

IN THE WAITANGI TRIBUNAL

**WAI 3300
WAI TBC**

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The Wai 3300 Constitutional Kaupapa Inquiry

AND

IN THE MATTER OF

the Claim by Rita Beckmannflay, for herself, her tātai rangatira tino rangatiratanga, her tamāhine tokorua, and for and on behalf of Ngāti Torehina Ki Mataure-Ō-Hau (Matauri Bay)

**Memorandum of Counsel Responding to the Crown's Characterisation
of Local Government**

Dated 20 February 2026



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Waitangi Tribunal

20 Feb 26

Ministry of Justice
WELLINGTON

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Introduction

1. This Memorandum is filed in response to the Crown's statement of issues, in particular regarding its characterisation of local government.
2. The Crown's position is that local authorities are not part of the Crown, are not Treaty partners, and are subject only to statutory Treaty obligations imposed by Parliament.
3. While this position reflects a certain public law view, it does not fully reflect the manner in which public authority is exercised in Aotearoa.

Local Government as an Exercise of Kāwanatanga

4. Local authorities exercise coercive public power on a daily basis. They regulate land use, infrastructure, environmental management, and social conditions. Their decisions are binding and shape the territorial environments within which rangatiratanga must operate.
5. Those powers are conferred by statute and derive ultimately from the sovereignty claimed by the Crown. In practical terms, local government is one of the principal institutional mechanisms through which kāwanatanga is exercised.
6. For many Māori communities, the council is the primary governance authority encountered in matters affecting whenua, taonga, housing, community facilities, and local economic development. This requires consideration of how Treaty responsibility operates in relation to those decision-making structures.
7. A constitutional analysis that focuses solely on institutional form does not fully capture the significance of functional power exercised at the local level. The relationship between Treaty responsibility and devolved governance structures therefore warrant deeper consideration.

Treaty Settlement Frameworks and Local Authorities

8. Modern Treaty settlement legislation routinely imposes obligations on local authorities, including statutory acknowledgements, consultation requirements, co-governance arrangements, and joint planning processes.

9. These statutory provisions form part of the legislative mechanisms through which negotiated Treaty commitments are implemented. They embed ongoing relationships between iwi and local authorities within the governance framework established by settlement legislation. It is through these mechanisms that the Crown meets its obligations. In this way, local authorities are part of the Crown or at least an agent of the Crown.

Delegation and Continuing Responsibility

10. While the Crown might retain ultimate responsibility for compliance with Treaty obligations, local authorities exercise statutory powers conferred by Parliament along with duties delegated by the Crown, often in areas with direct and significant implications for Māori land, resources, cultural sites, and community wellbeing.
11. The relationship between central responsibility and delegated Crown decision-making warrants close consideration. Where operational authority is exercised at the local level on behalf of the Crown (or as directed by the Crown), it is submitted that Treaty obligations must also flow and be reflected in that decision making, particularly where councils exercise decisive regulatory control over matters affecting Māori interests.
12. The Tribunal may therefore wish to enquire into whether a strict institutional separation between Crown Treaty responsibilities and local statutory authority adequately addresses the realities of devolved governance and the exercise of power.

Alcohol Licensing as an Illustration

13. Alcohol licensing provides a practical example of how local authorities exercise significant regulatory authority affecting Māori communities that is intertwined with the exercise of Crown power.

District Licensing Committees

14. Under the Sale and Supply of Alcohol Act 2012, territorial authorities, through District Licensing Committees and Local Alcohol Policies, determine whether alcohol outlets may operate in particular communities, the density of outlets, trading hours, and the conditions under which alcohol may be sold. These decisions directly shape local environments and patterns of alcohol availability.

15. It is well established that Māori experience disproportionate levels of alcohol-related harm.¹ Licensing decisions therefore intersect directly with issues of equity, active protection, and community wellbeing.
16. Confining Treaty responsibilities solely to central government does not fully reflect the level at which regulatory decisions with significant impact on Māori communities are made in practice. District Licensing Committees exercise statutory authority conferred by Parliament, and their decisions operate within a wider Crown framework, involving agencies such as New Zealand Police, Te Whatu Ora, and the Ministry of Justice (through the Alcohol Regulatory and Licensing Authority as a Crown tribunal).
17. The practical operation of the alcohol licensing regime is therefore an example of where the Crown's characterisation of local authorities as entities subject only to general statutory duties unwinds. The Waitangi Tribunal may wish to consider whether such a characterisation adequately captures the constitutional significance of the powers exercised at the local level by local authorities.

Local Alcohol Policies

18. Local Alcohol Policies (LAPs) are developed by territorial authorities and shape the entire alcohol licensing environment within a district. LAPs can set district-wide rules on matters such as maximum trading hours, outlet density, location restrictions, and proximity to sensitive sites, thereby materially limiting when and where alcohol may be sold.²
19. In practice, the development of a LAP commonly involves engagement with iwi and recognition of vulnerable communities and culturally significant locations. Decisions about outlet density and location frequently intersect with matters of direct cultural and community significance, including proximity to marae, kura and wāhi tapu, the protection of community safety and social cohesion, and the character of rohe with a strong Māori identity.
20. The regulatory settings established through a LAP influence the social environment within which whānau live and within which rangatiratanga is exercised. They may have implications for cumulative exposure to alcohol-related harm and for intergenerational wellbeing in affected communities.

¹ Law Commission Alcohol in our Lives: Curbing the Harm (NZLC R114, 2010), at [3.103]-[3.110].

² Sale and Supply of Alcohol Act, s 77.

21. The processes surrounding LAP development often include structured engagement with iwi and Māori organisations. In that respect, the formulation of a LAP may involve considerations that extend beyond commercial regulation and engage broader questions of community protection and cultural impact.

Decisions

22. A number of decisions of the Alcohol Regulatory and Licensing Authority have addressed the relationship between the Sale and Supply of Alcohol Act 2012 and Te Tiriti o Waitangi.
23. The Authority has affirmed the orthodox position that the Treaty does not form part of New Zealand's municipal law unless incorporated by statute.³ It has noted that there is no provision in the Sale and Supply of Alcohol Act expressly requiring decision-makers to act consistently with Treaty principles.⁴
24. The Authority has further observed that local authorities are not themselves parties to the Treaty and do not hold independent Treaty obligations by virtue of their institutional status.⁵
25. At the same time, the Authority has recognised that the statutory object of the Act (to minimise alcohol-related harm) is sufficiently broad to encompass harms experienced by Māori communities.⁶ It has accepted that where evidence establishes a real risk of alcohol-related harm affecting Māori, that matter properly forms part of the Authority's evaluative assessment under the Act.
26. In a subsequent appeal decision, the Authority considered an argument that Treaty principles should operate as an extrinsic aid to interpretation of a Local Alcohol Policy, relying on the Supreme Court's approach in *Trans-Tasman Resources*. The Authority declined to adopt that approach in the context of the Act, concluding that the statutory criteria, particularly the object of minimising alcohol-related harm, already required consideration of harms affecting Māori communities and that no additional interpretive layer was required.⁷

³ *Redwood Corporation Limited v Auckland City Council - Provisional Local Alcohol Policy* [2017] NZARLA 247, at [55].

⁴ *Flaxmere Liquor (2008) Limited - Flaxmere Liquor* [2019] NZARLA 94 (5 June 2019), at [141]-[145].

⁵ *Redwood*, above n 3, at [58]-[60].

⁶ *Flaxmere Liquor (2008) Limited - Flaxmere Liquor* [2019] NZARLA 94 (5 June 2019), at [146]-[147].

⁷ *Hendry v Tanishanaya Holding Limited - Rosedale Park Liquor* [2025] NZARLA 181, at [37]-[38] and [102].

Conclusion

27. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), must be enshrined into our constitution written as intended, laws enacted that uphold these International agreements.
28. The use of alcohol as a tool for colonisation serves as a stark reminder of the numerous human rights abuses that require our immediate attention. This is our pathway to self-determination, it is not to be determined by someone else.
29. In light of this jurisprudence, the Tribunal may wish to consider whether the Crown's characterisation of local authorities as entities subject only to general statutory obligations adequately reflects the functional reality of how Crown-conferred power is exercised in alcohol licensing, particularly where those powers directly affect Māori wellbeing and matters connected to Treaty interests.

Constitutional Coherence

30. The Crown's position draws a clear institutional distinction between the Crown and local authorities. That distinction reflects a certain public law view. However, the issue raised by the Crown's characterisation may require consideration of how public power is exercised in practice, and various sources of that power derived from the Crown.
31. Local authorities regulate the environments in which Treaty rights are experienced and realised. They are participants in settlement-based governance arrangements and exercise statutory powers in areas closely connected to Māori land, resources, cultural sites, and community wellbeing.

Conclusion

32. Local authorities are integral components of the governance system through which Crown authority is exercised territorially or locally.
33. In circumstances where significant aspects of land use regulation, environmental management, infrastructure planning, and community wellbeing are determined at the local level, the Tribunal should, it is submitted, consider how Treaty obligations are to operate within systems of delegated public power, and whether confining Treaty responsibility to central institutions adequately reflects contemporary governance practice.

Dated at Tāmaki Makaurau this 20th day of February 2026



Dr Grant Hewison
Counsel for the Claimant



Jasper Sontier

TO: The Registrar, Waitangi Tribunal, Wellington;
All Counsel - WAI 3300 The Constitutional Kaupapa Inquiry