KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL **WAI 3582**

CONCERNING	**the Treaty of Waitangi Act 1975**
AND	**an application for an urgent hearing by Priscilla Rivers on behalf of Ngāti Aukiwa**

SUBMISSIONS OF COUNSEL FOR THE CROWN OPPOSING APPLICATION FOR AN URGENT HEARING

25 Mahuru | September 2026

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. On 2 September 2026, a statement of claim (**the claim**)[1] was filed by Priscilla Rivers on behalf of Ngāti Aukiwa (**the claimant**), regarding kauri dieback disease in the Paekauri Conservation Area, Mangōnui.

2. The claimant requests that the Tribunal convene an urgent inquiry into the claim (**the application**).[2]

3. The Crown opposes the application for an urgent hearing:

    3.1 Many of the acts or omissions complained of are not those of the Crown, but of local authorities: the Far North District Council (**FNDC**), which manages the road running through Paekauri Conservation Area, and the Northland Regional Council (**NRC**).

    3.2 The claims against the Crown are unsubstantiated.

    3.3 There is an alternative remedy, this being to continue to collaborate with Crown agencies and local authorities in relation to kauri protection in Paekauri Conservation Area. The claimant, and Ngāti Aukiwa more broadly, has contributed significantly to kauri protection efforts in Paekauri Conservation Area, supported by the Department of Conservation (**DOC**) and Ministry for Primary Industries (**MPI**).

    3.4 The matter is imprecisely and inaccurately pleaded. The deficiencies in the pleadings make it difficult to respond to many of the allegations.

Tribunal Urgency Criteria

4. In determining whether to grant an urgent hearing, the Tribunal will consider whether the claimant has demonstrated:[3]

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1 Statement of claim, Wai 3582, #1.1.1.

2 Application for urgency, Wai 3582, #3.1.2.

3 Waitangi Tribunal, *Te Tukanga Taihoro (An Expedited Urgent Inquiry Process)*, August 2025 at [6].

4.1 they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

4.2 there is no alternative remedy that, in the circumstances, it would be reasonable to exercise; and

4.3 they are ready to proceed urgently to a hearing or decision on the papers, without the need for further research or evidence to be filed.

5. The Tribunal will only grant an urgent inquiry in exceptional cases, and only once it is satisfied that adequate grounds for urgency have been made out. In determining an application, the Tribunal must have regard to its work programme as set out in its Strategic Direction 2025-2035 and the effective and efficient deployment of its resources.[4]

Background

Paekauri Conservation Area

6. DOC manages Paekauri Conservation Area, which is stewardship land in the conservation estate. A road, Stoney Creek Settlement Road, runs through Paekauri Conservation Area. FNDC is responsible for Stoney Creek Settlement Road.

7. Paekauri Conservation Area contains kauri trees. There have been some positive findings of *Phytophthora agathidicida* (**PA**), the pathogen that causes kauri dieback, in Paekauri Conservation Area.

8. Paekauri Conservation Area is not promoted for public use and has no public walking tracks.

Management of the pathogen that causes kauri dieback

9. Since October 2022, *Phytophthora agathidicida* has been managed via a National (PA) Pest Management Plan (**the NPMP**), which is a mechanism under the Biosecurity Act 1993. MPI is the "management agency" responsible for the implementation and administration of the NPMP.

[4] Waitangi Tribunal, *Te Tukanga Taihoro (An Expedited Urgent Inquiry Process)*, August 2025 at [5].

10. The NPMP's objectives are, broadly speaking, to stop the spread of PA and its adverse effects.[5] Various measures are set out to achieve these objectives. Additionally, the NPMP contains ten plan rules. The rules apply, varyingly, to occupiers of kauri land (which includes Paekauri Conservaiton Area), and to those accessing the land.[6] Failure to comply with these rules is an offence under the Biosecurity Act 1993.[7]

11. Implementation of the NPMP is supported by a National Operational Plan (which is a requirement of the Biosecurity Act 1993). The National Operational Plan is a comprehensive document that sets out matters including overarching principles, workstreams and priorities for implementing the plan.

12. Separately, the NRC has its own Regional Pest Management Plan relating to PA (**the RPMP**), which applies in NRC's region and pre-dates the NPMP by several years.[8] This means that both NRC and MPI are responsible for implementing plans to address kauri dieback in Paekauri Conservation Area.

Collaborative efforts in Paekauri Conservation Area

13. Ngāti Aukiwa has received four funding grants from MPI to undertake PA-related work in Paekauri Conservation Area, totalling $135,000.[9]

14. Ngāti Aukiwa and DOC entered into 'community agreements' under the Conservation Act relating to Paekauri Conservation Area in 2024/2025 and 2025/2026.[10]

The broader iwi is not represented

15. The present claim and application for urgency is brought by Priscilla Rivers on behalf of Ngāti Aukiwa. Ms Rivers does not purport to represent Ngāti

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5 More precisely, the general objectives of the Plan (set out in cl 6) are to reduce the spread of PA; maintain areas free of PA; reduce the impact of PA within infected sites; locally eliminate PA within infected sites; protect kauri with special value from PA; and facilitate controlled access to kauri forests where it does not compromise the future or protection of kauri: Biosecurity (National (PA) Pest Management Plan) Order 2022.

6 Rules 1-3 apply nationally; rules 4-10 apply to 'kauri land', which includes Paekauri Conservation Area. See the Biosecurity (National (PA) Pest Management Plan) Order 2022 at cl 14-24 inclusive.

7 Clause 14.

8 Northland Regional Pest and Marine Pathway Management Plan 2017 – 2027, came into force 1 July 2018.

9 Affidavit of Michael Andrew Hogg affirmed 25 September 2026.

10 Affidavit of Laree Kay Furniss affirmed 25 September 2026.

Kahu ki Whangāroa in her statement of claim or application for an urgent hearing.

16. Kahukuraariki Trust is the Post-Settlement Governance Entity for Ngāti Kahu ki Whangāroa.[11] To date, Kahukuraariki Trust has not been involved in the claim.

Summary of the Claim and Application

The claim

17. The claim alleges the Crown has breached the Treaty by failing to protect Paekauri Conservation Area from PA infection in the following ways:[12]

    17.1 The Crown has breached rules 4, 5, 8, 9 and 10 of the NPMP.[13]

    17.2 The Crown has also breached the NPMP by excluding hāpu from collaboration and engagement in the management of PA, allowing the adverse effects of PA to continue, and failing to meet the objectives of the NPMP.

    17.3 The Crown has breached rule 8.1.1 of the RPMP (and the Northland Regional Council has failed to enforce compliance).[14]

    17.4 The Crown has breached the Biosecurity Act 1993,[15] the Conservation Act 1987,[16] the Resource Management Act 1991,[17] and the Local Government Act 2002.[18] (Note: the alleged breaches of the specified sections are not set out in the statement of claim.)

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11 See the Ngāti Kahu Claims Settlement Act 2017.

12 Statement of claim, Wai 3582, #1.1.1 at [2].

13 Specifically, the claimant alleges:

(1) There is no PA risk management plan in place for Paekauri Conservation Area, despite this allegedly being required under rule 4 of the National (PA) Pest Management Plan (**NPMP**).

(2) There is no earthworks PA risk management plan in place for Paekauri Conservation Area, despite this allegedly being required under rule 5 of the NPMP.

(3) There are no cleaning protocols or cleaning stations, despite this allegedly being required under rules 8-9 of the NPMP.

(4) There has been no road / track management, despite this allegedly being required under rule 10 of the NPMP.

14 We note that the application alleges breach of rule 8.1.1 on the basis an 'RPMP' hasn't been prepared. We understand, by reference to r 8.1.1 of the RPMP, that the claimant means a kauri dieback management plan has not been prepared under rule 8.1.1 of the RPMP.

15 Sections 5, 6, 7, 12A, 12B, 13, and 154N(19).

16 Sections 3, 4, and 6.

17 Sections 5, 6(c), 7(d), 30, and 31.

18 Sections 3, 4, 10, 11, 12, and 14.

18. The claimant lists "Crown failures", which we understand to be broadly duplicative of the allegations set out above.[19]

The application for urgency

19. The application states that if urgency is not granted the claimant is likely to suffer the following prejudice:[20]

    19.1 PA will continue spreading through the Paikauri Conservation Area.

    19.2 Soil disturbance will continue through FNDC roadworks on Stony Creek Settlement Road.[21]

    19.3 Kauri and associated ecosystems will suffer irreversible decline.

    19.4 Hapū kaitiakitanga will be undermined.

    19.5 Crown agencies will continue breaching "the NPMP, the RPMP, the Biosecurity Act, the Conservation Act, the Resource Management Act, and the Local Government Act".

20. The claimant alleges that hapū prepared two different plans but DOC and FNDC "blocked" or "did not implement" the plans and "withheld required information".

21. The claimant says the matters above collectively amount to breaches of Treaty principles of partnership, active protection, good faith, options, and redress.[22]

22. The claim seeks an immediate Tribunal inquiry and that the Tribunal make various orders (which we understand to mean recommendations).[23]

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[19] The alleged Crown failures are: (1) the absence of NPMP or RPMP plans for Paekauri Conservation Area (we understand this to mean a plan under rule 4 of the NPMP, and a plan under rule 8.1.1 of the RPMP); (2) FNDC continuing grading through infected land (We understand this to mean FNDC has undertaken road maintenance works on Stony Creek Settlement Road; (3) DOC allowing access to the land; (4) Hapū NPMP plans being ignored; (5) Crown agencies being notified but not taking action; and (6) Ecosystem decline being ongoing.

[20] Application for urgency, Wai 3582, #3.1.2 at [4].

[21] We note, for completeness, that the claim refers to the Northern Transport Alliance (NTA) but that this entity no longer exists, and staff have been redeployed into the FNDC.

[22] Wai 3582, #1.1.1 at [5].

[23] The orders sought:

    1.1 requiring DOC, FNDC, NTA, MPI and NRC comply with NPMP Order 2022 and RPMP Rule 8.1.1;

    1.2 temporarily closing Stoney Creek Settlement Road;

    1.3 requiring installation of hygiene stations;

Local and territorial authorities are not the Crown

23. To the extent the claimant's allegations are levelled against FNDC and NRC, these claims are not within the Tribunal's jurisdiction. FNDC and NRC are local authorities, and are not part of the Crown. The Tribunal is not the right forum for these aspects of the statement of claim, whether in an urgent hearing or otherwise.

Alleged Crown legislative breaches are not substantiated

24. The claimant alleges legislative breaches by the Crown. We understand the allegation to be that these are, in turn, a breach of the Crown's Treaty duties to Ngāti Aukiwa. The claims are not substantiated and do not establish a real risk of prejudice to the claimant justifying an urgent hearing.

Biosecurity Order 2022

25. Firstly, the claimant alleges that the Crown has breached various NPMP rules (4, 5, 8, 9, 10). Addressing these in turn:

    25.1 Rule 4 sets out that an occupier of land must "have, and operate in accordance with, an approved PA risk management plan **if a management agency… gives the occupier written notice that the land is at risk of PA**" (emphasis added). MPI has no record of having issued a rule 4 notice to DOC in relation to Paekauri Conservation Area. For completeness, we note that MPI has no record of having issued a rule 4 notice to FNDC (in relation to Stoney Creek Road). Rule 4 notices tend to be considered when voluntary compliance with the NPMP has not occurred, in line with the compliance regime set out in MPI's National Operating Plan for the NPMP.

    25.2 Rule 5 requires an occupier of land that includes a kauri hygiene zone[24] not to undertake earthworks in a kauri hygiene zone unless

1.4 prohibiting soil disturbance;

1.5 implementing of a hapū-led PA Management Plan; and

1.6 Any other urgent protective measures deemed necessary.

[24] Three times the maximum radius of the canopy dripline of a kauri tree: Biosecurity (National (PA) Pest Management Plan) Order 2022 at [3].

they have and operate in accordance with an earthworks risk management plan. There is no evidence that DOC has undertaken earthworks in any part of Paekauri Conservation Area, let alone in a kauri hygiene zone within the Paekauri Conservation Area. FNDC, which manages Stony Creek Road, is not the Crown. Its acts and omissions do not fall within the Tribunal's jurisdiction. In its role as the management agency for the NPMP, MPI has provided guidance to FNDC on its requirements under rule 5 NPMP when undertaking earthworks on Stoney Creek Road.[25]

25.3 Rule 8 requires those entering and exiting kauri forests to clean "risk items". Paekauri Conservation Area does not have public walking tracks. Minimal operational work occurs there by DOC rangers (who are required, in any event, to comply with NPMP rule 8). The claimant has presented no evidence of systemic Crown breach or breaches by individuals.

25.4 Rule 9 requires those who use a track or road in a kauri forest to clean applicable items at each cleaning station they pass. As there are no public tracks through Paekauri Conservation Area, DOC has not installed cleaning stations.

25.5 Rule 10 only applies to tracks or roads passing through kauri forest that are intended for public use. There are no tracks in Paekauri Conservation Area. The road that passes through is managed by FNDC.

26. Additionally, the claimant's allegations that the Crown has breached the NPMP by excluding hāpu from collaboration and engagement in the management of PA are not substantiated. The claimant does not specify what exclusions are alleged to have occurred. To the contrary, there is a significant record of collaboration and engagement between Crown

[25] For completeness, we note that FNDC has undertaken minor earthworks on Stony Creek Road (mostly, fixing potholes), which came to MPI's attention at a hui on 2 September this year. MPI does not know whether or not these occurred within a kauri hygiene zone. The earthworks have now ceased voluntarily. Whether further earthworks would require a rule 5 earthworks risk management plan depends on whether they are occurring within a kauri hygiene zone, as MPI has previously advised FNDC.

agencies and the claimant / her hapū, including this year. Ngāti Aukiwa has received four funding grants from MPI to undertake PA-related work in Paekauri Conservation Area, totalling $135,000. Ngāti Aukiwa and DOC entered into 'community agreements' under the Conservation Act relating to Paekauri Conservation Area in 2024/2025 and 2025/2026.[26]

27. Finally, the claimant's allegations that the Crown is breaching the scheme of the NPMP by allowing the adverse effects of PA to continue, and failing to meet the objectives of the NPMP, are not particularised. These allegations are too vague for the Crown to respond in a meaningful way and do not establish a need for an urgent hearing.

Alleged Crown breaches of the Regional Pest Management Plan

28. The claimant alleges breach of rule 8.1.1 of the Northland Regional Council's RPMP on the basis an 'RPMP' hasn't been prepared. We understand, by reference to r 8.1.1 of the RPMP, that the claimant means a kauri dieback management plan has not been prepared by DOC under rule 8.1.1 of the RPMP.

29. Rule 8.1.1 of the RPMP sets out that, where a person authorised by Northland Regional Council ("an authorised person") determines that a property is "high risk", that authorised person shall prepare a kauri dieback management plan in consultation with the occupier, owner, manager or user, as relevant. Thus, this is a process triggered and managed by NRC, not the Crown. There is no evidence that NRC has sought DOC input into a plan and that DOC has refused. Instead, there is evidence that NRC worked with Ngāti Aukiwa to produce a draft kauri dieback management plan for Paekauri Conservation Area.

30. The allegation of Crown breach of rule 8.1.1 is not substantiated and does not support the application for an urgent hearing.

[26] Affidavit of Laree Kay Furniss affirmed 25 September 2026, at [21], Exhibits A-1 and A-2.

Broad allegations of legislative non-compliance

31. We are unable to respond to the allegations that the Crown has breached the Biosecurity Act 1993,[27] the Conservation Act 1987,[28] the Resource Management Act 1991,[29] and the Local Government Act 2002[30] as the Crown conduct complained of is not specified.

Allegations 'Crown failures' are duplicative and improperly particularised

32. As detailed above, the claimant lists 'Crown failures' after allegations of legislative breach. To the extent these relate to Crown conduct (and not to local authorities), these appear to be broadly duplicative of the allegations addressed above.

33. However, it is difficult to understand to what extent the allegations may diverge from those relating to legislative breaches. Allegations of failures such as "DOC allowing access to the land", "Crown agencies being notified but not taking action" and "Ecosystem decline being ongoing" are too unspecific to be able to respond in a meaningful way.

Alternative remedies available

34. There is an alternative remedy available, this being to continue to collaborate with Crown agencies and local authorities in relation to kauri protection in Paekauri Conservation Area. The claimant, and Ngāti Aukiwa more broadly, has contributed significantly to kauri protection efforts in Paekauri Conservation Area, supported by DOC and MPI.

Conclusion

35. This claim does not present an exceptional case which warrants the diversion of the Tribunal's resources to conduct an urgent inquiry. Many of the allegations are levelled against non-Crown parties. Those that are levelled against the Crown are unsubstantiated and not properly particularised. They do not establish or suggest significant and irreversible prejudice. There is a history of collaborative engagement between the

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27 Sections 5, 6, 7, 12A, 12B, 13, and 154N(19).

28 Sections 3, 4, and 6.

29 Sections 5, 6(c), 7(d), 30, and 31.

30 Sections 3, 4, 10, 11, 12, and 14.

claimant and the Crown in kauri protection measures. There are opportunities for influence rather than Crown conduct causing significant and irreversible prejudice to the claimant. The application for an urgent inquiry into this claim should be denied.

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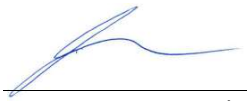

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AND TO: Claimant Counsel