa or Māori.

#### **IV: JURISDICTION**

- 59.** This claim falls within one or more of the matters referred to in section 6(1) of the ToW Act, namely:

- a.** the Claimants are Māori;
- b.** the Claimants have been and continue to be, or are likely to be, prejudicially affected by the various ordinances, Acts, regulations, orders, proclamations, notices and other statutory instruments, or by the various policies, practices, acts or omissions proposed to be done or omitted or adopted by, or on behalf of the Crown, their agents or their successors; and
- c.** the prejudice to the Claimants is in breach of te Tiriti/the Treaty.

- 60.** This claim raises contemporary issues in relation to acts and omissions of the Crown, which are ongoing, and occurring after 21 September 1992. However, these issues cannot be viewed in a vacuum, and the historical context is vitally important. This SoC has provided a brief historical background to give context to the relevant issues and also to the historical, and ongoing, prejudice faced by the Claimants.

#### **V: BREACHES OF TE TIRITI/ THE TREATY**

- 61.** The relevant provisions of te Tiriti/the Treaty, and the Principles, that have been breached by the Crown, are:

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<sup>31</sup> Te Rūnanga o Ngāti Whakaue ki Maketū *Maketū Climate Change Strategy* – <maketu-runanga.iwi.nz>

- a. articles one and two of te Tiriti/the Treaty itself, by imposing laws and regulations on Māori in relation to measures to address climate change, as opposed to allowing Māori to exercise their Tino Rangatiratanga and Kaitiakitanga over their own Taonga, and environments;
- b. active Protection, by failing to protect Māori Tino Rangatiratanga, and failing to protect Māori, Te Taiao, and Māori rights of development, from the devastating effects of climate change by instigating policies which have had the effect of worsening its impact;
- c. partnership, and the duty to act reasonably, honourably, and in good faith, by failing to engage appropriately with Māori in a way that embraces Tikanga and a Te Ao Māori perspective, and failing to take action on climate change in a way that would better meet New Zealand's international climate responsibilities;
- d. reciprocity, by failing to honour the commitments and promises made under te Tiriti/the Treaty to guarantee Māori Tino Rangatiratanga over their own peoples and territories, especially the failure to recognise the nexus between the Crown's historical breaches of te Tiriti and climate change; and
- e. breaching the right of current and future generations of Māori to develop their Taonga, by way of the Crown destroying the environment, making sustainable economic, cultural and environmental development unattainable for Māori.

## **VI: PREJUDICE TO THE CLAIMANTS**

**62.** The breaches of te Tiriti/the Treaty identified above have caused, is causing, and will continue to cause significant and irreversible prejudice to Māori, including the Claimants, as follows:

- a. denying, and/or, eroding Māori Tino Rangatiratanga, and their exercise of Kaitiakitanga by not involving Māori in the

decision-making in relation to climate change policies and laws in a manner consistent with te Tiriti/the Treaty;

- b.** destroying, or significantly eroding access to, and, opportunities for economic, cultural and environmental development for current and future generations of Māori; and
- c.** jeopardising the existence of coastal Māori communities.

## **VII: RELIEF SOUGHT**

**63.** The Claimants seek the following relief:

- a.** a finding that:
  - i.** it is a breach of te Tiriti/the Treaty and its Principles for the Crown to unilaterally and wilfully devise climate change laws and policies which have the effect of increasingly severe and prejudicial climate change impacts on Māori;
  - ii.** under Articles One and Two of te Tiriti/the Treaty, Māori were guaranteed the full, exclusive and undisturbed possession, and the authority, and Tino Rangatiratanga over their Taonga, which includes the environment and everything in, over, and around it, in their territories;
  - iii.** decisions on climate change must be consistent with te Tiriti/the Treaty, and He Whakaputanga/the Declaration of Independence;
  - iv.** that environmental matters should be viewed through a Mātauranga Māori lens, with Māori values at the fore;
- b.** an acknowledgement from the Crown that it has not considered or protected Māori interests from the devastating effects of climate change, recognising:

- i.** that Māori are likely to disproportionately suffer from the effects of climate change;
  - ii.** the systematic failure of the Crown to protect Taonga, including Māori lands, fisheries, forests and te taiao;
- c.** recommendations that:
  - i.** the Crown engage with and obtain the approval of the Claimants, and interested Māori organisations, in relation to any climate change policies and enactments;
  - ii.** a Māori Climate Change Commission should be established to act in partnership with the Crown;
  - iii.** the 3 Pou of the Māori Commissioner for Climate Change should be central to the work of the Māori Climate Change Commissioner. These are to represent the interests of Māori landowners and advocate on their behalf, to support the establishment of the World Indigenous Carbon Foundation, and to advocate for the value of the Māori world view in meeting Aotearoa's climate change targets, in particular, the concepts of whakapapa, mauri and utu that underpin whānau and hapū responsibilities to the natural world;
  - iv.** Māori environmental solutions and climate change research should be recognised, acknowledged and supported financially;
- d.** a formal apology by the Crown for the harm caused to the Claimants, their whānau, Hapū, Iwi, and urban communities, which acknowledges that the full responsibility for the prejudice which has befallen Māori sits with the Crown;
- e.** compensation for those detrimentally affected by the Crown's acts and omissions in relation to the Crown's climate response, for all the harm and losses suffered, either directly or indirectly, and including the immediate and ongoing detriment to the

social, psychological, cultural, economic and spiritual wellbeing of current and future Māori, and their whānau, Hapū, Iwi, and urban communities;

- f. all costs incurred as a result of bringing this Claim; and
- g. such other remedies as are warranted.

## **VIII: RIGHT TO AMEND CLAIM**

**64.** The Claimants reserve the right to further particularise this SoC and to amend or add further to it as the Inquiry develops and once the Crown's discovery documents have been received.

**Dated: 10 July 2024**



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**Janet Mason**

**Counsel Acting**

**To:** The Registrar, Waitangi Tribunal  
**And to:** Counsel for the Crown on behalf of the Crown Law Office

This document is filed by Janet Mason of Phoenix Law Ltd, Counsel for the Claimants.

The address for service of the Claimants is at the offices of Phoenix Law Ltd, 200 Willis Street, Wellington.

Documents for Service on the Claimant may be left at the above address or may be:

- posted to PO Box 27400, Wellington; or
- sent by electronic mail to [mason@phoenixlaw.expert](mailto:mason@phoenixlaw.expert) and [tearle@phoenixlaw.expert](mailto:tearle@phoenixlaw.expert)