IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2024

BETWEEN	**STUDENTS FOR CLIMATE SOLUTIONS INCORPORATED**
	Appellant
AND	**MINISTER OF ENERGY AND RESOURCES**
	Respondent

SUBMISSIONS OF THE INTERVENOR: TE HUNGA RŌIA MĀORI O AOTEAROA (THE NEW ZEALAND MĀORI LAW SOCIETY)

29 APRIL 2025

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Counsel certifies, in accordance with the Supreme Court Submissions Practice Note 2023, that these submissions are suitable for publication (and do not contain any information that is suppressed).

TĒNĀ, E TE KŌTI:

I. INTRODUCTION

1. The Court granted Te Hunga Rōia Māori o Aotearoa (**THRMoA**) leave to intervene in this appeal on 9 April 2025. THRMoA has a role in advocating on legal issues of relevance to Māori.[1] Consistent with this role, THRMoA is interested in ensuring that jurisprudence in Aotearoa develops in a manner that honours Te Tiriti o Waitangi and that Treaty issues are traversed in an appropriate manner.[2] The scope of THRMoA's intervention is therefore limited to the relevance of the Treaty to the appeal.[3]

2. This appeal concerns the grant of two petroleum exploration permits (**PEPs**) under s 25 of the Crown Minerals Act 1991 (the **CMA**). The principles of the Treaty are a mandatory relevant consideration in the decision to grant the relevant PEPs, by virtue of s 4 of the CMA and the fundamental legal and constitutional status of the Treaty.

3. The specific question before this Court is whether Treaty principles required the decision-maker to consider the impacts of climate change on Māori generally. It is accepted that the decision-maker did not consider such implications, confining the Treaty principles assessment to issues identified by iwi and hapū in the area in which the exploration was to occur, as well as localised impacts on them.[4]

4. The key issues that arise in this respect include:

   (a) whether the impact of climate change on Māori generally is prima facie relevant to the decision being made under the CMA

[1] See, for example, Rule 3.1(b) of the Rules of THRMOA which provide that one of THRMoA's objects is to "identify and respond to the legal needs of Māori. Rule 3.1(f) provides that THRMoA's role includes to "monitor legislation and promote law reform for Te Ao Māori".
[2] The approach we adopt to terminology around Te Tiriti o Waitangi / the Treaty of Waitangi is that we use "te Tiriti" to refer to the Māori text and if referring solely to the English text we will make that clear. We refer to "the Treaty" to refer to both texts together and "the principles of the Treaty" to reflect that they are generally derivative of elements of both language texts.
[3] Minute of the Court dated 9 April 2025.
[4] Appellant submissions at [5.2]-[5.4]; Respondent submissions at [62]; Affidavit of Phillipa Fox at [37]-[42] **[[201.0180-201.0181]]**.

and the Crown's Treaty obligations;

(b) if so, whether it was an error to confine considerations to issues raised by local iwi and hapū and the localised impact of the activity on those hapū and iwi only; and

(c) whether the Crown's response to climate change elsewhere, including the Climate Change Response Act 2002 (the **CCRA**), relieves the decision-maker absolutely of the obligation to consider the impacts of climate change on Māori in the present context.

5. In THRMoA's submission, the Treaty principles and the Treaty's constitutional and legal status provide a legal standard that constrains decision-makers in this context. Fossil fuel emissions, which all petroleum permits under the CMA help facilitate, is relevant to climate change, which impacts on Māori. Treaty principles are both protective and responsive in nature and scope. A blanket approach that excludes consideration of climate change impacts on Māori, unless specifically raised by local iwi and hapū, is too narrow and unduly reductionist.

6. Had Māori Treaty interests been properly considered, the impacts of climate change on Māori would have formed part of the assessment. This would not have required a "wide-ranging inquiry into the broader potential impact of climate change and mitigation measures on Māori"[5] but a focused consideration of whether the applications impacted the Māori Treaty interest generally due to climate change effects. This is something the decision-maker should have had regard to under s 4 of the CMA. It did not happen.

II. THE LEGAL FRAMEWORK

The relevance of the Treaty

[5] *Students for Climate Solutions Incorporated v The Minister of Energy and Resources* [2024] NZCA 152 (the **Court of Appeal judgment**) at [108].

7. It is not disputed that Treaty principles are relevant to the decision under the CMA.[6] Section 4 of the CMA provides that:

> All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

8. While s 4 requires that the principles of the Treaty be regarded as a mandatory relevant consideration when granting a permit under the CMA, both the High Court and the Court of Appeal also recognised the Treaty principles as part of the "principle of legality".[7] That is, consistent with the judicial approach to other fundamental rights, Parliament should not be presumed to empower decision-makers to make decisions that are inconsistent with Treaty principles.[8]

9. As explained by Cooke J:[9]

> … I do not agree that the particular verbal formulation [of Treaty clauses] is necessarily of decisive importance. What matters is the legislative indication that the principles need to be addressed, with the natural inference that they should be honoured unless Parliament provides otherwise. Anything less than this would fail to respect the constitutional significance of the Treaty.

10. On this reasoning, which THRMoA endorses, Treaty principles are the scaffolding and guard-rails for the decision-making. This reflects the significance of the Treaty as our foundational constitutional document and part of "the fabric of New Zealand society."[10] It also aligns with this Court's decision in *TTR*[11] and the developing jurisprudence in the Court of Appeal.[12]

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[6] Appellant submissions at [5.1]; Respondent submissions at [58].
[7] *Students for Climate Solutions Incorporated v The Minister of Energy and Resources* [2022] NZHC 2116 (the **High Court judgment**) at [91]; Court of Appeal judgment at [108].
[8] High Court judgment at [91], citing *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551 at [119], [203] and [218]; *New Health New Zealand Inc v South Taranaki District Council* [2018] NZSC 59, [2018] 1 NZLR 948; *Ye v Minister of Immigration* [2010] 1 NZLR 104 (SC); *R v Secretary of State for Home Department; Ex parte Simms* [2000] 2 AC 115 (HL).
[9] High Court judgment at [92]. The Climate Change Response Act 2002 also recognises at s 3A that the Crown has a "responsibility to give effect to the principles of the Treaty of Waitangi". This further suggests there is sense in an alignment to the approach to Treaty obligations generally.
[10] *Huakina development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 210; *New Zealand Māori Council v Attorney General* [1994] 1 NZLR 513 (PC) (***Broadcasting Assets***) at 516; *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at [150]-[151] (***TTR***).
[11] *TTR* at [151]
[12] The Court of Appeal has held that courts may take an active approach to statutory construction to avoid outcomes repugnant to the Treaty in cases of ambiguous language: *Urlich v Attorney-General* [2022] NZCA 38 at [62]; *Paul v Attorney-General* [2022] NZCA 443 at [49]; *Stafford v Attorney General* [2022] NZCA 165 at [77].

Treaty Principles

11. There is no singular articulation of the Treaty principles.[13] A body of court and Waitangi Tribunal jurisprudence exists to assist decision-makers in their consideration of the Treaty.[14] These principles set a legal standard that constrains decision-makers both procedurally and substantively.[15] Statutory provisions that incorporate Treaty principles should not be interpreted narrowly.[16] Treaty principles are living, dynamic, able to evolve and responsive to the circumstances.[17]

12. The principle of Kāwanatanga gives the Crown the right to make laws and govern.[18] However, it is well established that this right is not unfettered.[19] The Tribunal has said that "to the extent that it affects Māori communities, the right of kāwanatanga *must be* used to protect Māori interests" (emphasis added).[20] Tino Rangatiratanga is a Māori interest as well as a Treaty principle under which Māori retain their right to autonomy and self-government, including the management of resources in accordance with their own tikanga.[21]

13. The principle of Partnership has been considered the "framework for

[13] "Treaty principles" reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty: *Broadcasting Assets* at 517.
[14] As per Cooke P, the courts should give "much weight" to Waitangi Tribunal jurisprudence on Treaty principles: *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (CA) (***Lands***) at 661.
[15] *Ngāi Tai ki Tāmaki Trust v Minister of Conservation* [2018] NZSC 122; [2019] 1 NZLR 368 at [52] and [54]. Nor is compliance with the Treaty merely a question of administrative reasonableness. The Court must form its own judgment on whether the legal standard set by Treaty principles has been met: *Lands* at 658, *Broadcasting Assets* at 524; *New Zealand Māori Council v Attorney-General* [2013] NZSC 6 (***Waters***) at [88]. Analogy can be drawn to this Court's recent decision in *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 128, [2022] 1 NZLR 459 affirming that the New Zealand Bill of Rights Act 1993 (**NZBORA**) imposes a substantive constraint on decision-makers, where it is engaged.
[16] See Cooke J in *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA) (***Whales***) at 558; *TTR* at [150]-[151].
[17] Waitangi Tribunal *Report of the Waitangi Tribunal on the Ōrākei Claim* (Wai 9, 1987) (***Ōrākei Report***) at 209; *Lands* at 715.
[18] Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims Vol 1* (Wai 898, 2023) (***Te Mana Whatu Ahuru***) at 216.
[19] *Tino Rangatiratanga Report* at 47-48. In *He Maunga Rongo Vol 4*, the Tribunal drew analogy between the constraints Treaty principles place on Crown actions and the constraints created by domestic and international human rights obligations: at 1239.
[20] *Te Mana Whatu Ahuru* at 216.
[21] *Te Mana Whatu Ahuru* at 216.

governance in New Zealand"[22] and is underpinned by the balancing of rangatiratanga and kāwanatanga.[23] It requires each partner to recognise the authority of the other and decide together how to exercise their influence in matters of shared interest.[24]

14. The principle of Active Protection requires the Crown to exercise kāwanatanga to protect the Māori rights and interests guaranteed under Articles 2 and 3 of the Treaty.[25] The obligation is changeable depending on the circumstances. Where a taonga is in a vulnerable state, the obligation is heightened,[26] particularly where Crown Treaty breaches have imperilled that taonga.[27] In situations of crisis, the Crown may also be obliged to give greater consideration to Māori Treaty interests.[28] This obligation requires an appreciation of the nature of the Māori interest and impact of proposed Crown action.[29] Active protection is therefore connected to the Crown's duty to consult and to make informed decisions.[30]

15. Treaty interests are not absolute. While Treaty obligations are constant, the standard for discharging them is what is reasonable in the circumstances.[31] There may be occasions where the Crown needs to balance its Treaty obligations to Māori against the needs of other community sectors, such as in instances of war, impended chaos, public welfare and safety and matters involving the national

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[22] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: Stage 2 report on Te Paparahi o Te Raki Claim* (Wai 1040, 2022) (***Tino Rangatiratanga Report***) at 85.

[23] *Hart v Director-General of Conservation* [2023] NZHC 1011 at [81]; See also *Greenpeace Aotearoa Ltd Hiringa Energy Ltd* [2023] NZCA 672 at [191], citing *Tino Rangatiratanga Report*.

[24] *Te Mana Whatu Ahuru* at 216; *Tino Rangatiratanga Report* at 87. See also *Lands* at 703 per Casey J noting that implicit in the partnership relationship is the expectation of good faith "in the way that the Crown exercises the rights of government ceded to it".

[25] Waitangi Tribunal, *The Māori Wards and Constituencies Urgent Inquiry Report* (Wai 3365, 17 May 2024) at 18; *Lands* at 664 per Cooke J, at 683 per Richardson J; *Broacasting Assets* at 517; *Whales* at 560, referring to the need to actively protect Māori interests sufficiently linked to taonga or fisheries protected by the Treaty.

[26] *Broadcasting Assets* at 517.

[27] *Lands* at 664; See also Waitangi Tribunal, Tū Mai te Rangi: Report on Crown and Disproportionate Reoffending Rates (Wai 2540, 2017) at 22.

[28] Waitangi Tribunal *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023) (***COVID-19 Report***) at 44.

[29] Waitangi Tribunal, *The Ngawha Geothermal Resource Report 1993*, (Wai 304, 1993) (***Ngawha Report***) at 101–102.

[30] Waitangi Tribunal, *The Takutai Moana Act 2011 Urgent Inquiry Stage 1 Report* (Wai 3400, 12 September 2024), at 10.

[31] *COVID-19 Report* at 44; *Broadcasting Assets* at 517.

interest.[32] This balancing exercise, however, must still be carried out in a manner consistent with Crown Treaty obligations.[33]

16. The Respondent emphasises that it is "reasonable" for the decision-maker to focus on localised issues and engagement with directly affected iwi, thereby disregarding broader impacts, associated with climate change.[34] In THRMoA's submission the concept of "reasonableness" cannot be used to prematurely limit the scope of the Treaty assessment. The correct starting point is identifying the relevant Māori rights and interests involved in the decision.[35] Once those rights are understood, the reasonableness of Crown actions must be assessed considering those interests as against the relevant Treaty principles. [36] Prioritising reasonableness too early risks undermining the protective nature of the Treaty and the obligation on the Crown to make informed decisions.

The proper interpretation of the CMA, s 4

17. The Respondent submits that s 4 must be read in the context of the CMA as a 'permitting regime'.[37] In THRMoA's submission, it is the converse. Section 4, and the Treaty's constitutional status requires the promotion of permits to be read in the context of the Treaty and its principles. This may or may not lead to the declining of a permit, but the Treaty assessment should not be unduly narrowed or reduced before undertaken. Such an approach would be inconsistent with

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[32] Waitangi Tribunal *He Maunga Rongo* (Wai 1200, 2008) Vol 4 (***He Maunga Rongo Vol 4***) at 1239.

[33] *He Maunga Rongo Vol 4* at 1238.

[34] Respondent submissions at [65]-[66].

[35] The Waitangi Tribunal in their *Report on the Trans-Pacific Partnership Agreement* (Wai 2522, 2016), concluded that a broad approach to determining the nature and extent of Māori interests was appropriate. They found it overly reductionist to limit Māori interests to those held by Māori as investors, businesses and landowners (at 14). Instead a broader range of interests such as access to affordable medicines and intellectual property rights existed (at 40). In *He Maunga Rongo Vol 4*, the Tribunal said, in the context of Māori and Crown interests in the environment, that "in the balancing of interests required for a successful partnership there is a place for all interests…" in that exercise. The implication being that all interests needed to be in the mix to determine whether Crown's actions were "consistent with its Treaty obligations": at 1238.

[36] In the human rights context, to which analogies may be drawn, it has been recognised that in order to assess reasonable limits on a right, it is first necessary to assess the scope and nature of the right in question: *Attorney General v Chisnall* [2025] NZSC 178 at [106].

[37] Respondent submissions at [58].

TTR and read down the applicability of the Treaty.

The relevance of the Minerals Programme

18. Section 14(1)(b) of the CMA requires that a minerals programme (**MPP**) must set out how the Minister will have regard to Treaty principles for the purposes of that MPP. Section 22 of the CMA provides that the Minister must act in accordance with any MMP in place. The applicable MMP in this case set out Treaty considerations at cl 2, which largely focused on consultation procedures and provided for the exclusion of certain land from permits. Section 22(2), however, states that the CMA or any regulation will take precedence over the MMP in the event of an inconsistency. This affirms that while the MPP may practically assist the decision-maker's assessment of Treaty principles, it is not exhaustive. The Treaty obligation cannot be constrained by the narrowed approach enumerated in the MPP.[38]

III. APPLICATION OF TREATY PRINCIPLES IN THIS CONTEXT

Is the impact of climate change on Māori generally relevant to the consideration?

19. Both Parties, the High Court and the Court of Appeal accept that "the impact of climate change on Māori is generally relevant to the Crown's Treaty obligations".[39] THRMOA concurs.

20. Climate change poses significant and disproportionate risks to Māori interests protected under Articles 2 and 3 of the Treaty, particularly the physical and cultural relationship with the environment. As the Appellants highlight, many taonga within the environment are vulnerable; Māori land suffers erosion; marae and urupā are at risk of inundation; taonga species are declining; mahinga kai areas are disappearing and mātauranga is threatened.[40] These environmental

[38] *TTR* at [150]-[151].
[39] Court of Appeal judgment at [107]. See also High Court judgment at [99] and Respondent submissions at [66].
[40] The appellants refer to two reports that discuss in detail the way Māori will be impacted by the effects of climate change; **[[301.0001]]** and H-O Pörtner et al, IPCC, 2022: Climate Change 2022:

and associated cultural impacts go beyond the wellbeing of Māori communities and strike at the heart of tribal identity and tikanga that are intrinsically linked to the natural environment[41] and guaranteed under the principle of tino rangatiratanga.[42] Climate change is an existential threat to Māori physically, culturally and spiritually.

21. In THRMoA's submission Treaty principles impose a duty on the Crown to actively protect Māori interests from these severe impacts of climate change. This obligation is reinforced by the role assumed by the Crown in managing foreign relationships and preventing and mitigating the impacts of climate change both internationally and domestically.[43] Given the seriousness of climate change, the protective obligation should be viewed in a broad sense.[44]

22. The Crown's Treaty obligations are relevant to Crown actions that engage with climate change, including decisions under the CMA. The Waitangi Tribunal has already affirmed that Treaty principles are relevant to the management of petroleum and its impacts on Māori environmental interests.[45] Furthermore, fossil fuel emissions are the primary contributor to climate change. Over 90% of global carbon dioxide emissions, and 75% of global greenhouse gas emissions come from fossil fuels.[46] Permits issued under the CMA, including for

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Impacts, Adaptation, and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge, Cambridge University Press, 2022).

[41] See for example Ranginui Walker *Ka Whawhai Tonu Mātou: Struggle Without End* (2nd ed, Penguin Books, Auckland, 2004) at 70. See also Waitangi Tribunal *The Report on the Management of the Petroleum Resource* (Wai 796, 2011) (the ***Petroleum Management Report***) at Chapter 2 and particularly at 32: "landmarks…including mountains, rivers and lakes…hold the mauri of a district and a whole tribe. All iwi have landmarks which are their symbols of identification and mana".

[42] The courts have recognised that tikanga Māori is a "necessary and inevitable expression" of tino rangatiratanga and that the Article 2 guarantee extends to the protection of Māori custom and cultural values: see *Ngāti Whātua Ōrakei Trust v Attorney-General (No 4)* [2022] NZHC 843 at [582] and [586].

[43] *Te Mana Whatu Ahuru* at 216.

[44] See the point in *Broadcasting Assets* at 51, above n 26. In Waitangi Tribunal *Ngawha Geothermal Resource Report* (Wai 304, 1993), the Tribunal held that "in the case of a very highly valued, rare and irreplaceable taonga of great spiritual and physical important to Māori, the Crown is under an obligation to ensure its protection, save in very exceptional circumstances" at 152. That same logic is applicable in the context of an existential threat.

[45] Waitangi Tribunal *The Report on the Management of the Petroleum Resource* (Wai 796, 2011) (the ***Petroleum Management Report***) at 147 and 165.

[46] The United Nations "Causes and Effects of Climate Change" (accessed 27 April 2025) United Nations | Climate Action <https://www.un.org/en/climatechange/science/causes-effects-climatechange#:~:text=Fossil%20fuels%20%20coal%2C%20oil%20and,they%20trap%20the%20sun's%20heat>

exploration, form part of a chain of activities to enable fossil fuel emissions. THRMoA submit that the Māori Treaty interest must be considered at each decision-making point. While a PEP may not necessarily lead to a Petroleum Mining Permit (**PMP**), it is a significant step towards mining and the combustion of fossil fuels, warranting Treaty consideration at that stage. Although the precise factors to be weighed may differ at each step, the link between the decision, the activity, and the possible end outcome means the decision-maker was required to grapple with the impacts of climate change on Māori when assessing Treaty principles.

Improper to restrict considerations only to those raised by localised impacts

23. A key issue in this appeal is the extent to which the decision-maker was entitled to confine her Treaty assessment to issues raised by and affecting local iwi and hapū within Taranaki.

24. The applicable MMP set out that, to meet the Crown's Treaty obligations, any decision-maker under the CMA must engage with iwi and hapū whose rohe includes a permit area or who will be directly affected by a permit.[47] Consultation was initially conducted with five Taranaki iwi to open a block offer for applications for PEPs.[48] The iwi responses primarily focused on localised impacts of PEP's on their rohe. Te Korowai o Ngāruahine Trust[49] were the only iwi to raise concerns that ongoing mineral exploration went "against the commitment to move to a low emissions economy" and noted they saw the need to "take a stand against oil and gas explorations".[50]

25. Further consultation was not undertaken prior to the decision to grant the PEPs, but the decision-maker considered the iwi views

[47] See **[[301.0015]]**, cl 2.2.
[48] The iwi and hapū groups consulted were Te Korowai o Ngāruahine Trust, Te Kotahitanga o Te Ātiawa Trust, Te Kāhui o Taranaki Iwi, Te Rūnanga o Ngāti Ruanui Trust and Te Rūnanga o Ngāti Mutunga.
[49] A post-settlement governance entity for Ngāruahine.
[50] **[[302.0541]]** at **[[302.0561]]**.

expressed in the block offer consultation.[51] The advice provided to the decision-maker emphasised the views expressed by Te Rūnanga o Ngāti Ruanui, Te Kotahitanga o Te Ātiawa and Te Kāhui o Taranaki Iwi, because those iwi were "most affected" by the decisions due to their geographical location.[52] Te Korowai o Ngāruahine Trust's concerns about emissions were neither mentioned in the official advice, nor considered by the decision-maker. Those concerns had been disregarded in an earlier Ministerial briefing on the block offer consultation, which noted that Te Korowai's opposition did "not align with the CMA and consideration the Minister must consider".[53]

26. The High Court affirmed the decision-maker's approach, concluding she was entitled to focus on localised impacts and issued raised by iwi whose rohe are part of the permit areas.[54] Cooke J appeared to focus on the need to respect the rangatiratanga of iwi and hapū in the permit area.[55] He noted that, had iwi and hapū whose traditional lands were subject to the permits raised concerns about climate change, they would have needed to be addressed.[56] The Court of Appeal similarly concluded the decision-maker was entitled to focus on localised issues and engagement with affected iwi.[57]

27. THRMoA agrees the views of iwi and hapū whose rohe are part of the permit areas are central to decisions under s 25 and Treaty assessments. The grant of permits has the potential to significantly impact those hapū and iwi. Rangatiratanga is a paramount Treaty principle[58] and may require considerable weight to be given to their views. However, in THRMoA's submission, it is an error to confine relevant Treaty interests solely to localised impacts or concerns raised by mana whenua. Section 4 is a broad requirement. Limiting

[51] **[[201.0169]]** at **[[201.0180]]** at [38]-[42]; **[[201.0189]]** at [57]-[59]; **[[201.0191]]** at [69]. See also **[[305.1837]]** at **[[305.1857]]** at 21 and **[[305.1891]] at [[305.19090]]** at 19.
[52] **[[305.1837]]** at **[[305.1858]]** at 22 and **[[305.1891]] at [[305.1910]]** at 20.
[53] [[**302.0541]**] at **[[302.0562]]**.
[54] High Court judgment at [101]-[106].
[55] High Court judgment at [103].
[56] High Court judgment at [99].
[57] At [95] and [108].
[58] *Carter Holt Harvey Ltd v Te Rūnanga o Tūwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC) at [27]; *Tino Rangatiratanga Report* at 66.

the Treaty interest in this way is overly reductionist.

28. Furthermore, this approach risks placing the full burden on local iwi and hapū to raise Treaty concerns. As highlighted in the *Petroleum Management Report*, Māori face significant barriers to participation in petroleum permitting processes, including short consultation timeframes and lack of capacity, time, and resources, resulting in limited dialogue and reactive engagement.[59] The structure and approach to consultation can also limit the scope of responses.[60]

29. The Crown's duty of active protection does not necessarily depend on Māori expressly articulating an issue.[61] For example, if the Crown were aware that a permit would desecrate a wāhi tapu, the duty to protect would still apply, even if no concern were raised. Similarly, it was not necessary for local iwi to have raised climate change for it to be relevant to the decision. Climate change is an obvious and significant risk to Māori interests. Failure to consider it would be passive, not active, protection.

30. Moreover, the High Court's conclusion that climate change concerns would have been relevant if raised by mana whenua, but not when raised by a neighbouring iwi, is arbitrary.[62] Climate change impacts are cumulative and transcend boundaries. Given climate change is not solely a localised issue, there is no logical basis for distinguishing between general climate concerns raised by one iwi versus another. The real question is therefore not whether the appellants can "raise arguments on behalf of local iwi," as the High Court framed it[63] but

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[59] *Petroleum Management Report* at 154.
[60] For example, lack of plain language explanations of technical matters relating to proposals for petroleum mining was identified as an issue facing Māori in consultation with petroleum companies. Another issue was lack of access to funding for cultural impact assessments: *Petroleum Management Report* at 94-95. The Tribunal concluded the Crown's failure to provide for meaningful Māori engagement in processes under the Act itself amounted to a breach of Treaty principles: at 54.
[61] The Court of Appeal in *Lands* concluded that the Crown's informed decision-making obligation can be met in some circumstances without consultation with Māori: 683 per Richardson J. The corollary of that is that there must be occasions where the Crown has sufficient information to identify a protective obligation towards a Māori interest, despite Māori not articulating the issue.
[62] High Court judgment at [101]-[103].
[63] High Court judgment at [103] and [112].

whether the Crown has complied with the correct legal standard set by Treaty principles. That requires proper consideration of mana whenua views alongside broader Māori interests, where engaged.

31. The interests and obligations of both Māori and the Crown exist at multiple levels. The approach of the High Court, Court of Appeal and Respondent emphasises localised impacts and rohe boundaries. However, Treaty principles are not strictly territorial. Such an approach risks being inconsistent with the nuances of tikanga, which views the environment as a living whole.[64] Whilst Māori relationships with land and water are rooted in place, they are not rigidly confined to rohe boundaries.[65] Environmental and cultural effects often cross rohe and affect multiple iwi.

32. To illustrate, the Rangitāiki River flows through the rohe of several iwi and hapū, each with a distinct but interconnected relationship with the awa.[66] Decisions up-stream, such as land use or discharge permits, affect the river's health for all downstream iwi. *Greenpeace Aotearoa Inc v Hiringa Energy Ltd* offers a different example where one Taranaki-based hapū supported the establishment of wind turbines within their rohe, while other hapū, who were affected visually and culturally, opposed the project.[67] Although the Court of Appeal ultimately upheld the project as Treaty consistent, placing weight on the views of the local hapū most directly affected, it nevertheless considered all relevant Treaty interests as part of the Treaty assessment and application exercise. The point remains: Treaty interests are not confined by the physical footprint of a project. Weight of the respective interests in context is a separate question.

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[64] *Petroleum Management Report* at 24, referring to the evidence of Wiremu Pākehā and at 26: "another lesson is the relationship of all things in the environment through whakapapa".
[65] Edward Durie *Custom Law* (Reprint, Treaty of Waitangi Research Unit, 2013) at 84-89.
[66] In recognition of this interconnected relationship, representatives of Ngāti Manawa, Ngāti Whare, Ngāti Awa and Tūwharetoa alongside delegates from the Whakatane District Council and Bay of Plenty Regional Council have a co-governance partnership to protect and enhance the mauri of the Rangitāiki River. See: <https://www.boprc.govt.nz/your-council/council-and-region/committees/rangitaiki-river-forum/>
[67] [2023] NZCA 672 at [179]-[180].

33. Petroleum permitting decisions may have localised as well as broader environmental and cultural impacts. The decision-maker permits the whole activity, not just the local exploration or mining. Whilst exploration and mining have local effects, the end impact of petroleum exploration and associated mining may also be felt regionally, or, as in this case, more widely through contributing to climate change, which affects Māori generally. Given the Crown's foremost obligation of active protection, the broader Treaty obligations must form part of the assessment.

34. It is uncompelling that climate change is outright excluded from the Treaty assessment under the CMA particularly where Parties accept that climate change is generally relevant to Treaty principles.[68] The narrow focus on localised impacts misdirects the Treaty assessment. The proper approach is to identify all relevant rights and interests and obligations under the Treaty and to carefully balance these within the Treaty framework as appropriate.

Does Crown climate action elsewhere relieve the decision-maker of the obligation to consider the impacts of climate change on Māori?

35. Part of the Respondent's argument is that the wider impacts of climate change on Māori are addressed elsewhere, such as through the CCRA, and therefore do not need to be considered in this context.[69] The High Court and Court of Appeal accepted that while climate change considerations can become relevant to decisions under the CCRA, s 4 does not require the decision-maker to conduct a wide-ranging inquiry into the broader potential impact of climate change and mitigation measures on Māori and that the balancing of considerations is addressed elsewhere.[70]

36. THRMoA acknowledges that the Māori interest in climate change, exists at multiple levels. As already identified, the adverse impacts of

[68] Court of Appeal judgment at [107]; Respondent submissions at [66].
[69] Respondent submissions at [72]–[75].
[70] Court of Appeal judgment at [108].

climate change on Māori are significant and disproportionate.[71] There is a climate emergency and the on-going combustion of fossil fuels is the primary cause and largest contributing sector.[72] However, Māori also have a significant stake in the economy. According to MBIE figures, Māori contributed $32 billion to the economy in 2023 and have an asset base of $126 billion.[73] These interests include sectors associated with fossil fuel emissions. The economic impact of climate change measures could adversely impact Māori and must be weighed as part of a just transition.[74]

37. THRMoA submit that the complexity of Māori interests and the existence of broader climate change frameworks, do not exclude climate change from the Treaty assessment required under the CMA. Excluding it would be over-exclusionary and inconsistent with the Crown's duty to actively protect Māori interests.

38. To illustrate, if a mining permit were sought for fossil fuel extraction in quantities that would materially contribute to New Zealand exceeding its emissions budgets set under the CCRA,[75] failure to meet those targets could directly undermine the Crown's Treaty commitments. In that context, active protection would plainly require the decision-maker to consider effects of climate change on Māori. Although this hypothetical involves a mining, rather than exploratory permit, it highlights the need for decision-makers to engage with the specific contexts when applying Treaty principles.

39. The Respondent suggests that declining the PEPs may have conflicted with the principle of partnership, given Māori involvement

[71] See above at [20] and n 40.
[72] See above at [22] and n 46. See also **[[303.1105]]** at **[[303.1118]]** and the declaration of a climate emergency by the New Zealand Parliament at **[[302.0839]].**
[73] Ministry for Business and Innovation "Te Ohanga Māori – The Māori Economy" (10 March 2025) <https://www.mbie.govt.nz/business-and-employment/economic-growth/te-ohanga-maori-the-maori-economy/te-ohanga-maori-the-maori-economy-reports>
[74] The High Court acknowledged this at [108].
[75] Mallon J raised a similar example in the Court of Appeal judgment at [127] where she stated that "if an emissions budget were on course to be significantly exceeded it would be odd if the Minister was precluded from taking into account any published advice from the Climate Change Commission".

in climate change mitigation initiatives.[76] That conclusion may be open. However, it could only properly be reached by determining whether these particular permits were of such importance that declining them would undermine Māori interests of a just transition – a factual inquiry that needs to be undertaken.

40. These examples underscore that the factual context of each decision is critical to assessing what Treaty principles require. In some cases, decisions under s 25 may warrant only a high-level consideration of climate change frameworks, particularly where it is clear that Māori Treaty interests have been appropriately addressed elsewhere. However, climate change and its impact on Māori cannot simply be left out of the Treaty assessment altogether.

CONCLUSION

41. Prospecting, exploration and mining engage Māori Treaty interests in multiple ways, including through its contribution to climate change. Meeting the Treaty standard requires genuine understanding and active consideration of the Māori interests at stake.

42. In the climate crisis context, the principle of active protection required the decision-maker to consider the broader effects of climate change on Māori. It was too narrow to confine the assessment to localised impacts. This inquiry does not necessarily demand a wide-ranging investigation, but rather a targeted consideration of how the applications impact Māori generally through climate change. That approach properly reflects the Treaty obligations embedded in s 4, ensuring decision-making is protective and responsive to the evolving impacts of climate change on Māori.

DATED at Whakatane this 29th day of April 2025

[76] Respondent submissions at [70].

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