

BEFORE THE WAITANGI TRIBUNAL
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 2358

IN THE MATTER
OF
I TE TAKE O

the Treaty of Waitangi Act 1975

AND
Ā

IN THE MATTER
OF
I TE TAKE O

the National Fresh Water and
Geothermal Resources Inquiry –
Stage three of the Inquiry

**TŪAROPAKI TRUST RESPONSE TO MATTERS ARISING FROM HEARING
WEEK THREE**

22 JANUARY 2026

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LEGAL

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RECEIVED

Waitangi Tribunal

22 Jan 26

Ministry of Justice
WELLINGTON

Key concept / question / further information sought	Response(s)
<p>Can the Trust provide examples of any specific laws/policies that continue to prevent the Trust from achieving its aspirations?</p>	<p>In the Trust’s view, the following Crown laws, policies and regulations have contributed to the lack of recognition and respect afforded to the Trust’s ownership rights and interests over the Tūaropaki Lands and, as a corollary, the inability of the Trust to manage and control our geothermal taonga on the Tūaropaki Lands:</p> <ul style="list-style-type: none"> • Geothermal Energy Act 1953; • Geothermal Energy Regulations 1961; • Public Works Act 1981; • Resource Management Act 1991 (RMA); • Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991; • The National Environmental Standards and Regulations: including National Policy Statements, Regional Policy Statements and Plans, District Plans, and the National Direction; • Any proposed reforms to the management of geothermal taonga (including, but not limited to, the RMA) which fail to take into account the Trust’s existing ownership rights and interests over the geothermal taonga on the Tūaropaki Lands. This includes, for example, the “From the Ground Up” draft geothermal strategy and the 2022 proposed RMA reforms; and • Any proposed reforms that pre-empt any findings of the Tribunal in the current Wai 2358 inquiry in so far as they relate to the Trust’s existing ownership rights and interests over the geothermal taonga on the Tūaropaki Lands.
<p>Paragraph [152] of the joint brief of evidence refers to the hardships the Trust has faced as a result of Crown policy and actions. Counsel should provide the Tribunal with further detail regarding these hardships and how they arose from Crown actions.</p>	<p>The following Crown actions and omissions exemplify the Crown’s failure to recognise the Trust’s existing ownership rights and interests over the geothermal taonga on the Tūaropaki Lands which has had flow-on impacts on the Trust’s ability to manage and control our geothermal taonga on the Tūaropaki Lands.</p>

- The management of the Tūaropaki Lands by the Department of Māori Affairs – in which the Owners appointed out own leadership (the Mōkai Advisory Committee) to work alongside Māori Affairs.
- In around 1978, during the period that Māori Affairs managed the Tūaropaki Lands, the Ministry of Works and Development informed Māori Affairs that it planned to drill exploratory wells on the Tūaropaki Lands. At that time, the Geothermal Energy Act 1953 did not require the Ministry to seek consent from the Owners to enter the land and the Ministry failed to serve the formal notice of intention to enter the Tūaropaki Lands on the Owners (see paragraphs 51 to 53 of the joint brief of evidence).
- On 15 April 1980, the Ministry informed Māori Affairs and representatives of the Trust that it had planned for a two-year drilling programme to commence over the Tūaropaki Lands. Despite some further hui being held, there was ultimately no opportunity for the Owners or the representatives of the Trust to consent to the drilling programme and no compensation was payable to the Owners or the Trust (see paragraphs 54 to 55 of the joint brief of evidence).
- It wasn't until after the Owners applied to the Māori Land Court to establish the Trust in 1979 that control of the land was handed back to the Owners (as represented by the Responsible Trustees at that time) in 1980 (refer to paragraphs 36 to 39 of the joint brief of evidence).
- Despite the return of the Tūaropaki Lands in 1980, the Crown then applied for (and was granted) a water right to take water and geothermal fluids from the wells on or around 1981 to 1983. The Trust was never informed of this application (see paragraphs 58 to 64).
- Of particular note is that all the drilling and testing fluids were discharged at the surface entering nearby waterways and the Crown conceded this error in 1986 (see paragraph 61 of the joint brief of evidence).
- During the drilling of the wells, the Ministry had to move at least three farmhouses which had become inhabitable due to excessive noise and vibration. In light of this, the Trust sought reimbursement for the relocation costs from the

Government which took several years to be paid (see paragraph 63 of the joint brief of evidence).

- The Trust was never consulted on the overhaul of the electricity industry that took place following the election of the Fourth Labour Government in 1984 (see paragraphs 66 to 74 of the joint brief of evidence).
- The Crown's reference to and use of the Geothermal Energy Act 1953 and Public Works Act 1981 to threaten gaining entry to the Tūaropaki Land which resulted in the Trust reluctantly agreeing to Crown entry to the Tūaropaki Land for the purpose of drilling (see Exhibit Z4 of the joint brief of evidence, referring to evidence provided by S Andrews in the Māori Land Court)
- On 29 August 1986, the Minister Bob Tizard reiterated the Crown's position that "the resource belongs to the Crown" and that there was no point in meeting with the Trustees and refused to release official information sought by the Trust in respect of the Crown's plans for Mōkai (see paragraph 73 of the joint brief of evidence).
- The Crown resolved to seek competing tenders for the development of Mōkai from the Ministry's two trading divisions – not the Trust and, again, the Trust was not informed of this decision (see paragraph 74 of the joint brief of evidence).
- On 19 June 1987, the Minister advised the Trust that they would be required to apply for a geothermal energy licence in order to proceed with any development of Mōkai. This was an extremely expensive exercise. (see paragraphs 75 and 76, and 80 of the joint brief of evidence).
- The Crown notified the Trust that a new law was being drafted to vest the ownership of geothermal wells, including those on the Tūaropaki Lands, in the Crown (despite being shortly abandoned after) (see paragraph 88 of the joint brief of evidence).
- The Crown's continuation of its position that it owned the wells at Mōkai, culminating in the Māori Land Court litigation to determine ownership of the wells, and the introduction of the Finance Bill (No. 2) which sought to vest the wells in the Crown – was a breach of good faith, irrespective of the fact that the

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	<p>Bill was subsequently withdrawn (see paragraphs 89 to 94 of the joint brief of evidence).</p> <ul style="list-style-type: none"> • In 1994, the Trust’s application for resource consent over the power station was opposed by Electricorp (which was partially owned by the Crown at that time) – as the owner of the neighbouring land (see paragraph 100 of the joint brief of evidence). • Around 1994, the Crown chose to transfer land overlying the Mōkai geothermal field to Contact without sound policy reason. There was an opportunity for the Crown to transfer this land to the Trust and they failed to do so (see paragraph 105(b) of the joint brief of evidence). • During the Trust’s 2022 re-consenting process, the Trust was vulnerable to the Crown’s urgent timeframes for its proposed RMA reforms, which the Crown indicated would be passed mid to late 2023. As a result, the Trust was inevitably faced with a short timeframe to prepare its re-consenting application (see paragraphs 113 to 118 of the joint brief of evidence).
<p>Counsel should file a readable version of the Finance Bill (No. 2) 1994 provided as document Z6 in Appendix A of the joint brief of evidence (Wai 2358, #I71(a))</p>	<p>A copy of the Finance Bill (No.2) is attached as Appendix A.</p>
<p>At paragraph [105(b)] of the joint brief of evidence, the witnesses refer to the transfer of the land overlying the Mōkai geothermal field from the Crown to Contact Energy Ltd. Counsel should provide the Tribunal with both a contemporary and historical search of that land title.</p>	<p>A copy of the record of title and its accompanying historical title search is attached as Appendix B to this response. From these records:</p> <ul style="list-style-type: none"> • NZ Forest Products Limited, Electricity Corporation of New Zealand Limited and Contact Energy previously held title in this whenua. • Importantly, Electricity Corporation of New Zealand Limited (which was a State-Owned Enterprise) transferred title in the whenua to Contact Energy Limited in 1996, when it could have transferred the whenua to the Trust.

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<p>Confirm whether Tūaropaki Trust has previously raised the issue with the transfer of land overlying the Mōkai geothermal field from the Crown to Contact Energy.</p>	<p>The Crown has been on notice of these issues since before the land was even transferred to Contact. As part of the breaking up and partial privatisation of Electricorp in 1991, the Pukemoremore land was sold with other assets to Contact Energy. The Trust had earlier told the new National Government that the land was important to its own plans to develop a privately owned geothermal power station and that it was eager to acquire the land, having been negotiating with Electricorp for it. The government ignored Tūaropaki’s interests and ambitions.</p> <p>The full extent to which Contact was assisted – and Tūaropaki hindered – by the Crown was confirmed in 2007, when Contact (which never developed the geothermal resource) sold the land to Tūaropaki for \$27 million. Most of the value lay in the potential of the geothermal resource (without it the land, part in forestry and part in pasture, was worth about \$5 million). The price would have been a lot lower in 1989, when Tūaropaki began their nineteen-year effort to obtain the land, but thanks to the Crown, Contact made a tax-free profit of over \$21 million without lifting a finger, a profit that came entirely at the expense of Tūaropaki.</p>
<p>Has the Trust been impeded by water allocation problems to date?</p>	<p>As the traditional and current owners of our taonga, our Treaty rights in so far as they relate to water have not been upheld. We are required to seek consents for allocation from third parties for access to our own taonga which flows on, though, and under our whenua.</p> <p>This is the very issue at hand and applies equally to geothermal and fresh water.</p> <p>In so far as this relates to the consenting process for water take/use, the Trust have had no issues accessing water to obtain water for farming and geothermal processes (drilling). Notwithstanding this, our rights are not expressly recognised in the consent process, and we have therefore had to follow standard resource consent application and monitoring processes for water take/allocation over our own whenua.</p>
<p>What is the cost of maintaining the Trust’s consent?</p>	<p>The Trust is not in a position to confirm all historical costs associated with the resource consent. However, by way of example, and as indicated in our written brief of evidence, the Trust has recently undertaken a re-consenting process for its current consent. Over the 35-year consenting period, several additional commitments were made to the</p>

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	<p>Waikato Regional Council (WRC). To the best of our knowledge, these commitments are expected to incur costs of between \$5 million to \$10 million in present value of over the life of the consent, with approximately \$1.5 million in expenditure projected over the next two years.</p>
<p>Counsel are to confirm the number of production wells the Trust has at present.</p>	<p>The Trust confirms that there are 11 production wells at present.</p>
<p>Provide any information regarding the Trust’s provision of a deep well geothermal bond?</p>	<p>The Trust can confirm that a bond was provided as part of the resource consenting process – including both the previous consent and the new consent that has been issued. To the best of our knowledge, as part of the re-consenting process there was an estimated \$1.179 million to \$1.2 million increase in bond from the old consent. In our experience, the ability to put up a bond is an integral part of the prevailing consenting regime.</p>
<p>What are the Trust’s views (if any) on the draft legislation provided on behalf of Ngāti Tahu Ngāti Whāoa that vests geothermal taonga in hapū/iwi?</p>	<p>It is for Tauhara North, Ngāti Tahu and Ngāti Whāoa, to have a view on how their taonga should be cared for.</p> <p>We acknowledge the map provided in the draft but note that there may be overlapping interests in relation to the rohe or area being mapped. Again, that that is for tangata whenua of those lands to form views on those matters.</p> <p>Any attempt to draft legislation in regard to our taonga, must acknowledge the rights and ownership of Tūaropaki.</p> <p>Any attempt to legislate in regard to, or including, our taonga must acknowledge the rights of Māori Authorities/Trusts and Māori land owners whom whakapapa to the taonga resource.</p> <p>Any attempt to legislate in regard to our taonga must acknowledge the agreements made between Raukawa, Tūwharetoa hapu forum (the predecessor to Te Kotahitanga O Tuwharetoa) to not seek any redress in respect of our taonga.</p>

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	<p>The Crown should acknowledge we are the present-day manifestation of the whanau and hapū collective, we continue to be Māori, and our right to practice tino rangatiratanga in relation to our own taonga should not be impeded. We are the in place and long-standing ahi kaa in relation to our taonga. We have and continue to practice rangatiratanga, kaitiakitanga, for our own taonga.</p>