

between

MICHAEL JOHN SMITH climate change spokesperson, of
Mahinepua
Plaintiff

and

FONTERRA CO-OPERATIVE GROUP LIMITED
a duly incorporated company having its registered office at
109 Fanshawe Street, Auckland
First Defendant

and

GENESIS ENERGY LIMITED
a duly incorporated company having its registered office
at 660 Great South Road, Greenlane,
Auckland
Second Defendant

and

[DRAFT] AMENDED STATEMENT OF CLAIM
15 June 2022~~27~~ August 2019

LeeSalmonLong

Barristers and Solicitors

COUNSEL:
DAVEY SALMON QC
MILLS LANE CHAMBERS, AUCKLAND
TELEPHONE +64 21 974 873
EMAIL davey.salmon@millslane.co.nz

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET
PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND
TELEPHONE 64 9 912 7100 FACSIMILE 64 9 912 7109
EMAIL: michael.heard@sl.co.nz SOLICITOR ON RECORD: MICHAEL HEARD
EMAIL: david.bullock@sl.co.nz SOLICITOR ACTING: DAVID BULLOCK

DAIRY HOLDINGS LIMITED

a duly incorporated company having its registered office
at 243 Tancred Street, Ashburton
Third Defendant

and

NEW ZEALAND STEEL LIMITED

a duly incorporated company having its registered office
at 131 Mission Bush Road, Glenbrook,
Auckland
Fourth Defendant

and

Z ENERGY LIMITED

a duly incorporated company having its registered office
at 3 Queens Wharf, Wellington Central,
Wellington
Fifth Defendant

and

~~**THE NEW ZEALAND REFINING COMPANY**~~
~~**LIMITED**~~
~~**CHANNEL**~~
~~**INFRASTRUCTURE NZ LIMITED**~~

a duly incorporated company having its registered office
at Marsden Point, Whangarei
Sixth Defendant

and

BT MINING LIMITED a duly incorporated company having
its registered office at Level 12, 1
Willeston Street, Wellington
Seventh Defendant

[DRAFT] AMENDED STATEMENT OF CLAIM

The plaintiff says—

Parties

1. The plaintiff is of Ngāpuhi and Ngāti Kahu descent.
2. The plaintiff is the climate change spokesman for the Iwi Chairs Forum, and has customary interests in land and other resources and sites situated in and around Mahinepua, Northland, New Zealand.
3. The first defendant (**Fonterra**) is a company that is in the business of producing and exporting the majority of New Zealand's dairy products.
4. The second defendant (**Genesis**) is a company that is majority owned by the Crown and is in the business of generating and selling electricity in New Zealand.
5. The third defendant (**Dairy Holdings**) is a company that is in the business of operating dairy farms in New Zealand.
6. The fourth defendant (**NZ Steel**) is a company that is in the business of producing steel in New Zealand.
7. The fifth defendant (**Z Energy**) is a ~~publically~~publicly listed company that is in the business of distributing fuel in New Zealand.
8. The sixth defendant (**Refining-NZChannel**) is a publicly listed company that is in the business of ~~importing refining oil-petroleum products in to~~ New Zealand ~~and which was formerly known as The New Zealand Refining Company Limited and was in the business of importing and refining oil.~~
9. The seventh defendant (**BT Mining**) is a company that owns and operates the Stockton Mine and produces coal for export.

The Plaintiff's interests

10. The plaintiff has an interest according to custom and tikanga in the Mahinepua C block located at Mahinepua, north east of Kaeo, in Northland (**Mahinepua C**), and is a representative of the interests of his whānau ~~and descendants~~ in that land.
11. Mahinepua C is situated on the coast at Wainui Bay.
12. Situated on Mahinepua C, and upon nearby lands and waters, are sites of customary, cultural, historical, nutritional and spiritual significance to the plaintiff, including Tauranga ika (fishing places), Tauranga waka (landing places), ara moana (pathways to the ocean), Wahi Tapu (burial caves, cemeteries and sacred trees), rivers, streams, wetlands, seasonal food gathering camps, pā sites, battle sites, and other sites of historical significance (**Customary Sites and Resources**).

13. Many of the Customary Sites and Resources are situated in close proximity to the coast, waterways or low lying land, or are in the sea.

Fonterra's emitting activities

14. Fonterra owns and operates 8 dairy factories in New Zealand that burn coal to generate energy for the production of dairy products including milk powder (**Dairy Factories**).

Particulars

- (a) Fonterra operates a factory at Edendale in Eastern Southland, which operates 4 coal fired boilers and consumes approximately 180,000 tonnes of coal per annum.
 - (b) Fonterra operates a factory at Clandeborne in South Canterbury, which operates 5 coal fired boilers and consumes approximately 130,000 tonnes of coal per annum;
 - (c) Fonterra operates a factory at Darfiled, near Christchurch, which operates 2 coal fired boilers and consumes approximately 90,000 tonnes of coal per annum;
 - (d) Fonterra operates a factory at Te Awamutu, in Waikato, which operates 5 coal fired boilers and consumes approximately 55,000 tonnes of coal per annum;
 - (e) Fonterra operates a factory at Waitoa, in Waikato, which operates 3 coal fired boilers and consumes approximately 55,000 tonnes of coal per annum;
 - (f) Fonterra operates a factory at Hautapu, in Waikato, which operates 2 coal fired boilers and consumes approximately 10,000 tonnes of coal per annum;
 - (g) Fonterra operates a factory at Takaka, in Golden Bay, which operates 1 boiler fired by coal chip and fines;
 - (h) Fonterra operates a factory at Studholm, Waimate, which operates 2 coal fired boilers.
15. Fonterra will continue to burn coal in the Dairy Factories for the foreseeable future.

Particulars

- (a) Fonterra retains consents that will allow it to continue to burn coal in the Dairy Factories for a number of decades;
- (b) Fonterra ~~publically~~publicly stated in 2017 that it intends to divest any coal mining interests by 2025;
- (c) In 2017 Fonterra stated ~~publically~~publicly that it intends to achieve net zero emissions by 2050, and to reduce its emissions by 30 per cent by 2030 (from a 2015 base year).

- (d) In 2017 Fonterra stated publicly that it does not intend to install any more coal boilers in the Dairy Factories or any other dairy factories from 2030.
 - (e) In May 2019, Fonterra stated publicly that it may have to review its plan to reduce emissions from coal by 2030 in view of the Government's decision to halt further natural gas exploration.
 - (f) In July 2019, Fonterra stated ~~publically~~publicly that:
 - (i) it targeted a reduction in emissions by 30% across all its manufacturing operations by 2030 and net zero emissions by 2050;
 - (ii) it will not be installing any new coal boilers or increasing capacity to burn coal.
16. The combustion of coal at the Dairy Factories releases greenhouse gases into the atmosphere including carbon dioxide, methane, and nitrous oxide (**Greenhouse Gases**).
- ~~17. It is possible for Fonterra to achieve net zero emissions of Greenhouse Gases by 2030.~~

Genesis' emitting activities

- ~~18-17.~~ Genesis operates the Huntly Power Station in Huntly, New Zealand.
- ~~19-18.~~ The Huntly Power Station is the largest thermal power station in New Zealand.
- ~~20-19.~~ The Huntly Power Station is fuelled by the combustion of coal and natural gas.
- ~~21-20.~~ In August 2015 Genesis stated publicly that it would close the two coal-burning electricity generators at the Huntly Power Station by December 2018.
- ~~22-21.~~ In February 2018 Genesis stated publicly that it would not close the coal burning generators at the Huntly Power Station by December 2018 but would instead stop using coal to generate electricity, expect in exceptional circumstances, by 2025.
- ~~23-22.~~ In the last quarter of 2018, Genesis burned more coal at the Huntly Power Station than it had in any quarter since mid-2013.
- ~~24-23.~~ In May 2019 Genesis stated publicly that its "intent is to remove coal by 2030 if we can".
- ~~25-24.~~ The combustion of coal and natural gas at the Huntly Power Station releases Greenhouse Gases into the atmosphere.
- ~~26. It is possible for Genesis to achieve net zero emissions of Greenhouse Gases by 2030.~~

Dairy Holdings' emitting activities

- ~~27-25.~~ Dairy Holdings operates 59 dairy farms in the South Island, producing 17 million kilograms of milk solids from 50,000 milking cows.
- ~~26.~~ Dairy Holdings' dairy farms release Greenhouse Gases into the atmosphere, including by releasing methane as a result of enteric fermentation and nitrogen dioxide from nitrogen-based fertiliser use.
- ~~28-27.~~ Dairy Holdings does not need to surrender emissions units under the Emissions Trading Scheme in respect of its agricultural methane emissions.
- ~~29.~~ It is possible for Dairy Holdings to achieve net zero emissions of Greenhouse Gases by 2030.

NZ Steel's emitting activities

- ~~30-28.~~ NZ Steel operates the Glenbrook Steel Mill.
- ~~31-29.~~ The Glenbrook Steel Mill is primarily fuelled by the combustion of coal.
- ~~32-30.~~ The Glenbrook Steel Mill has the capacity to burn 800,000 tonnes of coal a year.
- ~~33-31.~~ The combustion of coal at the Glenbrook Steel Mill releases Greenhouse Gases into the atmosphere.
- ~~34.~~ It is possible for NZ Steel to achieve net zero emissions of Greenhouse Gases by 2030.

Z Energy's emitting activities

- ~~35-32.~~ Z Energy is a ~~publically~~publicly listed company that supplies retail customers and commercial customers, including in the aviation and maritime industries, with petrol, diesel, jet fuel and petroleum-related fuel products (**Fuel Products**).
- ~~36-33.~~ The Fuel Products supplied by Z Energy are burned resulting in the release of Greenhouse Gases into the atmosphere.
- ~~37-34.~~ Z Energy knows that the Fuel Products it supplieds are burned resulting in the release of Greenhouse Gases into the atmosphere.
- ~~38.~~ It is possible for Z Energy to achieve net zero emissions of Greenhouse Gases by 2030, including accounting for the emissions of the end users of the Fuel Products that it supplies.

NZ RefiningChannel's emitting activities

- ~~39-35.~~ NZ Refining Channel is a publicly listed company whose major shareholders include Mobil Oil New Zealand Limited, Z Energy and BP New Zealand Holdings Limited.

~~40.36.~~ ~~NZ Refining Channel~~ operates the Marsden Point ~~Oil-oil Refinery and import terminal (Marsden Point)~~ and the Refinery-Auckland Pipeline.

~~41.37.~~ ~~NZ Refining Channel~~ produces ~~or imports~~ the majority of the Fuel Products consumed in New Zealand.

~~42.38.~~ The process of refining of crude oil by ~~NZ Refining Channel~~ at Marsden Point directly causes the release of Greenhouse Gases into the atmosphere.

~~43.39.~~ The majority of the Fuel Products ~~imported and~~ supplied by ~~NZ Refining Channel~~ are burned to power combustion engines for land, maritime and air transportation, or to generate electricity.

~~44.40.~~ The burning of the Fuel Products ~~imported and~~ supplied by ~~NZ Refining Channel~~ causes the release of Greenhouse Gases into the atmosphere.

~~45.41.~~ ~~NZ Refining Channel~~ knows that the Fuel Products it ~~imports and~~ supplies are burned and that this releases Greenhouse Gases into the atmosphere.

~~46.~~ ~~It is possible for NZ Refining to achieve net zero emissions of Greenhouse Gases by 2030, including accounting for the emissions of the end users of Fuel Products that it supplies.~~

BT Mining's activities

~~47.42.~~ BT Mining owns and operates the Stockton Mine, north of Westport.

~~48.43.~~ The Stockton Mine is the largest opencast mine in New Zealand and produces bituminous, coking and thermal coal.

~~49.44.~~ The majority of the coal produced at the Stockton Mine is exported.

~~50.45.~~ In 2018 approximately 0.8 million tonnes was produced and exported from the Stockton Mine.

~~51.46.~~ In 2019 approximately 1.1 million tonnes of coal is forecast to be produced and exported from the Stockton Mine.

~~47.~~ The majority of the exported coal is sent to China, where it is primarily burned in the production of steel.

~~52.48.~~ ~~The Greenhouse Gas emissions arising from the burning of coal to produce steel in China are not materially regulated.~~

~~53.49.~~ The burning of coal produced at the Stockton Mine (whether in New Zealand or overseas) releases Greenhouse Gases into the atmosphere.

~~54.50.~~ BT Mining knows that the coal it produces is burned, and that this results in the release of Greenhouse Gases into the atmosphere.

~~55.~~ ~~It is possible for BT Mining to achieve net zero emissions of Greenhouse Gases by 2030, including accounting for the emissions of end users of the coal it produces.~~

Consequences of the release of Greenhouse Gases into the atmosphere

51. In 2020-2021 the defendants were together responsible for more than one third of New Zealand's total reported Greenhouse Gas emissions.
52. In 2020-2021 just 15 companies were responsible for more than 75 per cent of New Zealand's total reported Greenhouse Gas emissions.
- ~~56-53.~~ The release of Greenhouse Gases into the atmosphere from human activities (including the defendants' activities) increases the natural greenhouse effect, which causes, among other consequences, the warming of the planet.
- ~~57-54.~~ Climate change from the release of Greenhouse Gases into the atmosphere from human activities (including the defendants' activities) will result on average in an additional warming of the Earth's surface and atmosphere, and will adversely affect natural ecosystems and humankind.
- ~~58-55.~~ The effect of the release of Greenhouse Gases into the atmosphere from human activities (including the defendants' activities) will result in dangerous anthropogenic interference with the climate system.
56. The current scientific consensus as to the nature, effects, and mitigation requirements of climate change is represented by the most recent reports of the Intergovernmental Panel on Climate Change (**IPCC**), which are relied upon as if pleaded in full:-
- (a) AR5 Synthesis Report: Climate Change 2014 (October 2014)
 - (b) Special Report: Global Warming of 1.5°C (October 2018)
 - (c) Special Report: Climate Change and Land (August 2019)
 - (d) Special Report: The Ocean and Cryosphere in a Changing Climate (September 2019)
 - (e) AR6 Climate Change 2021: The Physical Science Basis (August 2021)
 - (f) AR6 Climate Change 2022: Impacts Adaption and Vulnerability (March 2022)
 - (a)(g) AR6 Climate Change 2022: Mitigation of Climate Change (April 2022)
- ~~(b)~~ The IPCC's AR5 Synthesis Report of October 2014 is relied upon as if pleaded in full.
- ~~(c)~~ The IPCC's Special Report: Global Warming of 1.5°C of October 2018 is relied upon as if pleaded in full.
- 59-57. It is necessary to limit warming caused by climate change to 1.5°C to avoid dangerous anthropogenic interference with the climate system and to minimise the long-term and irreversible adverse effects of climate change.

~~60. Limiting the warming caused by climate change to 1.5°C requires a global net reduction in human-caused emissions of carbon dioxide by 45 percent from 2010 levels by 2030, reaching net zero by around 2050, and substantial and fast reductions of other Greenhouse Gases.~~

61.58. The release of the Greenhouse Gases by the defendants is human activity that has contributed, and will continue to contribute, to dangerous anthropogenic interference with the climate system and the adverse effects of climate change (Adverse Effects).

Particulars of dangers

- (a) Increases in temperatures;
- (b) Loss of biodiversity and biomass;
- (c) Loss of land and productive land (including as a result of sea level rise);
- (d) Risks to food and water security;
- (e) Increasing extreme weather events;
- (f) Ocean acidification;
- (g) Geopolitical instability and population displacement;
- (h) Adverse health consequences;
- (i) Economic losses as a result of all of the above;
- ~~(j) The reaching of “tipping points” which may cause the catastrophic breakdown of crucial environmental systems;~~
- (k) An unacceptable and escalating risk of social and economic collapse and mass loss of human life; and
- ~~(l) As further described in the reports of the IPCC.~~

62.59. Poor and minority communities will be disproportionately burdened by the aAdverse eEffects of climate change.

~~60. According to the most recent science from IPCC, to avoid dangerous climate change (including to have a better than even chance of limiting warming to 1.5°C with no or limited overshoot):~~

- ~~(a) By 2025, at the latest, global Greenhouse Gas emissions must peak;~~
~~(Minimum 2025 emissions)~~
- ~~(b) By 2030:~~
 - ~~(i) Global CO₂ emissions must be reduced by 48% compared to 2019 levels;~~

(ii) Global CH₄ emissions must be reduced by 34% compared to 2019 levels;

(Minimum 2030 reductions)

(c) By 2040:

(i) Global CO₂ emissions must be reduced by 80% compared to 2019 levels;

(ii) Global CH₄ emissions must be reduced by 44% compared to 2019 levels;

(Minimum 2040 reductions)

(d) By 2050 global Greenhouse Gas emissions must be net zero, meaning that after 2050 no more net anthropogenic emissions can be added to the atmosphere anywhere in the world.

(Minimum 2050 reductions)

(together **Minimum Global Reductions**)

61. It is possible for the defendants to reduce the emissions from their activities and products to reflect the Minimum Global Reductions (as to timing and amount) directly and from the activities of those to whom they supply fossil fuels.

62. Requiring the defendants to cease, or to reduce, their Greenhouse Gas emissions (or contribution to emissions from producing and selling fossil fuels) will materially reduce the Adverse Effects of climate change.

Particulars

(a) The defendants are material contributors to New Zealand's total Greenhouse Gas emissions;

(b) Requiring the defendants to stop emitting or selling emissions creating products (or to otherwise take steps to reduce downstream emissions from the products they sell) will have flow on effects of requiring other emitters to stop (whether voluntarily or by orders in other proceedings);

(c) Climate inaction across the globe is interlinked. Liability and relief in this case will result in very substantial emissions reductions being made in other countries (through one or more of inspiration, precedent and adoption of similar judicial responses, or political steps becoming unavoidable or more normalised).

63. In the Paris Agreement (2016), 196 countries urged themselves and society to take urgent measures to reduce Greenhouse Gas emissions to avoid the Adverse Effects of climate change. This followed similar commitments in the United Nations Framework Convention on Climate Change (1992) (**UNFCCC**) and the Kyoto Protocol to that Convention (1997).

64. Despite states urging immediate and significant reductions in Greenhouse Gas emissions in various international agreements and forums, between 2010 and 2019 global Greenhouse Gas emissions increased by 12 per cent (2019 being the latest date in the IPCC data) and the defendants contributed to this increase.
65. Given the lagged effects of Greenhouse Gas emissions on warming, achieving the Minimum 2025 Emissions and the Minimum 2030 Reductions are particularly important if warming is to be limited to below 2°C or 1.5°C.
66. Given global economic inequality it is necessary for developed countries, including New Zealand, to achieve proportionally greater and faster reductions in Greenhouse Gas emissions than the Minimum Global Reductions.
67. The Minimum Global Reductions cannot be achieved without the contribution of non-state actors including the defendants.
68. The New Zealand Parliament enacted the Climate Change Response Act 2002 which has purposes that include enabling New Zealand to meet its international obligations under the UNFCCC, the Kyoto Protocol and the Paris Agreement.
69. Despite enacting the Climate Change Response Act, since 2002 New Zealand's net and gross Greenhouse Gas emissions have increased and have not reduced.
70. Current and proposed measures under the Climate Change Response Act, including its emissions trading scheme, proposed carbon budgets, and the 2022 "Emissions Reduction Plan", will not result in New Zealand achieving reductions in Greenhouse Gas emissions, or the defendants being required to reduce emissions, in line with a proportionate (or better) contribution to the Minimum Global Reductions as to timing or amount.

Particulars

- (a) The Emissions Trading Scheme is demonstrably ineffective at achieving meaningful reductions in Greenhouse Gas Emissions, and its flaws enable a cover for continuing emissions (and increases of emissions);
- (b) The Emissions Reduction Plan largely provides a framework for further planning, rather than providing measures for concrete emissions reductions, and imagines that inventions will be discovered enabling reductions in net emissions without any proper basis to believe that will eventuate;
- (c) Proposed carbon budgets are logically flawed, inadequate, and not commensurate with achieving limiting warming to 1.5°C. They will see New Zealand's emissions continue to increase over the next decade;
- (d) New Zealand intends to rely on the possibility of obtaining offshore credits to meet its international obligations rather than actually reducing emissions, in circumstances where offshore credits may

not be available and actual emissions reductions consistent with the Minimum Global Reductions are required to avoid dangerous climate change;

(e) The Emissions Trading Scheme does not include agricultural greenhouse gas emissions, which comprise the majority of New Zealand's greenhouse gas emissions;

(f) The legislation and associated plans rely significantly upon the planting of forests (in New Zealand and to support offshore credits) where those offsets are unlikely to be real or secure, not least because predicted climate and moisture changes will result in widespread and uncontrollable levels of forest fires.

71. Despite the UNFCCC, the Kyoto Protocol and the Paris Agreement, effective governmental action at a global and national level (including in New Zealand) has not occurred and will not result in the Minimum Global Reductions being achieved.

72. Even if the commitments of various states under the Paris Agreement to reduce their emissions by 2030 are met, those commitments are inadequate such that the IPCC considers that it is likely that warming in excess of 1.5°C will nevertheless occur.

73. Political imperatives and short election cycles have impeded central governments taking effective action to require the reduction of Greenhouse Gas emissions in accordance with the Minimum Global Reductions.

74. Political imperatives and short election cycles will continue to impede central governments taking effective action to require the reduction of Greenhouse Gas emissions in accordance with the Minimum Global Reductions.

75. New Zealand's central government and legislature will not take effective action to reduce Greenhouse Gas emissions in time to achieve the Minimum Global Reductions, or in time to otherwise avoid the Adverse Effects including Adverse Effects that will impact Mr Smith and his descendants.

76. The defendants have variously:

(a) failed to credibly commit to voluntary measures that would see them proportionally contribute to, or better, the Minimum Global Reductions as to timing or volume; and

(b) actively lobbied against regulatory measures that would require them to reduce their emissions to proportionately contribute to, or better, the Minimum Global Reductions as to timing or volume.

Particulars

(a) Fonterra has lobbied extensively and continues to lobby to avoid or minimise regulation of agricultural emissions;

(b) The lobbying steps taken by the defendants are within their knowledge and further particulars will be given following discovery.

77. The Greenhouse Gas emissions of several of the defendants are actually, or effectively, unconstrained by the current regulatory regime.

Particulars

(a) Agricultural greenhouse gas emissions are not part of the emissions trading scheme;

(b) It is unlikely that agriculture greenhouse emissions will be regulated in a manner which would see a reduction in emissions consistent with the Minimum Global Reductions;

(c) BT Mining produces coal and exports it to jurisdictions where there is no, or no credible, regulation of Greenhouse Gas emissions such that its continued production and export of coal is inconsistent with the achievement of the Minimum Global Reductions and those emission are not regulated in New Zealand;

(d) A number of defendants, including NZ Steel, have received substantial allocations of "free" units under the emissions trading scheme such that they have not, and will not, reduce their emissions in a manner consistent with the Minimum Global Reductions;

(e) The availability of fixed price options, price caps, the cost containment reserve and similar mechanisms in the emission trading scheme artificially suppress the carbon price meaning that those defendants who are participants in the emissions trading scheme are not incentivised or required to reduce their emissions in a manner consistent with the Minimum Global Reductions;

(f) The New Zealand regulatory regime does not place hard limits on the amount of Greenhouse Gases that may be emitted by an individual or in total including due to the existence of a substantial stockpile of existing units (approximately 150,000,000), additional auction volumes, free allocation, and the cost containment reserve.

78. By their continued Greenhouse Gas emissions the defendants knowingly externalise both the harms of their Greenhouse Gas emissions, and the costs of otherwise achieving a reduction in Greenhouse Gas emissions sufficient to achieve the Minimum Global Reductions, onto others including Mr Smith, his whanau, and his descendants.

79. The consequence, in fact and in law, of the defendants' actions is that Mr Smith, his whanau, his descendants and others will bear the cost of dealing with harms contributed to by the defendants' historical, current and future Greenhouse Gas emissions.

80. There are multiple options available to the defendants to achieve, and better, the Minimum Global Reductions and to achieve the reductions sought by Mr Smith in this proceeding.

81. The orders sought in this proceeding will cause rapid sectoral change that will lead to other major New Zealand emitters taking similar steps to reduce their emissions in a manner that will materially mitigate the harm faced by Mr Smith, his whanau, and his descendants.

Tikanga Māori

82. Mr Smith does not allege that the defendants directly owed, or violated, any obligations under tikanga Māori, but he does rely on principles of tikanga Māori to inform the legal basis of the pleaded causes of action and the development of the common law of Aotearoa New Zealand. On the basis that the Court of Appeal considered that Mr Smith was required to plead those principles of law if he was to rely on them, he says:

(a) tikanga Māori has its own system of obligations owed to others and wrongs arising from those obligations;

(b) under tikanga Māori, obligations are grounded in whakapapa and whanaungatanga (kinship and community relationships);

(c) these relationships include a connection with the whenua (land and the environment), as humans are genealogically descendants of the natural world, giving rise to corresponding obligations of kaitiakitanga (obligations to care for the environment and resources);

(d) a breach of tikanga gives rise of a hara or take (an issue or a cause), requiring utu (an appropriate response or steps to be taken) in order to restore ea (a state of harmony or balance);

(e) harm to the environment is a harm in and of itself and can create a corresponding harm to those who have interests in the environment including kaitiaki and mana whenua (because it directly impacts their mana and their relationship with the whenua);

(f) where the environment or a resource is out of balance, including through human induced activity, kaitakitanga requires steps to be taken to restore balance, including through measures such as rāhui, being the prohibition of specific human activity through the use of tapu (making something sacred) and, in connection with the environment, to give a period of time to allow a resource to be re-generated;

(g) tikanga Māori recognises that hara has both a collective and an individual dimension both as to who is responsible for causing harm and as to who suffers harm.

(a) _____

FIRST CAUSE OF ACTION: PUBLIC NUISANCE

63-83. The plaintiff will suffer harm from the effects of dangerous anthropogenic interference with the climate system and the aAdverse consequences

Effects of climate change caused or contributed to by the defendants jointly and separately.

Particulars

- (a) Climate change will result in increasing sea levels, causing increased coastal erosion, inundation, flooding and storm surges. This will irrevocably damage the plaintiff's family land at Mahinepua C resulting in:
 - (i) A physical loss of land from erosion and inundation;
 - (ii) A loss of productive land from saltwater intrusion;
 - (iii) A loss of economic value as a result of the same;
 - (iv) A loss of sites cultural and spiritual significance that cannot be compensated by money or the substitution of different land, or remedied by relocation to a different area.
- (b) Climate change will result in increasing sea levels, causing increased coastal erosion, inundation, flooding and storm surges. This will irrevocably damage the Customary Resources and Sites of customary, cultural, historical, nutritional and spiritual significance to the plaintiff including as a result of:
 - (i) The loss or impairment of traditional or customary fisheries as a result of sea level rise, ocean warming and ocean acidification;
 - (ii) The physical loss and impairment of traditional or customary coastal landing sites for waka, and access to those sites;
 - (iii) The physical loss of burial caves and cemeteries from erosion or inundation;
- (c) Climate change will result in ocean warming and acidification which will adversely impact specific coastal and freshwater fisheries which the plaintiff customarily uses.
- (d) Climate change will result in the irrevocable and irreplaceable loss of land, resources, and species that are economically, culturally and spiritually significant to the plaintiff as tangata whenua (including interests protected under the Te Tiriti o Waitangi).
- (e) Climate change will result in increasing adverse health impacts in respect of which the plaintiff and Māori communities have a particular vulnerability.

64.84. By releasing Greenhouse Gases into the atmosphere (or producing or exporting coal, in the case of BT Mining; and producing or supplying Fuel Products in the case of Channel NZ Refining and Z Energy), the defendants have interfered with, or contributed to interference with, and will

in the future interfere with or contribute to interference with, the rights of the public.

Particulars

- (a) The release of Greenhouse Gas by the defendants (or, in the case of BT Mining, ~~Channel~~~~NZ Refining~~, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to interference with public health.
- (b) The release of Greenhouse Gas by the defendants (or, in the case of BT Mining, ~~Channel~~~~NZ Refining~~, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to interference with public safety.
- (c) The release of Greenhouse Gas by defendants (or, in the case of BT Mining, ~~Channel~~~~NZ Refining~~, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to interference with public comfort.
- (d) The release of Greenhouse Gas by defendants (or, in the case of BT Mining, ~~Channel~~~~NZ Refining~~, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to interference with public convenience.
- ~~(e)~~ The release of Greenhouse Gas by defendants (or, in the case of BT Mining, ~~Channel~~~~NZ Refining~~, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to interference with public peace.
- ~~(e)(f)~~ The release of Greenhouse Gas by defendants (or, in the case of BT Mining, Channel, and Z Energy as a result of their production or supply of coal and Fuel Products) has or will contribute to an interference with a public right to a safe and habitable climate system.

~~65-85.~~ The defendants' interference with public rights is substantial, material and unreasonable both as to the level of their contribution and the consequences of their contribution.

~~66-86.~~ The defendants knew, or ought reasonably to have known, since at least the release of the IPCC's Fourth Assessment Report in 2007, that their activities would contribute to dangerous anthropogenic interference in the climate system.

~~67-87.~~ The defendants knew, or ought reasonably to have known, since at least the release of the IPCC's Fourth Assessment Report in 2007, that it was necessary for them to immediately and significantly reduce their Greenhouse Gas emissions (or their production or exportation of coal, in the case of BT Mining; and or their production or supply of Fuel Products in the case of ~~Channel~~~~NZ Refining~~ and Z Energy) in order to avoid causing or contributing to dangerous anthropogenic interference in the climate system and the adverse consequences of climate for persons including the plaintiff.

88. Despite this knowledge, the defendants have continued to emit Greenhouse Gases into the atmosphere (or produce or export coal, in the case of BT Mining; and produce or supply Fuel Products in the case of Channel NZ Refining and Z Energy) and have failed to significantly reduce their Greenhouse Gas emissions (or their production or exportation of coal, in the case of BT Mining; and production or supply of Fuel Products in the case of Channel NZ Refining and Z Energy) and have instead increased gross emissions (or production of coal, in the case of BT Mining; and production or supply of Fuel Products in the case of Channel NZ Refining and Z Energy) since 2007.

89. Requiring the defendants to reduce, or cease, their Greenhouses Gas emissions (directly or arising from their fossil fuel products) will reduce the injury that will otherwise be suffered by the plaintiff and his descendants as a result of the Adverse Effects of climate change.

Relief sought

(a) A declaration that the defendants have (individually and/or collectively) unlawfully caused or contributed to a public nuisance through their emitting activities (or their production of coal in the case of BT Mining; and their production or supply of Fuel Products in the case of Channel NZ Refining and Z Energy);

(b) An injunction requiring the each of the defendants to produce (or cause in relation to the products they sell, in the case of BT Mining, Channel NZ Refining and Z Energy):

(i) A peaking of their emissions by 2025; and

(ii) A reduction in their emissions in the amount of the Minimum 2030 Reductions by the end of 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court);

(iii) A reduction in their emissions in the amount of the Minimum 2040 Reductions by the end of 2040, by linear reductions in net emissions each year until that time (to be supervised by the Court);

(iv) ~~zero net emissions from their activities by 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court);~~ zero net Greenhouses Gas emissions from their activities by 2050 by continued linear reductions (to be supervised by the Court);

~~(b)(c)~~ Alternatively, an injunction (which may be suspended) requiring the defendants to immediately or to otherwise cease their nuisance creating or contributing activities emitting net Greenhouses Gas emissions, or contributing to the net emission of Greenhouse Gases through the sale of their products immediately;

~~(e)(d)~~ Such other relief as the Court determines appropriate to enable the mitigation of or adaption to damage to climate systems contributed to by the defendants;

~~(d)~~(e) The plaintiff brings this proceeding in the public interest, and with the assistance of *pro bono* legal representation, and for that reason does not seek costs.

SECOND CAUSE OF ACTION: NEGLIGENCE (IN ADDITION OR IN THE ALTERNATIVE)

The plaintiff repeats paragraphs [1] to [6982] above, and says further —

~~68.90.~~ The defendants owe the plaintiff (and persons like him) a duty to take reasonable care not to operate their business in a way that will cause the plaintiff loss by contributing to dangerous anthropogenic interference in the climate system.

~~69.91.~~ The defendants have breached their duty by doing acts that have contributed to, and will continue to contribute to, dangerous anthropogenic interference in the climate system.

~~70.92.~~ The defendants knew, or ought reasonably to have known, since at least the release of the IPCC's Fourth Assessment Report in 2007, that their activities would contribute to dangerous anthropogenic interference in the climate system.

~~71.93.~~ The defendants knew, or ought reasonably to have known, since at least the release of the IPCC's Fourth Assessment Report in 2007, that it was necessary for them to immediately and significantly reduce their Greenhouse Gas emissions (or their production or exportation of coal, in the case of BT Mining; and or their production or supply of Fuel Products in the case of ~~Channel NZ Refining~~ and Z Energy) in order to avoid causing or contributing to dangerous anthropogenic interference in the climate system and the adverse consequences of climate for persons including the plaintiff.

~~72.94.~~ Despite this knowledge, the defendants have continued to emit Greenhouse Gases into the atmosphere (or produce or export coal, in the case of BT Mining; and produce or supply Fuel Products in the case of ~~Channel NZ Refining~~ or Z Energy) and have failed to significantly reduce their Greenhouse Gas emissions (or their production or exportation of coal, in the case of BT Mining; and their production or supply of Fuel Products in the case of ~~Channel NZ Refining~~ and Z Energy) and have instead increased gross emissions (or production of coal, in the case of BT Mining; and production or supply of Fuel Products in the case of ~~Channel NZ Refining~~ and Z Energy) since 2007.

~~95.~~ The defendants' breach of their duty has or will cause the plaintiff loss.

~~96.~~ The defendants' contribution to the injury that has been or will be suffered by the plaintiff is material.

~~73.97.~~ Requiring the defendants to reduce, or cease, their Greenhouses Gas emissions will reduce the injury that will otherwise be suffered by the plaintiff as a result of the Adverse Effects of climate change.

Relief sought

- (a) A declaration that the defendants have (individually and/or collectively) unlawfully breached a duty owed to the plaintiff and have caused, or will cause him loss through their emitting activities (or the production and/or exportation of coal in the case of BT Mining; and the production or supply of Fuel Products in the case of Channel NZ Refining and Z Energy);
- ~~(b)~~ An injunction requiring the each of the defendants to produce (or cause in relation to the products they sell contribute to, in the case of BT Mining, Channel NZ Refining and Z Energy):
- ~~(i)~~ A peaking of their emissions by 2025; and
- ~~(ii)~~ A reduction in their emissions in the amount of the Minimum 2030 Reductions by the end of 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court);
- ~~(iii)~~ A reduction in their emissions in the amount of the Minimum 2040 Reductions by the end of 2040, by linear reductions in net emissions each year until that time (to be supervised by the Court);
- ~~(iv)~~ zero net emissions by 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court), zero net Greenhouses Gas emissions from their activities by 2050 by continued linear reductions (to be supervised by the Court);
- ~~(b)(c)~~ Alternatively, an injunction (which may be suspended) requiring the defendants to immediately cease emitting net Greenhouses Gas emissions, or contributing to the net emission of Greenhouse Gases through the sale of their productser to otherwise cease their emissions activities immediately;
- ~~(e)(d)~~ Such other relief as the Court determines appropriate to enable the mitigation of or adaption to damage to climate systems contributed to by the defendants;
- ~~(d)(e)~~ The plaintiff brings this proceeding in the public interest, and with the assistance of *pro bono* legal representation, and for that reason does not seek costs.

THIRD CAUSE OF ACTION: BREACH OF DUTY (IN ADDITION OR IN THE ALTERNATIVE)

The plaintiff repeats paragraphs [1] to [7582] above, and says further —

98. The defendants owe a duty, cognisable at law, to cease materially contributing to damage to the climate system, dangerous anthropogenic

interference with the climate system, and the ~~a~~Adverse ~~e~~Effects of climate change through their emission of Greenhouse Gases into the atmosphere (or their production or exportation of coal in the case of BT Mining; and their production and supply of Fuel Products in the case of Channel NZ Refining and Z Energy).

74-99. The defendants have breached, and will continue to breach, the duty by emit Greenhouse Gases into the atmosphere (or to cause the emission of Greenhouse Gases through the sale of fossil fuel products) for their own profit and knowing that those emissions will contribute to damage to the climate system, dangerous anthropogenic interference with the climate system, the Adverse Effects of climate change, and injury to the plaintiff and people like him.

Relief sought

(a) A declaration that the defendants have (individually and/or collectively) unlawfully breached a duty through their emitting activities (or their production or exportation of coal in the case of BT Mining; and their production and supply of Fuel Products in the case of Channel NZ Refining and Z Energy);

(b) An injunction requiring the each of the defendants to produce (or ~~contribute to cause in relation to the products they sell~~, in the case of BT Mining, NZ Refining Channel and Z Energy):

(i) A peaking of their emissions by 2025; and

(ii) A reduction in their emissions in the amount of the Minimum 2030 Reductions by the end of 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court);

(iii) A reduction in their emissions in the amount of the Minimum 2040 Reductions by the end of 2040, by linear reductions in net emissions each year until that time (to be supervised by the Court);

(iv) ~~zero net emissions by 2030, by linear reductions in net emissions each year until that time (to be supervised by the Court)~~ zero net Greenhouses Gas emissions from their activities by 2050 by continued linear reductions (to be supervised by the Court).

~~(b)~~(c) Alternatively, an injunction (which may be suspended) requiring the defendants to immediately cease emitting net Greenhouses Gas emissions, or contributing to the net emission of Greenhouse Gases through the sale of their products, or to otherwise cease their emissions creating activities immediately;

~~(c)~~(d) Such other relief as the Court determines appropriate to enable the mitigation of or adaption to damage to climate systems contributed to by the defendants;

~~(d)~~(e) The plaintiff brings this proceeding in the public interest, and with the assistance of *pro bono* legal representation, and for that reason does not seek costs.

This document is filed by Michael Heard solicitor for the plaintiff of the firm LeeSalmonLong.

Documents for the plaintiff may be served at the offices of LeeSalmonLong situated on Level 16, Vero Centre, 48 Shortland Street, Auckland, or may be posted to P O Box 2026, Shortland Street, Auckland.