

**IN THE WAITANGI TRIBUNAL**

**WAI-**

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

**AND**

**IN THE MATTER OF** **The New Zealand Māori Council Trans Pacific Partnership Claim** being a claim by Cletus Maanu Paul and Edward Taihākurei Durie for the New Zealand Māori Council and Māori generally; Kereama Pene, of Kia Maia Māori Committee of Tamaki ki te Tonga for Ngāti Rangiteaorere generally in relation to geothermal interests; and Tamati Cairns, of the Wellington District Māori Council and chair of the Pouakani Claims Trust for Pouakani iwi in relation to freshwater interests, and Cletus Maanu Paul for Mataatua District Māori Council, Edward Taihakurei Durie for Raukawa District Māori Council, Tamati Cairns for Wellington District Māori Council, Rihari Dargaville for Tai Tokerau District Māori Council, Titewhai Harawira for Auckland District Māori Council, Desma Kemp Ratima for Takitimu District Māori Council and Anthony Toro Bidois for Te Arawa District Māori Council

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**Memorandum of Counsel for the Claimants Supporting the Application  
for Urgency**

**Dated:** 13 July 2015

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**MAY IT PLEASE THE TRIBUNAL:****Overview of the Claim**

1. The Claimants say that the Crown's actions in relation to the Trans Pacific Partnership Agreement will result in prejudice to Māori who have claims to natural resources.
2. There are two aspects to the Claimants' position:<sup>1</sup>
  - 2.1 **Water:** refers to the claim that the Crown's actions in relation to the Trans Pacific Partnership Agreement will affect the claimants in the Wai 2358 claim to have their interests recognised and properly provided for by the Crown for fear of economic backlash against the Crown at the suit of foreign investors.
  - 2.2 **Geothermal Resources:** refers to the claim that the Crown's actions in relation to the Trans Pacific Partnership Agreement will affect the geothermal claimants in Wai 2358 in the same way.
3. The prejudice associated with each of these aspects is separately discussed.<sup>2</sup>
4. Against this background, the Claimants' position is that the Tribunal's intervention is necessary to ensure that future Māori claims to natural resources are not prejudiced by the Crown's actions in entering into the Trans Pacific Partnership Agreement.
5. The Claimants consider that it is necessary for the Tribunal to consider the Crown's actions in relation to the Trans Pacific Partnership Agreement in a timely way, before negotiations have been progressed further and officials have reported back to Cabinet on it. This is to ensure that minds remain open to identifying the best way to protect Māori claims to natural resources.

**Orders sought by Claimants**

6. To resolve their Claims in a timely way, the Claimants now seek:

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<sup>1</sup> As set out in the Statement of Claim dated 10 July 2015.

<sup>2</sup> Paragraphs 15-21 of the Statement of Claim dated 10 July 2015.

- 6.1 first, that their Claim be given urgent consideration by the Tribunal;
- 6.2 second, that the Tribunal direct that the Crown should consider further strengthening the provision generally included in international trade agreements to protect the interests of Māori and the Treaty of Waitangi.

### **Application for urgency: Why urgency should be granted**

#### **Applicable legal principles**

7. The Tribunal's discretion to grant an urgent inquiry is informed by the criteria it has identified in its "Practice Note – Applications Seeking Urgent Tribunal Consideration". The Practice Note provides:

#### **Applications for an urgent inquiry**

In deciding an urgency application, the Tribunal has regard to a number of factors. Of particular importance is whether:

- 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;
- there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- the claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- the claim or claims challenge an important current or pending Crown action or policy;
- an injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and
- any other grounds justifying urgency have been made out.

Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the take or both are amenable to alternative resolution methods, such as informal hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

8. Each is addressed in turn below.

#### **Significant and irreversible prejudice**

9. The Claimants say that if the Crown proceeds to enter into the Trans Pacific Partnership Agreement, their claims and the claims that Māori generally may

have to natural resources under the protections offered by the Treaty of Waitangi will be prejudiced.

10. The prejudice justifying the Tribunal's urgent intervention is the consequences that will flow from entering into the Trans Pacific Partnership Agreement. The steps to date have been taken without sufficient consultation with Māori and without sufficient consideration of the long term effects it may have on Māori claims to natural resources.
11. In relation to the significance and irreversibility, the Claimants cannot see a way that the prejudice caused by the Crown's actions could be reversed to protect Māori rights and interests adequately.
12. The claimants note that in the past, urgency has been granted in part to applicants where their claims would otherwise have been rendered moot by Crown actions.<sup>3</sup> That approach has relevance here too, as officials continue to engage in negotiations with an aim of reaching agreement as soon as possible.

#### **Alternative remedies**

13. Reliance on the existing protections provided to the Treaty of Waitangi and Maori claims under trade agreements will not ensure adequate protection of Maori rights and interests.

#### **Claimants are ready to proceed urgently to a hearing**

14. The Claimants are ready to be heard urgently by the Tribunal. They expect that any evidence that will need to be filed will be able to be prepared within the Tribunal's set timeframes.

#### **Claim challenges an important current/pending Crown action**

15. As set out above, this Claim relates to the protection of Māori claims to natural resources. Considerable time, effort and resources have been applied to those claims throughout the preparation and presentation of Stage 1 of the Wai 2358 inquiry, from the Waitangi Tribunal to the Supreme Court. The Claimants fear

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<sup>3</sup> See *The Ngati Tuwharetoa ki Kawerau Settlement Cross-Claim Report* (Wai 996, 2003) for example.

that, as a result of the Crown's many delays in the Freshwater and Geothermal Resources inquiry, that work may be for naught if the Crown should enter into an agreement that would prejudice any possible resolution to that claim.

**No relevant court injunctions have been issued**

16. No injunction has been issued by the Courts relating to the urgency sought. The urgent hearing of this Claim will avoid the need for the New Zealand Māori Council to consider turning to the High Court to seek other relief.

**Dated:** 13 July 2015



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**Donna Hall**  
Counsel for the Claimants