

Y D'Costa

Do New Zealand's Climate Change Adaptation Strategies Uphold Te Tiriti Obligations and to What Extent?

I. Introduction

In 2022, the Ministry for the Environment published Aotearoa's first National Adaptation Plan (NAP). New Zealanders are already facing the detrimental impacts of climate change from extreme weather events and cliffside erosion. There is an urgent need to transform New Zealand into a climate resilient society that is acclimated to this new world. However, without comprehensive management, climate change will compound and entrench preexisting societal inequities. With many Māori living in coastal or rural areas, Māori are particularly vulnerable to climate change impacts.¹ As the Ministry for the Environment noted, climate change also threatens primary sectors, which are "major areas for investment and employment for Māori."² This essay explores if and to what extent New Zealand's current adaptive frameworks (mainly the NAP) uphold Te Tiriti o Waitangi obligations.

The NAP does make explicit commitments to upholding the principles of Te Tiriti o Waitangi by working with Māori and recognising mātauranga Māori in New Zealand's adaptation strategies. However, New Zealand's adaptation frameworks fail to meaningfully uphold Te Tiriti o Waitangi by their lack of binding legislative actions, insufficient resourcing and refusal to engage with historical inequities against Māori.

II. Adaptation and Māori

A. What is Climate Change Adaptation?

Whilst mitigation deals with actions to reduce emissions, adaptation "is the process of adjusting to the actual or expected changes brought about by climate change."³ The focus is on creating

¹ Ministry for the Environment *Climate Action for Māori: The National Adaptation Plan* (INFO 1082, August 2022) at 1

² Above n 1, at 2.

³ Climate Change Commission *Progress Report: National Adaptation Plan Assessing Progress on the Implementation and Effectiveness of the Government's First National Adaptation Plan* (August 2024) at 22.

economies, societies and infrastructure suited to the new challenges climate change brings. Investing in adaptation is important for risk reduction and capitalising on any economic benefits.⁴ Some examples of adaptation include planting drought resistant crop varieties and building defences against fires and floods (e.g. seawalls).⁵

B. Why Adaptation is Particularly Significant for Māori

The NAP identifies the unique role Māori play in adaptation due to their roles as Tiriti partners, tangata whenua and kaitiaki.⁶ Māori have concurrent interests in adaptation. Firstly, they face heightened risk of multifaceted loss and damage as a vulnerable group. Climate change brings tangible loss and damage (i.e., cliff erosion and flooding) but also threatens the stability, values, and laws of communities. As Iorns articulates, many aspects of Māori society and economy are environmentally dependent.⁷ Throughout the NAP, Māori are consistently identified as a vulnerable group that is particularly sensitive to climate impacts. The NAP articulates that climate change can alter patterns of use of mahinga kai and rongoā crops. Coastal degradation can also interfere with marae or wāhi tapu access.⁸ Secondly, government adaptation measures can threaten the legal rights and responsibilities Māori have regarding tino rangatiratanga and kaitiakitanga.

III. Overview of Current Adaptive Strategies

New Zealand's main policy for climate change adaptation is the NAP. There are other legislative frameworks that reference adaptation and Te Tiriti obligations.

A. Climate Change Response Act 2002 (CCRA)

The CCRA creates a framework which New Zealand can use to implement policies that both contribute to the global commitments in the Paris Agreement, as well as enabling New Zealand

⁴ Ministry for the Environment, above n 1, at 2.

⁵ United Nations Development Programme “What is Climate Change Adaptation and Why is it Crucial (30 January 2024) <www.climatepromsie.undp.org>.

⁶ Ministry for the Environment *Aotearoa New Zealand's First National Adaptation Plan* (ME 1660, August 2022) at 26.

⁷ Catherine Iorns “Treaty of Waitangi Principles Relevant to Adaptation to Coastal Hazards from Sea-level Rise” (2022) 53 VUWLR 563 at 564.

⁸ At 32.

to prepare and adapt to the effects of climate change.⁹ It established several significant commitments for the Government. There is a duty to set emissions budgets and ensure they are met.¹⁰ The CCRA also requires national climate change risk assessments every 6 years.¹¹ Part of this assessment must include a NAP.¹² The CCRA requires the Minister in their preparation of the NAP, to take into account the “economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi and Māori.”¹³ The CCRA recognises The Crown’s responsibility to give effect to the principles of the Treaty of Waitangi in section 3A. The CCRA also established the Climate Change Commission who provides independent, expert advice, as well as monitoring and reviewing the government’s progress on its emissions and adaptation goals.¹⁴ The CCRA does not explicitly mention tino rangatiratanga or active protection.

B. National Adaptation Plan (NAP)

The NAP sets out the government’s six-year strategy for building Aotearoa into a climate resilient society.¹⁵ It provides guidance and principles covering numerous facets of New Zealand life – including housing, scientific development, managed retreat, infrastructure, and financial systems.¹⁶ The NAP characterises Māori as “partners” in creating a climate resilient Aotearoa.¹⁷ It states that upholding the principles of Te Tiriti o Waitangi is a “central aspect of the Government’s long-term adaptation strategy.”¹⁸ The NAP is also committed to incorporating mātauranga Māori and te ao Māori in adaptive strategies.¹⁹ This is evidenced by the Hauora Framework. Designed by the operational arm of Te Pou Take Āhuarangi (Climate Lead) for the National Iwi Chairs Forum, Hauora is a climate change framework with Māori values in its foundation.²⁰ This was designed to facilitate the partnership between Māori and The Crown for climate action.²¹ The NAP also established a platform for Māori Climate

⁹ Section 3(1)(aa).

¹⁰ Section 5X.

¹¹ Section 5ZQ.

¹² Section 5ZS.

¹³ Section 5ZS(4)(a).

¹⁴ Sections 5A to 5B.

¹⁵ Ministry for the Environment *Climate Action for Māori*, above n 1, at 1.

¹⁶ At 3.

¹⁷ At 28.

¹⁸ At 13.

¹⁹ At 13.

²⁰ At 30.

²¹ Ministry for the Environment *Climate Action for Māori*, above n 1, at 3.

Action.²² There was no clear mention of how this can lead to funding for Māori led climate adaptation. Since then, the platform has announced funding for a climate resilient marae pilot project.²³ However, there remains no guidance on how the Ministry approaches equitable funding for Māori adaptation. Adaptation planning requires significant and comprehensive funding. For Māori-led solutions to be implemented, resourcing and funding is required. This is also why climate adaptation needs to be historically contextualised. Due to ongoing colonisation and dispossession, Māori will not have the immense capital needed to fund adaptive strategies. Currently there is no national funding framework for climate adaptation.²⁴ Refraining from resourcing iwi adaptation initiatives constitutes a failure to acknowledge rangatiratanga.²⁵

C. Resource Management Act 1991 (RMA)

The RMA is focused on the sustainable management of natural and physical resources.²⁶ Regional councils now must have regard to the NAP when they prepare or change a regional policy statement, regional plan or district plan.²⁷ Additionally, persons exercising powers under the RMA shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).²⁸ The “relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” is also considered a matter of national importance that a decision maker shall recognise and provide for.²⁹

D. Local Government Act 2002 (LGA)

The LGA focuses more on ensuring Māori contribute to the decision-making processes of the local authority.³⁰ The obligation on the local authority is more about facilitating processes that can provide these opportunities.

²² At 49.

²³ Ministry for the Environment “Marae funded for climate resilience pilot project” (12 February 2025) <www.environment.govt.nz>.

²⁴ Climate Change Commission, above n 3, at 43.

²⁵ Climate Change Commission, above n 3, at 59.

²⁶ Section 5.

²⁷ Sections 61(2)(e), 66(2)(g) and 74(2)(e).

²⁸ Section 8.

²⁹ Section 6(e).

³⁰ Section 81.

IV. Analysis of New Zealand's Adaptive Strategies and Te Tiriti o Waitangi

The NAP provides strong recognition for Te Tiriti, mātauranga Māori and tikanga but legislative empowerment remains scant. The NAP is not regulatory but a values-based guide.³¹ This structure will remain ineffective whilst there are no other robust mechanisms for Te Tiriti enforcement. The NAP refrains from addressing past harms done to Māori and their land. Not acknowledging the historical injustice Māori face results in an inappropriate contextualisation of Aotearoa's adaptive strategies. Consequently, this risks undermining the goals of New Zealand's adaptation policies. A just and equitable framework cannot be achieved without recognising historical and ongoing injustice. Similarly to other projects that call for Māori input, Māori agency over adaptation frameworks remains restrained to mere consultation. The discretion of local authorities acts as an active impediment to Māori being able to fully exercise tino rangatiratanga. Lastly, there remain issues around accountability and monitoring, calling into question the legitimacy and equity of adaptive measures.

A. An Aspirational Approach to Te Tiriti Does Not Uphold Te Tiriti Obligations

Whilst the NAP makes strong references to a Māori/Crown partnership, this cannot uphold Te Tiriti o Waitangi obligations without corresponding empowering legislation. Current adaptive strategies are also incoherent and engagement with Māori ranges between local areas. The Climate Change Commission has also identified the need for legislation or institutional arrangements that support iwi Māori to exercise rangatiratanga in adapting to climate change.³² Such legislation would be in line with the international obligations New Zealand has endorsed, including the United Nations Declaration on the Rights of Indigenous People.³³ Of course, state legislation is not a precursor to Māori being able to exercise rangatiratanga. As Pirini and Morar remind us, Māori can still exercise Rangatiratanga within the purview of the state.³⁴ Project

³¹ Ministry for the Environment *National Adaptation Plan and Emissions Reduction Plan: Resource Management Act 1991 Guidance Note* (ME 1717, November 2022) at 6.

³² Above n 3, at 62

³³ See *United Nations Declaration on the Rights of Indigenous People*, GA Res 61/295 (2007), art 3.

³⁴ Mihiata Pirini and Rhianna Morar "Climate Change and the Claiming of Tino Rangatiratanga" (2021) 5 NZWLJ 86 at 101.

Kāinga is a research programme funded by the Ministry of Business, Innovation and Employment, which is concerned with how marae can help build Māori community climate change resilience.³⁵ This combination of localised knowledge and embracing everyday accountabilities and responsibilities is what Dr Steele and others described as “quiet activism” which they argue can lead to transformative change.³⁶ However, government initiatives should be cautious to avoid proportioning the burden on Māori to rectify historical and ongoing deficiencies in The Crown’s adherence to Te Tiriti. The Crown should invest in such financed partnerships to uphold the kawanatanga and responsibilities they subscribed to. Specific legislation would still be needed as one way to govern the immense inequity in resourcing and political capital between Māori and the state.

Adaptive strategies have continued confining Māori to consultation roles, opposed to models that would give Māori the full agency of being a treaty partner (e.g. co-governance). This confinement is a concerning curtailment over Māori being able to have full agency over determining their lives and those of their descendants. The limits of current legislative arrangements were criticised by the Climate Change Commission in their progress report as impacting the ability of some Māori/iwi to exercise rangatiratanga and mana motuhake while “they adapt and build resilience to climate change.”³⁷ Te ao Māori also appears to be inconsistently applied and siloed into some objectives and not others.³⁸ As articulated by the Climate Commission, this will manifest in the government’s inability to support iwi/Māori. The aspirational rhetoric of the NAP regarding Māori will only translate into a tangible commitment to Te Tiriti if it is paired with empowering concrete actions that can provide Māori with the resources needed to navigate adaptation.

B. Climate Justice and the Legacy of Colonisation

Given Aotearoa’s colonial history, “climate justice” is an important concept when dealing with adaptation strategies and Māori. Climate justice recognises that social groups who have contributed the least towards climate change should not be “disproportionately burdened with

³⁵ Project Kainga “Final Overview: Project Kāinga: Rolling Out Successes” (January 2022) <www.projectkainga.co.nz>.

³⁶ Wendy Steele and others *Quiet Activism: Climate Action at the Local Scale* (Palgrave Macmillan, Cham (Switzerland), 2021) at 3.

³⁷ At 45.

³⁸ Climate Change Commission, above n 3, at 61.

responsibilities for mitigation and adaptation.”³⁹ The concept also refers to ensuring that mitigation and adaptation policies are equitable.⁴⁰ For Aotearoa’s climate adaptation policies to be truly equitable, they must take an analytical and historically sound approach. Adaptive strategies must be appropriately situated within the ongoing colonial context Māori experience in New Zealand. For example, iwi submissions on the draft NAP reminded the government that Māori are located in high-risk locations (i.e. coastal areas and flood plains) due to colonial land confiscation.⁴¹

This is of particular concern in the context of any proposed managed retreat policy. Managed retreat is an adaptation strategy that involves the strategic relocation of high-risk communities and their assets away from areas at risk from climate change and natural hazards.⁴² In light of the historic land confiscation Māori have experienced, this is a highly sensitive strategy. Legislation to support managed retreat was an identified action in the NAP.⁴³ Notably, the NAP does not address current issues around Māori land, further demonstrating a disconnect from contemporary issues Māori face.⁴⁴

As identified by the Climate Change Commission, a lack of acknowledgment for historic inequities hinders the ability of iwi/Māori to participate in adaptive measures.⁴⁵ The NAP’s lack of engagement with structural inequities decontextualises climate change effects. It prevents further analysis of how historical and ongoing inequities compound vulnerability to climate change for Māori. Without interrogating current arrangements of power that further subjugate Māori, it is not in good faith to then resort to more drastic alternatives such as managed retreat. Managed retreat proposals exemplify the compounded issues Māori face when trying to work with The Crown. They demonstrate the inherent divergence in how Māori and The Crown evaluate loss. Whilst governments can see managed retreat as a potentially cheaper option for dealing with climate change impacts, communities will suffer loss of land, cultural heritage and connection.⁴⁶ As noted by Bailey-Wiata and others, relocating with the motivation to find physical resources is manageable but for Māori the intangible aspects of pā

³⁹ Meg Parsons and Roa Crease “Exploring Indigenous Climate Justice in Aotearoa New Zealand Climate Adaptation Planning” in Steven Brechin and Seungyun Lee (eds) *Routledge Handbook of Climate Change and Society* (2nd ed, Routledge, New York, 2024) 388 at 391.

⁴⁰ Parsons and Crease, above n 39, at 391.

⁴¹ Parsons and Crease, above n 39, at 395.

⁴² Ministry for the Environment, *Aotearoa New Zealand’s First National Adaptation Plan*, above n 6, at 80.

⁴³ At 83.

⁴⁴ Climate Change Commission, above n 3, at 63.

⁴⁵ At 63.

⁴⁶ Parsons and Crease, above n 39, at 403.

and land connection cannot be as easily accounted for in relocation.⁴⁷ Having Māori led adaptive strategies is vital to ensuring that The Crown's view does not get superimposed into such significant evaluations.

C. Local Authorities

Ad hoc, localised responses may provide the flexible approach that is needed for each local jurisdiction, but they additionally create an inconsistent national approach for Te Tiriti obligations and funding. Providing local bodies with wide discretionary powers for adaptation policies could potentially entrench historical inequities. One example of local bodies lacking the sophistication needed for Te Tiriti consistent adaptive approaches was the case of Waitara. Here, residents of a Taranaki beach settlement asked for a seawall to protect against erosion. Whilst the efficacy of a seawall can be debated, the reason given for refusal by the local body was that Māori freehold land constitutes private land holdings and New Plymouth District Council's policy was to protect "strategic and significant public assets."⁴⁸ This is a clear case of local governments being unable to value climate change loss in a Te Tiriti consistent manner.

Local government being such key decision makers in adaptive strategies also constrains the agency of iwi and hapū as it forces Māori to balance their dual responsibilities to both the New Zealand legal systems and their own tikanga.⁴⁹ Māori are already contributing to the development of adaptive strategies. Institutional arrangements that give effect to that would be more effective than localised consultation. The LGA then arguably does not fully give effect to Te Tiriti and in fact acts as another barrier to Māori ability to exercise tino rangatiratanga.

D. Government Accountability

For the government to uphold Te Tiriti o Waitangi obligations in adaptation, there also need to be robust monitoring and accountability mechanisms. There are already some mechanisms in

⁴⁷ Akuhata P Bailey-Winiata and others "Looking Backwards to Move Forwards: Insights For Climate Change Adaptation From Historical Māori Relocation Due to Natural Hazards In Aotearoa New Zealand" (2024) 24 *Regional Environmental Change* 79 at 80.

⁴⁸ Robin Martin "Waitara locals plead for seawall" *RNZ* (3 June 2016) *RNZ* < www.rnz.co.nz >.

⁴⁹ Martin Manning and others "Dealing With Changing Risks: a New Zealand Perspective on Climate Change Adaptation" (August, 2014) 15 *Regional Environmental Change* 581 at 584.

place with varying degrees of efficacy such as the Climate Change Commission and the option to bring Waitangi Tribunal claims. Climate change litigation is a burgeoning space with increasing cases across the globe. In *Smith v Fonterra* the Supreme Court opened the possibility that the common law could be a vehicle for climate harm accountability.⁵⁰ Globally, climate change litigation is altering the preconceived scope of the law and could potentially be a new mechanism for accountability.

The Waitangi Tribunal does not have jurisdiction to hear claims on bills brought before parliament.⁵¹ This is of particular concern with adaptation where policies and circumstances are rapidly evolving in real time. Therefore, accountability mechanisms for government decision making regarding Māori remains limited. The Climate Change Commission remains a key national body for monitoring Crown behaviour. However, it is not a specialist for Māori affairs. International obligations that Aotearoa is a party to can function as an accountability mechanism but the efficacy of this can be debated. The legal mechanics of adaptation remains influx and unsettled. However, considering Māori already are not yet full partners in adaptation, it is a matter of legitimacy and equity that there are more robust mechanisms for accountability.

V. Conclusion

Climate change brings high stakes for humanity, with adaptation as one prong of our response. Our adaptation frameworks can reorganise societies, economies and change our relationships with land. Adaptation inherently involves discussions of power. With the stakes this high, and Māori being an incredibly vulnerable group, the rights in Te Tiriti o Waitangi must be upheld. New Zealand's adaptation frameworks demonstrate a growing awareness of Te Tiriti obligations, but mere recognition and consultation should not discharge The Crown's duties. The NAP does not meaningfully meet Te Tiriti obligations when it relies on rhetorical, good faith commitments. A full exercise of rangatiratanga and financed partnership are needed to help Māori achieve and create a just, climate resilient society that supports their rights in Te Tiriti.

⁵⁰ *Smith v Fonterra* [2024] NZSC 5.

⁵¹ Treaty of Waitangi Act 1975, s 6(6).