TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3561

E PĀ ANA KI the Treaty of Waitangi Act 1975
CONCERNING

Ā, the Whakaraupō Infrastructure claim
AND

HE WHAKATAUNGA A TE PAEWHIRI MŌ TE TONO RUKU TĀTARI OHOTATA

DECISION OF THE PANEL CONCERNING THE URGENT APPLICATION

24 Apereira 2026

Hei tīmatanga kōrero / Introduction

1. Jesse Thompson, of Ngāti Wheke and Ngāi Tahu descent, filed a claim against the Crown concerning sewage discharge events at the Bromley Wastewater Treatment Plant arising from the Lyttelton Harbour Wastewater Scheme (Wai 3561, #1.1.1 and #1.1.1(a)). Mr Thompson alleges that the Crown has breached the principles of the Treaty of Waitangi by failing to prevent and mitigate harmful wastewater discharges through a range of alleged systemic failures.

2. These failures are said to include delayed notification of discharge events, exposing Māori to health risks; the diversion of funding from critical wastewater infrastructure; deferral of remediation projects resulting in ongoing "managed pollution"; reliance on outdated monitoring systems; operation of a "two tiered" infrastructure model in the Whakaraupō takiwā; misclassification of assets to avoid statutory obligations and limit mana whenua oversight; failures to enforce regulatory and cultural protections; withholding of information regarding system failures; and reliance on disposal methods that redistribute, rather than remedy, environmental harm. Mr Thompson has applied for these claims to be heard urgently.

3. The Crown opposes urgency, submitting that the claim relates predominantly to acts or omissions of Christchurch City Council and Canterbury Regional Council, rather than to acts or omissions of, or on behalf of, the Crown. The Crown further submits that the claim is generalised and insufficiently particularised, indicating it is not ready to proceed urgently, and that alternative avenues remain reasonably available to the claimant (Wai 3561, #3.1.3).

4. Canterbury Regional Council, an interested party, also opposes urgency. It submits that regulatory responses are ongoing, including investigation of discharges and the issuing of an abatement notice to Christchurch City Council on 20 March 2026 in respect of its wastewater network across the Banks Peninsula area, including Whakaraupō (Wai 3561, #3.1.2).

5. Following receipt of submissions, the Tribunal received a memorandum from Mr Thompson on 30 March 2026 seeking an adjournment of the urgency application for 90 days. This request was made at the instigation of Te Hapū o Ngāti Wheke Rāpaki Rūnanga Special Wai 3561 Komiti, to allow the Komiti to test a direct governance model. Mr Thompson submitted that, if engagement did not result in documented remediation or cessation of unconsented discharges within that period, he would seek to reactivate the urgency application (Wai 3561, #3.1.6). The Crown submits that the Tribunal already has sufficient information to determine the urgency application and that adjourning it is not necessary.

6. For the reasons set out below, both the application for adjournment and the application for urgency are declined. Declining urgency does not determine the merits of Mr Thompson's claim, nor does it preclude its progression, it will just not be heard urgently. Our determination is confined to whether the criteria for urgency have been met. We do, however, note that significant aspects of the claim relate directly to the acts or omissions of local authorities, which are not the Crown for the purposes of the Treaty of Waitangi Act 1975. Any future progression of the claim would therefore require amendment and greater precision.

7. The claimant should note that there are other available alternative remedies available to the claimant to bring his claim to. Most notably, the Ombudsman has the authority to investigate councils and accepts complaints from individuals who feel they have been treated unfairly. Useful information regarding the Ombudsman and their complaints process is accessible through their online website.[1]

Te hītori tukanga / Procedural history

8. We set out a summary of the procedural history:

   (a) On 4 March 2026, the Tribunal received a statement of claim and an application for an urgent inquiry from Jesse Thompson, together with supporting evidence (Wai 3561, #1.1.1; #A1- #A4).

   (b) On 5 March 2026, the claimant filed an amended statement of claim adding further allegations and relief sought (Wai 3561, #1.1.1(a)).

   (c) On 6 March 2026, the Deputy Chairperson directed the Crown and any interested parties to file responses to the urgency application by 20 March 2026, and directed the claimant to file submissions in reply by 7 April 2026 (Wai 3561, #2.5.1).

   (d) Additional evidence was filed by the claimant on 12 March 2026 (Wai 3561, #A5–#A9).

   (e) On 20 March 2026, the Crown filed submissions opposing the granting of urgency (Wai 3561, #3.1.3).

   (f) Christchurch City Council sought leave to participate as an interested party on 24 March 2026 (Wai 3561, #3.1.1), indicating it would abide the Tribunal's decision on urgency.

   (g) Canterbury Regional Council sought leave to participate as an interested party on 26 March 2026 and filed submissions opposing urgency (Wai 3561, #3.1.2).

   (h) On 25 March 2026, the claimant filed submissions in reply to the Crown's opposition, together with further evidence (Wai 3561, #3.1.4; #A10-#A18).

   (i) On 30 March 2026, the claimant filed a memorandum seeking an adjournment of the urgency application, together with additional evidence (Wai 3561, #3.1.5-#3.1.6; #A19).

   (j) On 31 March 2026, the Tribunal directed the Crown and interested parties to respond to the adjournment request (Wai 3561, #2.5.3).

   (k) On 1 April 2026, Canterbury Regional Council filed submissions in response to the adjournment request (Wai 3561, #3.1.7).

[1] Ombudsman "Complaints about government agencies" Ombudsman New Zealand < Complaints about government agencies | Ombudsman New Zealand>

(l) On 2 April 2026, the Crown filed submissions opposing the adjournment (Wai 3561, #3.1.8).

(m) On 7 April 2026, the claimant filed further submissions responding to the Crown and Canterbury Regional Council on the adjournment issue (Wai 3561, #3.1.9).

Ngā tāpaetanga a te kaitono / Claimant's submissions

9. Mr Thompson alleges that the Crown, including through the actions of Christchurch City Council and Canterbury Regional Council, has breached the principles of the Treaty of Waitangi by failing to prevent and mitigate harmful wastewater discharge events affecting Māori. The claimant's allegations include the following (Wai 3561, #1.1.1 and #1.1.1(a)):

    (a) the operation of a wastewater notification regime permitting delays of up to 16 hours following discharge events, exposing Māori to untreated effluent and waterborne pathogens;

    (b) the reallocation of approximately $25.7 million from terminal wastewater infrastructure to other projects, resulting in continued reliance on inadequate and analogue monitoring systems in the Whakaraupō takiwā;

    (c) the deferral of the Biogas/LPG remediation project until 2028, requiring mana whenua to endure ongoing discharges notwithstanding the availability of alternative technology;

    (d) the categorisation of sewage infrastructure as "parks and foreshore assets", allegedly to avoid statutory obligations and constrain mana whenua oversight;

    (e) inadequate inspection, monitoring, and maintenance of key pump stations, including at Simeon Quay and Corsair Bay, resulting in repeated non compliance with consent conditions;

    (f) failures to enforce regulatory obligations and to give appropriate recognition to the cultural significance of affected sites;

    (g) the non disclosure or delayed disclosure of information regarding system failures, including the incident at Sandy Point;

    (h) failure to notify Te Hapū o Ngāti Wheke of public health risks arising from discharge events;

    (i) continued reliance on terminal infrastructure acknowledged to be in poor condition, while prioritising expenditure elsewhere; and

    (j) the promotion of disposal models, including the Bromley discharge regime, which are said to relocate environmental effects rather than remedy underlying contamination.

10. The claimant submitted that these matters demonstrate systemic failure and justify the granting of urgency.

11. In support of the urgency application, the claimant submitted that:

(a) wastewater discharges have caused ongoing degradation of the benthic environment and mahinga kai, resulting in prejudice that is significant and irreversible;

(b) alternative remedies, including engagement with relevant councils and regulatory processes, have been exhausted or shown to be ineffective; and

(c) the claim is sufficiently developed and ready to proceed to an urgent hearing.

Ngā tāpaetanga whakahoki o te Kaitono / Claimant's submissions in reply

12. In response to the Crown's opposition, the claimant submitted that:

(a) the Crown's inability to identify relevant Crown acts or omissions reflects a failure of engagement, and following notification of discharge events, constitutes a failure of active protection;

(b) the Crown's characterisation of the failures as temporary is contradicted by a Ministry for Primary Industries warning issued on 13 March 2026 confirming the presence of toxic algal bloom (Alexandrium pacificum), which produces cysts capable of remaining viable in benthic sediments for extended periods;

(c) the Christchurch City Council's decision not to participate actively in the urgency application undermines the Crown's position that the claim is purely a local authority matter beyond Tribunal jurisdiction;

(d) the issuing of an abatement notice covering the entirety of the Bromley connected wastewater network demonstrates the scale and systemic nature of the failures; and

(e) the only adequate remedy is the transfer of powers under s 33 of the Resource Management Act 1991 to enable implementation of alternative treatment technologies.

13. In a further response to the Crown's response opposing the application for urgency, the Claimant submits that:

(a) The Crown's claim that "it is difficult to identify the Crown act or omission the claimant takes issue with, why he does so, and the prejudice that has arisen from any such Crown act or omission," is a "plea of ignorance," and that this, following a direct notification of the discharge events, indicates a failure of active protection by the Crown;

(b) the Crown's assertions that the failures are "temporary" are factually contradicted by the Ministry for Primary Industries Warning issued on 13 March 2026 confirming a toxic algal bloom (Alexandrium Pacificum), where these blooms produce resting cysts that remain viable in the benthic mud for decade and has thus effectively extinguished the right of the Rūnanga to gather mahinga kai for the next generation;

(c) in their submissions in response, Counsel for the Christchurch City Council submitted that the Council will "abide by the decision of the Tribunal" and will "not participate actively" in this application. The claimant submits that this indicates that the Christchurch City Council declines to contest the urgency application, therefore

contradicts the Crown's argument that this application constitutes a local government matter beyond the Tribunal's jurisdiction;

(d) as the entire wastewater system connected to the Bromley Wastewater Treatment Plant is now subject to an abatement notice, the Christchurch City Council, as the Crown's delegate is now under notice for the entirety of its regional network; and

(e) the only "adequate remedy" is a Resource Management Act 1991 transfer of power under section 33, to enable the implementation of bio-digestion/LPG technology.

He taunaki e pā ana ki te tono whakatārewa / Evidence relating to adjournment request

14. In support of the adjournment request, the claimant submitted that:

(a) Te Hapū o Ngāti Wheke Rāpaki Rūnanga has sought to pursue a direct governance model as a priority response to the ongoing discharges;

(b) the proposed adjournment would allow assessment of whether active engagement results in measurable remediation or cessation of unconsented discharges;

(c) environmental degradation would continue during any adjournment, given the persistence of toxic pathogens in benthic sediments and ongoing disturbance from vessel traffic within the harbour; and

(d) should documented remediation not occur within 90 days, the claimant would seek to reinstate the urgency application.

15. The claimant further submitted that, if the Tribunal considered the evidence disclosed a prima facie Treaty breach causing ongoing prejudice, it should continue its inquiry of its own motion and formally notify Te Hapū o Ngāti Wheke of any such findings.

Kōrerorero / Discussion

16. We first address the claimant's application for adjournment.

17. In the normal course, the Tribunal supports adjournments of applications for urgency where parties (Crown and claimants) agree to engage constructively in resolving issues between them. This commonly arises in Treaty settlement contexts, where there are overlapping or internal claim matters requiring clarification. In such circumstances, the Tribunal has occasionally deferred consideration of urgency applications for an agreed period.

18. The present case is materially different. There is no proposed engagement between the Crown and the claimant. This is because, as the Crown maintains, and as we agree, the Crown is not the proper respondent to the grievances underpinning the claim. In these circumstances, there is little utility in adjourning the application for urgency for the proposed 90-day period. The jurisdictional issue raised is a legal one, and all relevant material is already before us. We therefore decline the application to adjourn.

19. We now turn to address the urgency criteria.

Is there a current or pending Crown action or policy?

20. We accept without hesitation that the concerns advanced by Mr Thompson are sincerely held and arise from matters of real significance. However, those concerns relate primarily to the acts and omissions of Christchurch City Council and Canterbury Regional Council, not to the acts or omissions of the Crown. Acknowledging this, we take no position on the merits of the concerns raised.

21. The distinction is critical. The Tribunal is a creature of statute and must act within the jurisdiction conferred on it by the Treaty of Waitangi Act 1975. That jurisdiction extends only to policies, practices, acts, or omissions of the Crown, or those done on behalf of the Crown.[2]

22. Local authorities are not part of the Crown. The Crown denotes the executive government acting through Ministers and departments pursuant to powers conferred by Parliament. Local authorities are separate statutory entities and do not form part of the executive government.

23. Local authorities are statutory corporations created by Parliament under the Local Government Act 2002. They possess no inherent executive powers. Their powers are conferred and limited by statute. While they exercise public power and are subject to public law obligations including judicial review, they do so as independent legal entities, not as agents of the Crown. Both Canterbury Regional Council and Christchurch City Council are listed as local authorities under the Local Government Act 2002[3].

24. This structural distinction is orthodox, deliberate, and judicially entrenched. It is reflected in statute. The Local Government Act 2002 expressly presupposes a separation between the Crown and local authorities. Local authorities are also not Crown entities under the Crown Entities Act 2004 and sit outside that accountability framework entirely[4].

25. New Zealand courts have consistently characterised local authorities as statutory delegates rather than agents of the Crown. The courts' reasoning assumes clear legal separation, notwithstanding functional overlap in public purposes. That overlap does not dissolve the legal distinction.

26. The claimant appears to conflate public power with Crown responsibility, for example by referring to "the Crown (via CCC/ECan)". While understandable, that conflation cannot be sustained for jurisdictional purposes. Judicial review of councils exists because they exercise statutory public power, not because they are part of the Crown. The source of their authority remains statutory, not constitutional.

27. We acknowledge that modern governance, particularly in the Treaty settlement context, has strained the orthodox model. Delegation may create functional overlap, and the Tribunal has recognised that delegation does not absolve the Crown of constitutional

[2] Treaty of Waitangi Act 1975, s 6(1).

[3] Local Government Act 2002, Schedule 2.

[4] Crown Entities Act 2004, s 7(1).

responsibility. However, that recognition has not collapsed the legal distinction between the Crown and local authorities. Responsibility and jurisdiction remain analytically distinct.

Application to this claim

28. Applying these principles, the acts and omissions complained of relate to the operation, maintenance, monitoring, and regulation of wastewater infrastructure by Christchurch City Council and Canterbury Regional Council. There is no evidence of any current or pending Crown policy, act, or omission directly engaged in those matters.

29. Although the Crown sets the legislative framework within which local authorities operate, Tribunal inquiries into local government conduct generally occur in broader historical or kaupapa inquiries. They do not ordinarily arise in relation to discrete, site-specific environmental issues absent a clearly identified Crown action or policy. Nothing before us suggests that we must depart from this approach.

30. We find that the allegations concerning the Crown's role are insufficiently particularised. The assertion that "the Crown has presided over a multi-site infrastructure collapse" does not identify the relevant Crown action or omission for example. In the context of an urgency application, where significant Tribunal resources would be diverted, the onus rests on the claimant to establish a clear jurisdictional link between the Crown and the alleged prejudice. That precision is lacking.

31. Accordingly, we find that there is no current or pending Crown action or policy capable of grounding urgency.

Remaining urgency criteria

32. Given our finding on jurisdiction, it is unnecessary to assess the application against the remaining urgency criteria. However, for completeness, we briefly address them here.

33. The criteria that an application must meet for the Tribunal to grant an urgent inquiry into a claim include whether:[5]

    (a) the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

    (b) there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

    (c) the claimants can demonstrate that they are ready to proceed urgently to a hearing.

34. In the absence of connection between the prejudice identified by the claimant and a current or pending Crown action or policy, the first criteria above has not been met.

35. In relation to any reasonable alternative remedies available, complaints regarding the actions of local government are best suited to the Ombudsman, who has jurisdiction to hear such claims.The Ombudsman remains an avenue available to the claimant. A further

[5] Waitangi Tribunal *Guide to the Practice and Procedure of the Waitangi Tribunal* (2023) at [3.28].

alternative would be for direct engagement with the relevant councils via the Komiti, which was the basis for the adjournment. That approach can still occur regardless of our decision as to urgency.

36. Further, the claim as it is currently articulated, as well as the claimant's request for adjournment, suggest that it is not ready to proceed urgently to a hearing.

Kupu whakatau / Decision

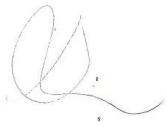
37. For the reasons set out above, and whilst we express some sympathy for the issues raised by the claimant, the claim is not one against the Crown and is too broad to meet the exceptional threshold required for the granting of urgency. The application for an urgent inquiry is declined.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki roia a te kaikereme, roia a te Karauna me ērā ki te rārangi whakamōhio mō Wai 3561, the Whakaraupō Infrastructure claim.

The Registrar is to send a copy of this direction to counsel for the claimant, Crown counsel and those on the notification list for Wai 3561, the Whakaraupō Infrastructure claim.

WHAKAPŪMAUTIA ki Kirikiriroa i te 24th o te Apereira 2026

Kaiwhakawā Aidan Warren
Te Mana Whakahaere
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI



Tipene Chrisp
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Grant Hadfield
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Kim Ngarimu
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Hon. Ron Mark
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI