The Waitangi Tribunal and Geothermal Resource Management

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TUHINGA WHAKARĀPOPOTO |ABSTRACT

For over 30 years, the Resource Management Act (1991) (RMA) has required that resource management decisions "take into account" the principles of Te Tiriti o Waitangi (the Treaty of Waitangi), New Zealand's founding document. Subordinate instruments such as Regional Policy Statements, Regional Plans and District Plans must also recognise and provide for Māori cultural values, ancestral connections to land and water, wāhi tapu, and other taonga. Local authorities, including territorial and regional councils, are required to engage proactively with iwi and hapū, reinforced by obligations under the Local Government Act 2002 (LGA).

Recent legislative reforms, including the Fast-track Approvals Act 2024 (FTAA) and Resource Management (Consenting and Other System Changes) Amendment Bill 2024, are reshaping this framework. Iwi and Māori have raised concerns that these reforms may erode their Treaty rights and limit Māori participation in environmental decision-making, including in the geothermal sector. This paper explains the role of the Waitangi Tribunal and how its inquiries and recommendations can influence geothermal resource management, particularly through the interaction of Treaty obligations, local authority responsibilities, environmental planning frameworks, and ongoing legislative reform.

1. STATUTORY FRAMEWORK

Under current New Zealand law, geothermal resources are not owned per se. However, land access agreements are required to undertake investigation and development of underground geothermal energy and fluids. In addition, resource consents are required under the RMA for land use activities associated with geothermal development, as well as for the taking, use, and discharge of fluids, water, and gases. These consents are administered by local authorities, with territorial authorities responsible for land use consents, and regional councils responsible for take, use, and discharge consents.

The overall purpose of the RMA has been to provide for the sustainable management of New Zealand's natural and physical resources. The RMA is built upon principles of sustainability and integrated management, enabling resource use and development, provided adverse effects are avoided, remedied or mitigated. The RMA is effects-based and evidence-driven, and requires decision-makers to consider alternatives, alongside public consultation and participation in both planning and consenting processes. Part II of the RMA sets out the guiding framework for resource management, including the use of geothermal water and steam.

In addition, several other statutes apply to the development and use of geothermal resources. These include the Marine and Coastal Area (Takutai Moana) Act (2011) (MACA), the Conservation Act (1987) and Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act (2012) (EEZ Act). The regulatory framework varies depending on location, whether the project is on land, within the coastal marine area (up to 12 nautical miles offshore), or beyond this within New Zealand's Exclusive Economic Zone. While both the MACA and the EEZ Act apply to offshore areas, geothermal projects have not been advanced under either regime. The consenting difficulties faced by offshore proposals such as the Trans-Tasman Resources iron sand project illustrate the significant barriers to progressing extraction activities in those environments. That project has faced sustained legal challenges and strong opposition from a range of parties, including iwi and Māori organisations, highlighting the complexity of gaining consent for offshore extraction.

There are no national policy statements that apply exclusively to geothermal development. However, some national policy statements influence how geothermal resources are managed. These include:

A. the National Policy Statement for Freshwater Management 2020 (NPS-FM), which is relevant to activities such as geothermal water takes and discharges);
B. The National Policy Statement for Renewable Electricity Generation 2011 (NPSREG); and
C. The National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB), which specifically relates to Geothermal Significant Natural Areas and Wetlands.

It is noted that the NPS-IB includes specific provisions exempting certain renewable electricity generation activities from the standard requirements relating to significant natural areas. However, these exemptions apply primarily to the development, operation, maintenance, and upgrade of existing assets, and do not automatically remove Significant Natural Areas (SNA) classifications or eliminate council responsibilities to manage environmental effects associated with new developments.

For further detail on the statutory framework applying to geothermal development prior to 2021, see Kissick et al. (2021). Legislation proposed and enacted since 2022, as part of ongoing reform of the RMA and related statutes, is summarised in Tables 1 and 2 in Section 1.3.

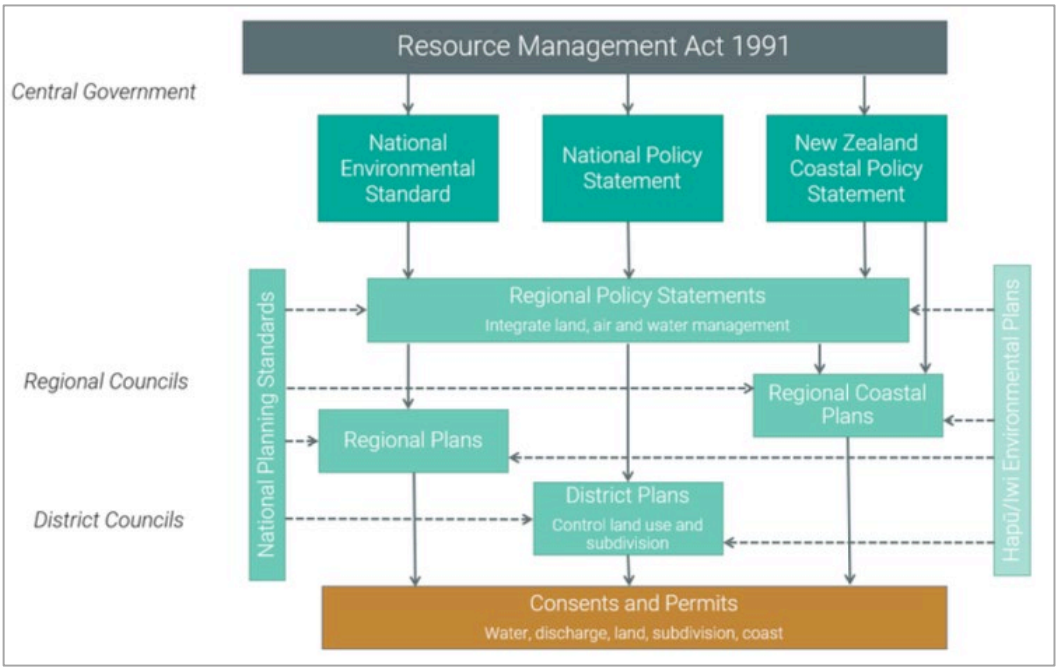

Figure 1: RMA document hierarchy (from Kissick et al, 2021)

1.1 Iwi Management Plans

Māori have a recognised constitutional role in New Zealand society, and an established presence in the national economy. Since the early 1900s, access to Māori owned land and the geothermal resource beneath, has been sought for power generation. Māori and their representative entities have participated in geothermal development in various ways, including as landlords, commercial partners, and equity holders, generating returns for Māori with commercial interests in these projects.

Traditional Māori social structures (Figure 2) consist of Iwi (tribes), Hapū (sub-tribes) and whānau (extended families). They are held together by kinship with each other and a shared common ancestor. The most used legal entities for governing geothermal developments are Māori Incorporations and Ahu Whenua Trusts (or 'Māori Trusts' as they are often called) (Blair, 2024).

Many iwi with geothermal resources within their rohe (region) have developed Iwi Management Plans (IMPs), which territorial authorities are required to take into account. An IMP is prepared and approved by iwi to address resource management issues of significance within their rohe. These plans typically set out iwi perspectives on cultural values, historical associations, rohe boundaries, and protocols for consultation and engagement in resource consent processes and plan development. In the context of geothermal resources, IMPs consistently emphasise sustainability and the protection of the taonga. They provide a mechanism for iwi to articulate their interests and expectations regarding geothermal management. For example, the Ngāti Tuwharetoa IMP for the Waikato region expresses aspirations for kaitiakitanga, including that the involvement of tangata whenua in monitoring processes established through resource consents (Ngāti Tuwharetoa, 2003).

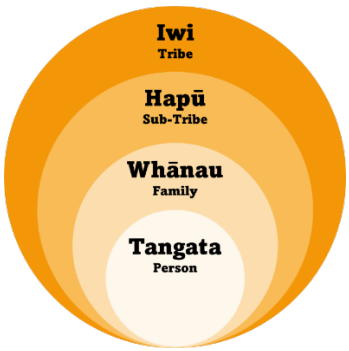

Figure 2. Māori social structures (from Blair, 2024).

1.2 Te Tiriti o Waitangi | Treaty of Waitangi

The Treaty of Waitangi is Aotearoa New Zealand's founding document. Signed on the 6th February 1840, it is an agreement between the British Crown and Māori rangatira (chiefs) to found a nation state and establish a government in New Zealand. The Treaty is referenced in numerous Acts of Parliament, and recognised in New Zealand's common law. It reflects the partnership intended between Māori and the Crown and provides overarching direction for many aspects of governance, including resource management.

For over 30 years, the RMA (Section 8) has required that resource management decisions "take into account" the principles of the Treaty. Subordinate planning instruments, such as Regional Policy Statements, Regional Plans, and District Plans (Figure 1), must include policies that recognise and provide for Māori cultural values, ancestral connections with land and water, wāhi tapu, and other taonga (sections 6(e) and 6(f)). Local authorities are also required to engage with iwi and hapū during the development and review of these planning documents, to support Māori participation in resource management processes. These requirements are reinforced under the LGA which obliges councils to facilitate Māori participation in decision-making (sections 4, 14(1)(d),

and 81), build Māori capacity to engage, and provide information to support effective participation.

The report Nga Wai Ariki o Rotorua (2019) sets out the perspectives of hau kainga peoples in the Rotorua area who have longstanding cultural and historical connections to the geothermal resource. The report emphasises the need for a genuine Treaty partnership approach to geothermal management, including:

1. Protection of the rights of hau kāinga to restore and maintain access to the geothermal resources.
2. Protection of the rights of hau kāinga to manage and safeguard their geothermal resources which including ensuring their sustainable use.
3. Implementation of a values-based approach to geothermal allocation that enhances social and cultural outcomes and delivers tangible benefits to communities.
4. Active involvement of hau kāinga in all aspects of hot and cold-water management across the Taupō Volcanic Zone including planning, decision-making and monitoring.

1.3 Legislative Reform

New Zealand's resource management system is undergoing another period of significant reform. Since 2022, the RMA has been under review, with replacement legislation anticipated. The Government has cited the need to simplify the complex network of regional, city and district plans, and to establish a unified system intended to prevent environmental degradation while supporting economic development. The current RMA framework has been criticised for creating uncertainty for both developers and communities due to its complexity and inconsistent decision-making. The current National Coalition Government has confirmed its intention to repeal the RMA and replace it with two new Acts: the Natural Environment Act (NEA) and the Planning Act (PA). The reform agenda is framed around property rights, deregulation, and centralised planning frameworks. The stated aim is to reduce regulatory barriers, accelerate development, and clarify roles between central and local government. However, these changes raise complex challenges, particularly in relation to environmental protection, iwi and hapū participation, and public confidence in the decision-making system.

At the time of writing, a suite of legislative changes affecting geothermal resources, Māori and community input into resource management decision making frameworks has been proposed, enacted or repealed (Tables 1 & 2) following the change in Government. These reforms have generated widespread concern among Māori, environmental groups, and legal experts, who argue they risk marginalising Māori voices and weakening established protections for Indigenous rights in resource management. Historically, the combination of the RMA, subordinate instruments, and LGA consultation processes have provided mechanisms for Māori to participate and have their interests considered in regional resource management, including geothermal development. The durability of those protections under the new legislative framework remains uncertain.

In addition to structural changes, the Government has proposed replacing the general Treaty clause under section 8 of the RMA with a more targeted provision recognising specific Treaty settlements and agreements. Concerns have been raised by iwi leaders, legal commentators, and Māori organisations that this approach risks narrowing the application of Treaty principles, as it may limit obligations to parties with formal settlement arrangements, excluding those still pursuing claims or lacking formal agreements. Without clear legal drafting and robust safeguards, there is concern that the proposed changes may reduce the visibility and enforceability of Treaty principles across environmental decision-making frameworks.

To date, geothermal resources have not been meaningfully distinguished in government policy or public submissions, despite their national significance and the unique cultural relationships many iwi and hapū maintain with geothermal taonga as well as the desire of many to develop them. This generalised approach also contributes to ongoing uncertainty about how geothermal resources will be recognised, allocated, and protected in the reformed system. In the proposed NEA, geothermal is grouped with other allocable resources such as freshwater, coastal space, and assimilative capacity, and will be subject to nationally consistent environmental limits and allocation frameworks. More broadly, geothermal governance has been identified as a longstanding gap in national policy, with most decision-making delegated to regional authorities and subject to inconsistent classifications, thresholds, and protections. This creates additional barriers to Māori-led development, limiting the ability of those with access to geothermal resources to progress projects within a clear and consistent national framework.

While these structural reforms are intended to address long-standing issues of delay, inconsistency, and cost under the RMA, they are being implemented in a climate of significant concern regarding environmental degradation, reduced public input, and Treaty compliance. The Crown has confirmed that new resource management legislation will include a Treaty clause. However, this will not replicate the existing approach under section 8 of the RMA, which requires decision-makers to "take into account" the principles of the Treaty of Waitangi. Instead, the Government intends to adopt a more targeted clause that references specific Treaty settlements and agreements.

2. TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI | THE WAITANGI TRIBUNAL

Established by the Treaty of Waitangi Act 1975, Te Rōpū Whakamana i te Tiriti o Waitangi (the Waitangi Tribunal) is a permanent commission of enquiry. Any group of Māori may lodge a claim with the Tribunal if they have been, or are likely to be prejudicially affected by Crown action or omission since 6 February 1840 that are inconsistent with the principles of the Treaty. The Articles of the Treaty (Table 3) are central to the Tribunal's jurisdiction and role. The Treaty principles, as expressed by the Courts and the Waitangi Tribunal, are:

1. The Kawanatanga Principle (The Principle of Government): Recognises the Crown's right to govern and make laws within New Zealand.
2. The Rangatiratanga Principle (Principle of Self-Management): Affirms the right of iwi to exercise authority and manage their taonga.
3. The Principle of Equality: Acknowledges that Māori and Pākehā have equal legal rights and protections.
4. The Principle of Cooperation: Requires the Crown to engage with Māori on significant matters.
5. The Principle of Redress: Requires the Crown to address and resolve Māori grievances.

Table 1: Recent bills and legislation.

Legislation	Description	Status
Proposed, enacted and then repealed		
Natural and Built Environments Act (NBA)	The Act aimed to (replace the RMA and) protect the health of the natural environment; and enable the use and development of the environment in a way that promotes the well-being of both present and future generations.	Repealed (Proposed November 2022, enacted August 2023, repealed December 2023)
Spatial Planning Act (SPA)	This Act aimed to (replace the RMA and) provide for regional spatial strategies and integrate the performance of functions across a range of Acts (including the NBA, LGA etc).	Repealed (Proposed November 2022, enacted August 2023, repealed December 2023.)
Proposed and enacted		
Fast-Track Approvals Act	Enables a 'fast-track' decision-making process for infrastructure and development projects with regional or national benefit.	In force (Proposed in March 2024 under urgency*; enacted December 2024)
Resource Management (Freshwater and Other Matters) Amendment Act 2024	Phase 1 of amendments to the RMA. Removes the Te Mana o te Wai hierarchy from consent decisions, delays freshwater planning instruments, allows consents for discharges with significant adverse effects subject to conditions, and introduces broader Ministerial discretion to amend national direction.	In force (Proposed in May 2024 under urgency*; enacted October 2024)
Proposed and defeated		
Principles of the Treaty of Waitangi Bill	This bill sought to introduce legislation that defined the Treaty principles, based on ACT Party policy and ideology.	Defeated (Proposed November 2024, defeated April 2025)
Proposed and in consultation		
Resource Management (Consenting and Other System Changes) Amendment Bill 2024	This bill is phase 2 of amendments to the Resource Management Act 1991, with a focus on five theme areas: infrastructure and energy, housing growth, farming and the primary sector, natural hazards and emergencies, and system improvements.	Recommended (Proposed December 2024, submissions closed February 2025, Environment Committee recommend all amendments be passed.)
Regulatory Standards Bill 2025	The bill proposes a set of regulatory principles that lawmakers, agencies and ministries would have to consider in regulation design, with the principles based on ACT Party ideology.	In consultation (Proposed May 2025)

** 'urgency' is a mechanism by which the New Zealand Government can rush laws through Parliament, bypassing normal procedures to expedite the passage of legislation, potentially skipping select committee scrutiny and limiting public consultation.*

Table 2: Regulatory Instrument Reform

Legislation/Policy	Description	Status
National Policy Statement for Freshwater Management (NPS-FM)	Proposed amendments remove Te Mana o te Wai from consent decision-making, alter freshwater planning timeframes, and change freshwater allocation settings. Implications for geothermal water takes remain under review.	In consultation (Consultation opened June 2025; final policy expected late 2025)
National Policy Statement for Renewable Electricity Generation (NPS-REG)	Proposed amendments strengthen national direction for renewable energy, including geothermal, with greater emphasis on emissions reduction and Māori participation.	In consultation (Consultation opened June 2025; final policy expected late 2025)
National Policy Statement for Indigenous Biodiversity (NPS-IB)	Proposed changes to SNA identification requirements and biodiversity protections may affect Geothermal Significant Natural Areas and associated cultural sites.	In consultation (Consultation opened June 2025; final policy expected late 2025)

The Tribunal's jurisdiction is broad, and it has the authority to establish benchmarks against which Crown actions are assessed. Through its interpretations of the Treaty, the Tribunal determines whether the Crown has breached Treaty principles. While the Tribunal's recommendations are not legally binding and their implementation remains at the Crown's discretion, they are highly influential. Tribunal inquiries have historically driven significant changes in legislation, policy, and Crown practices.

3. WAITANGI TRIBUNAL CLAIMS RELATING TO GEOTHERMAL

The Tribunal's jurisdiction is broad, and it has the authority to assess Crown actions against the principles of the Treaty of Waitangi. Through its inquiries, the Tribunal determines whether the Crown has breached those principles and makes recommendations to address identified breaches. However, Tribunal recommendations are not legally binding; it remains at the Crown's discretion whether to adopt or implement them. While Tribunal findings can be highly influential, particularly in shaping Treaty settlements and informing public debate, their legal weight is limited unless codified through legislation or policy.

The courts have confirmed that Waitangi Tribunal processes and RMA proceedings operate within distinct legal frameworks (Sea-Tow Ltd v Auckland Regional Council, 1994). Tribunal findings do not override or displace statutory decision-making requirements under the RMA. However, courts have also recognised that Tribunal findings, while not determinative, may carry persuasive weight in certain contexts. For example, Tribunal interpretations have been

used to assist with the interpretation of Māori concepts and terminology within resource management processes (Winstone Aggregates Ltd v Franklin District Council, 2002).

Table 3: Articles of Te Tiriti o Waitangi (Waitangi Tribunal, 2025)

Article	English Version	Māori Version
1	*Scholars and the Tribunal have concluded Māori and the Crown held different interpretations of this provision. 'Sovereignty' had no direct equivalent in the context of Māori society.*	
	In the English text, Māori ceded 'sovereignty'.	Māori gave the British 'kawanatanga', the right of governance*
2	*Scholars and the Tribunal have concluded Māori and the Crown held different interpretations of this provision.*	
	The Queen guarantees to Māori the undisturbed possession of their properties, including their lands, forests, and fisheries, for as long as they wished to retain them. This text emphasises property and ownership rights.	The Māori text uses 'rangatiratanga' in promising to uphold the authority that tribes had always had over their lands and taonga. This choice of wording emphasises status and authority.
3	*This article is consistent in both versions, and emphasises equality and equity.*	
	The Crown promises to Māori the benefits of royal protection and full citizenship.	The Queen agrees to give Māori the same rights and duties of citizenship as the people of England.

Below are examples of Waitangi Tribunal reports that address geothermal resources.

3.1 Wai 304 - Ngawha Geothermal Resource Report (1993)

This claim concerned ownership of and the right to control, the Ngawha geothermal resource. As summarised in the WAI 304 (summary report) the two main components of the claim were the Crown's acquisition of land and hot springs at Ngawha, and the provisions of the Geothermal Act 1953 and the RMA, which the claimants argued were inconsistent with their rights under the Treaty of Waitangi.

Following a full inquiry the Tribunal found that the claimants hold rangatiratanga over Ngawha Hot Springs and that the Treaty of Waitangi guarantees the protection of this taonga for the people of Ngāpuhi. The tribunal recommended the return of four acres currently vested in the Crown and an amendment to the RMA to provide clearer direction to decision makers, ensuring decisions align with the principles of the Treaty of Waitangi.

The Tribunal found:

- Since 1894, the claimants have retained ownership and rangatiratanga over the Ngāwha hot springs located on one acre of land vested in the trustees of the Parahirahi C1 Māori Reservation. The claimants are entitled to the return and reinstatement of ownership and rangatiratanga over the additional four acres of land currently vested in the Crown as a recreation reserve.
- In considering ownership of the geothermal resource, the Tribunal found that isolating sub-surface geothermal fluid from the broader underground system does not create a valid basis to allocate exclusive ownership or rangatiratanga over the entire sub-surface resource to the owner of a single surface feature. No individual or group can validly claim exclusive rights to manage or control the underground geothermal fluid, or in all circumstances, exercise a veto over its extraction and use.
- The Crown is under a Treaty obligation to protect the claimants' taonga at Ngāwha. The degree of protection required depends on the nature and significance of the resource, and the Tribunal emphasised that the value attached to a taonga is a matter for Māori to determine.
- For the Crown's management of geothermal resources to be consistent with the Article 2 guarantee of Te Tiriti, that management must respect Māori tikanga and spiritual values. The Crown's authority to manage geothermal resources in the public interest must be constrained to ensure the claimants' interests in their taonga are preserved in accordance with their wishes. The Tribunal found no exceptional circumstances or overriding public interest that would justify a different conclusion or diminish the protection of the claimants' taonga.

The Tribunal recommended, among other things, that the RMA be amended to prevent a situation where claimant's rights are placed at risk of being diminished or outweighed by other considerations, resulting in Māori Treaty right not receiving the level of protection required under Article two of the Treaty. The Tribunal stated that it saw no alternative to the amendment it proposed if future Treaty breaches were to be avoided in the implementation of the RMA.

Following the release of the Tribunal's report, resource consents were granted for the construction of a geothermal electricity plant at Ngawha. The project was developed by a joint venture between Top Energy Ltd and the Tai Tokerau Māori Trust Board. In 2020, the plant owner, Ngāwha Generation Ltd (a wholly owned subsidiary of Top Energy Ltd), expanded the facility, doubling its generation capacity to 57 MW. Prior to this, Top Energy sold the hot springs property, which became the Ngāwha Springs Bath, to the ahu whenua trust Parahirahi Ngāwha Waiariki Trust. As kaitiaki of the resource, the Trust states that it has a responsibility to uphold the cultural and spiritual values of the resource, its long history, and its unique environment, while ensuring its sustainability into the future (Parahirahi Ngāwha Waiariki Trust, 2024).

Iwi interests in the Ngāwha geothermal resource have yet to be addressed through a comprehensive Ngāpuhi Treaty settlement. However, an investment fund, Tupu Tonu, was established in 2025 with the objective of acquiring commercial assets that may form part of the financial redress of a future Ngāpuhi settlement. One of the identified investment categories is infrastructure and energy, although it

remains unclear at this stage whether the energy component will include geothermal assets.

3.2 Wai 153 - Preliminary Report on The Te Arawa Representative Geothermal Resource Claims (1993)

These claims related to the Whakarewarewa, Rotokawa Baths, and Rotomā geothermal systems. The Tribunal acknowledged that the respective claimants hold rangatiratanga over hot pools and springs within these systems, exercise kaitiakitanga, and have expressed a clear intention to preserve these taonga.

The Tribunal referred to the same recommendations it made in the Ngāwha report and found:

- The hot pools known as the Rotokawa Baths are a taonga of the Rotokawa Baths claimants. They hold rangatiratanga over them and act as kaitiaki.
- The hot pools, springs, and other geothermal surface features within the Whakarewarewa claimants' land at Whakarewarewa Village, including the Rāhui Trust land, are taonga of the Whakarewarewa claimants. They hold rangatiratanga over them and act as kaitiaki.
- The Waitangi Soda Springs, located within the Waitangi No. 3 Springs Reserve, are a taonga of the Rotomā claimants. They hold rangatiratanga over them and act as kaitiaki.
- Article 2 of Te Tiriti o Waitangi requires the Crown to actively protect the claimants' interests, both in the benefit and enjoyment of their taonga and in their authority to exercise control over them. Failure to provide such protection constitutes a breach of Treaty principles.
- The Crown cannot discharge its Treaty duty of active protection by delegating control of geothermal resources to local or regional authorities or other entities in a way that does not ensure those authorities provide the same level of protection required of the Crown. If the Crown chooses to delegate, it must do so in a manner that upholds its Treaty obligations.
- The claimants' interests in geothermal resources are not limited by traditional or pre-Treaty technology or practices. In appropriate circumstances, those interests include the right to develop the resource for economic benefit using modern technology.
- It would be inconsistent with Treaty principles for the Crown to impose royalties or resource rentals for the use of geothermal resources within the claimed fields and retain those benefits, without first determining and giving appropriate effect to the claimants' interests.
- In relation to the wider geothermal resource, beyond the identified surface features, the Tribunal noted that the full extent of the claimants' interests could not be determined without further research into land sales and related matters.

The Te Arawa affiliated treaty settlement was finalised in 2008. As part of the redress package, the Te Arawa settlement entity, Te Pumautanga o Te Arawa, received the Whakarewarewa Thermal Springs Reserve, subject to existing leases. The Ngatamariki geothermal assets (including four wells), were also transferred to Te Pumautanga as a gift, with a notional value of $5 million and a five-year restriction on on-sale. In addition, as part of the settlement an outstanding Whakarewarewa Village debt of $295,000 was forgiven.

While the Waitangi Tribunal's findings in Ngāwha and Te Arawa have influenced aspects of Treaty settlements, the extent to which these recommendations have been embedded into statutory or regional planning frameworks remains limited. For example, despite Ngāwha claimants being recognised as holding rangatiratanga over specific geothermal taonga, no national policy statement or legislative amendment has directly codified these rights in relation to geothermal management. Similarly, the Tribunal's recommendation for clearer Treaty guidance within the RMA has yet to be implemented, leaving Māori reliant on general policy statements and variable council interpretations.

3.3 Wai 2358 - National Fresh Water and Geothermal Resources Inquiry (ongoing)

The Wai 2358, initiated in 2012 is of particular significance for geothermal resources. The third stage of the National Freshwater and Geothermal Inquiry is focussed on Māori rights and interests in geothermal resources as well as the Crown's historical and contemporary policies and practices regarding their management. The Tribunal's findings may have important implications for the future governance and management of geothermal resources, particularly as the regulatory and political landscape continues to evolve.

Parties to the inquiry include iwi, Māori landowners with geothermal interests, the Crown and a significant list of interested parties which include geothermal generators.

The parties have agreed the primary matters to be considered during this stage of the Inquiry, which are:

1. What Māori rights and interests in geothermal resources are guaranteed and protected by the Treaty of Waitangi?
2. Is the current law in respect of geothermal resources consistent with the principles of the Treaty of Waitangi?
3. If the current law in respect of geothermal resources is not consistent with Treaty principles, what recommendations should be made for the reform of the current law? What other recommendations (if any) should be made?

Evidence presented during the inquiry reflects widespread frustration with the implementation of regional planning frameworks that restrict Māori ability to develop geothermal taonga. Claimants have highlighted inconsistent system classifications, limited pathways for reclassification, and precautionary policies that entrench underutilisation of geothermal resources on Māori land, despite clear aspirations for development aligned with kaitiakitanga and economic objectives. The Tribunal will have the opportunity to make findings on these issues as part of the inquiry.

Notwithstanding the important questions and evidence being considered by the Tribunal, significant legislative reform affecting geothermal governance and Māori aspirations for development is already underway. The pace of these changes, including amendments to freshwater and environmental legislation, has the potential to reshape how Māori rights and interests are recognised and exercised in practice, irrespective of whether the Tribunal's findings have been fully implemented.

4. MĀORI COMMERCIAL USERS OF GEOTHERMAL

As discussed above, many Māori have been unable to access or develop geothermal resources and have therefore sought to have their interests in geothermal heard through the Waitangi Tribunal and through Treaty settlement processes.

While many Māori entities face structural and regulatory barriers to geothermal development, it is acknowledged that several successful examples exist. Entities such as Ngāti Tūwharetoa Geothermal Assets, Tauhara North No. 2 Trust, and Tuaropaki Trust have established commercial partnerships and developed geothermal projects that contribute to both economic development and energy generation (Climo et al., 2022). However, these successes reflect only a portion of the development potential associated with Māori-owned geothermal land. Evidence presented to the Waitangi Tribunal indicates that other Māori landowners continue to face barriers, including restrictive system classifications, fragmented regulatory processes, and challenges accessing capital and technical partnerships.

At present, the full extent of undeveloped Māori geothermal resources is not comprehensively documented, limiting the ability to quantify the overall scale of development constraints. Nonetheless, the recurring concerns raised through Tribunal inquiries and submissions to regional planning processes point to systemic issues that extend beyond isolated cases.

Across both successful and stalled developments, there is a shared aspiration among Māori landowners to improve the economic position of their communities through the sustainable use of geothermal resources. While some projects have been enabled through Treaty settlement processes, many have arisen independently, reflecting the widespread presence of geothermal resources beneath Māori land, irrespective of settlement outcomes.

4.1 Ngāti Tuwharetoa (Bay of Plenty)

Ngāti Tuwharetoa Settlement Trust (NTST) settled its Treaty claims in 2005 through the Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act, 2005. The redress recognised the economic loss suffered by Ngāti Tuwharetoa (Bay of Plenty) as a result of the Crown's breaches of its Treaty obligations. and provided financial resources to support their economic and social development. The settlement included a right of first refusal (RFR) over Crown geothermal assets supplying steam to the Tasman Pulp and Paper Mill, should those assets be offered for sale and the mill's owner decline to purchase them. NTST also received a RFR over a Crown-owned geothermal bore and associated land. As part of a back-to-back arrangement negotiated alongside the NTST settlement in 2005, the Crown agreed to transfer its geothermal assets to Mighty River Power (MRP), now known as Mercury. MRP paid $14 million for the assets and simultaneously on-sold the majority of them to Ngāti Tūwharetoa Geothermal Assets Ltd (NTGAL), a wholly owned subsidiary of NTGA. NTGAL has since expanded its geothermal holdings and partnered with MRP and other operators to develop and utilise the iwi's geothermal resources (Beehive, 2005)

4.2 Te Arawa

In 2008, Te Arawa and the Crown reached a second and final settlement of the Te Arawa historical claims through the Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008. As part of the redress package, the Crown gifted the Ngatamariki geothermal assets, including four wells. The transfer was based on a notional value of $5 million and was subject to a five-year restriction on on-sale.

4.3 Tauhara North No 2 Trust

Tauhara North No2 Trust (TN2T) has not received a Treaty Settlement. TN2T is an equal joint venture partner (50:50) with Mercury in the Rotokawa Joint Venture, which owns the steam field assets supplying geothermal fluid to three power stations: Rotokawa, Ngatamariki, and Nga Awa Purua Power Stations. The Nga Awa Purua Power Station is owned by Mercury (65%), and TN2T (35%), while the Rotokawa and Ngatamariki power stations are fully owned by Mercury. At Rotokawa, TN2T landowners retain ownership of the land beneath both power stations (McLoughlin *et al.,* 2010).

4.4 Tūaropaki Trust

The Tūaropaki Trust, established in 1953, has not received a Treaty Settlement. In 1996, Tūaropaki purchased the Crown's interests in wells drilled by the Government on the Mōkai geothermal field. At the time the Mōkai geothermal project was completed, it was the largest privately developed and owned geothermal project in New Zealand.

4.5 Taheke

Taheke 8C has not received a Treaty settlement, but has participated in previous Waitangi Tribunal inquiries, including the Preliminary Inquiry into the Te Arawa Representative Geothermal Claims (Wai 153, 1993) and the Central North Island inquiry (Wai 1200, 2008). Taheke 8C has been investigating the geothermal resource beneath its land since 2010. Government shovel-ready funding was used to initiate further investigatory drilling, and a consent has been issued to commission a geothermal power plant on Taheke land.

5. CONCLUSION

This paper has outlined the role of the Waitangi Tribunal in shaping the legal and policy environment for geothermal resource management. Through inquiries such as Ngāwha, Te Arawa, and Wai 2358, the Tribunal has consistently highlighted the need to recognise Māori rights and interests in geothermal resources, uphold rangatiratanga, and enable meaningful Māori participation in decision-making processes. These findings have influenced aspects of Treaty settlements and local governance arrangements. However, the broader resource management system continues to present challenges. As legislative reforms progress, the Crown's response to Tribunal recommendations, the approaches taken by local authorities, and the removal of unnecessary regulatory barriers will collectively determine whether the system can balance environmental protection, development aspirations, and Treaty partnership in a coherent and durable way.

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REFERENCES

Bay of Plenty Regional Council (2025). *Draft Plan Change 11: Geothermal System Classification and Management.* Retrieved from www.boprc.govt.nz

Bay of Plenty Regional Council (2023). *Regional Policy Statement, Geothermal System Classification Criteria.* Tauranga: BOPRC.

Beehive (2005) Crown agrees to Kawerau geothermal assets deal. www.beehive.govt.nz/node/23671

Blair, A., Climo, M., Campbell, A., Lovell, L. (2024) Indigenous participation in geothermal projects: learnings from Aotearoa New Zealand. Proceedings GRC Transactions, Vol. 48.

Climo, M, Blair, A., Campbell, A., Carey, B. (2022) Commercial Arrangements Underpinning Aotearoa New Zealand's Industrial Scale Geothermal Operations. Proceedings NZ 44th Geothermal Workshop, 2022.

Environment Select Committee (2024). *Summary of Submissions on the Fast-track Approvals Bill.* New Zealand Parliament, Wellington.

Kissick, D., Carey, B., Climo, M. (2021) An Overview of New Zealand's Geothermal Planning and Regulatory Framework. Traverse Environmental Ltd., ISBN 978-0-473-59132-8.

Kissick, D., Bendall, S., Climo, M. (2020) New Zealand's regulatory and planning framework for conventional geothermal resource use. Proceedings NZ Geothermal Workshop 2020.

Ministry for the Environment (2023). *National Policy Statement for Indigenous Biodiversity.* Wellington: New Zealand Government.

Ministry for the Environment (2024). *Proposed Resource Management Treaty Clause Amendments: Discussion Document.* Wellington: New Zealand Government.

Ministry for the Environment. (2025). Package 1: Infrastructure and Development – Discussion Document. Wellington: Manatū mō te Taiao.

Ministry for the Environment. (2025). Package 3: Freshwater – Discussion Document. Wellington: Manatū mō te Taiao.

Nga Wai Ariki o Rotorua: He kohikohinga hau kainga perspectives on the health and wellbeing of geothermal taonga within Rotorua. (2019) www.boprc.co.nz

Ngāti Tūwharetoa Environmental Iwi Management Plan (2003) Accessible at: www.waikatoregion.govt.nz

Parahirahi Ngāwha Waiariki Trust (2024). *Statement of Cultural and Environmental Responsibilities for Ngāwha Springs.* Retrieved from www.ngawhasprings.co.nz/our-values

The Proprietors of Taheke 8C & Adjoining Blocks Incorporation (2025). *Submission on Draft Plan Change 11.* Unpublished submission to Bay of Plenty Regional Council, dated 31 January 2025.

Tupu Tono (2025) Ngāpuhi Investment Fund. www.tuputonu.co.nz

Waitangi Tribunal (2025) About the Treaty. Accessed Jun 2025: www.waitangitribunal.govt.nz

Legislation

Accessible at www.legislation.govt.nz

- Affiliate Te Arawa Iwi and Hapu Claims Settlement Act, 2008
- Fast-track Approvals Act, 2024.
- Local Government Act (LGA), 2002.
- Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act, 2005
- Resource Management Act (RMA), 1991.
- Resource Management (Consenting and Other System Changes) Amendment Bill, 2024.
- Treaty of Waitangi Act, 1975

Waitangi Tribunal Reports

Accessible at: www.waitangitribunal.govt.nz

Olsen, A. (2024). *Evidence of Barriers to Māori Participation in Geothermal Planning.* Presented to the Waitangi Tribunal, Wai 2358 Inquiry, Rotorua.

Preliminary Report on The Te Arawa Representative Geothermal Resource Claims 1993, WAI153.

The Stage 2 Report on the National Freshwater and Geothermal Resources Claims, 2022

Waitangi Tribunal (1993). *WAI 304: Ngāwha Geothermal Resource Claim Report.* Wellington: Waitangi Tribunal.

Waitangi Tribunal (2008). *Te Arawa Settlement Inquiry Report.* Wellington: Waitangi Tribunal.

Case Law

Sea-Tow Ltd v Auckland Regional Council [1994] NZRMA 204 (PT)

Winstone Aggregates Ltd v Franklin District Council EnvC Auckland A80/02, 17 April 2002

GLOSSARY OF MĀORI TERMS

Te Reo Māori	Meaning
ahi kā	continuous occupation - title to land through occupation by a group, generally over a long period of time.
hapū	kinship group, subtribe
hau kāinga	Local people of a marae, home people.
iwi	extended kinship group, tribe, nation
kaitiaki	trustee, minder, guard, custodian, guardian
mana whenua	Territorial rights, power from the land
rangātiratanga	Right to exercise authority, chiefly autonomy, sovereignty,
rohe	boundary, district, region, territory
tangata whenua	Local people
taonga	Treasure, property; taonga are prized and protected as sacred possessions of the tribe
Te Rōpū Whakamana i te Tiriti o Waitangi	The Waitangi Tribunal
Te Tiriti o Waitangi	The Treaty of Waitangi
wāhi tapu	sacred place, sacred site
whānau	extended family, family group