IN THE WAITANGI TRIBUNAL

KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 3450

WAI 745

IN THE MATTER OF	Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	The Natural Resources and Environmental Management kaupapa inquiry
AND	
IN THE MATTER OF	
AND	a claim filed by Luana Pirihi and the late Paki Pirihi on behalf of Patuharakeke hapū

SUBMISSIONS IN REPLY TO THE CROWN

Dated this 20th day of May 2025

MAY IT PLEASE THE TRIBUNAL

1. On 4 April 2025, an application for a priority hearing relating to the Fast-track Approvals Act 2024 (**FTAA**), was made by Luana Pirihi and the late Paki Pirihi on behalf of Patuharakeke hapū (Wai 745) (collectively, **the Claimants**)(**Application**).[1]

2. In Memorandum-directions dated 17 April 2025, the Presiding Judge directed the Crown and other parties to file submissions in response to the Application by Tuesday 6 May.[2] Responses were received by the Crown[3] and 15 claimant counsel.

3. The Presiding Judge also directed the Claimants to file submissions in reply to those of the Crown and other parties no later than Tuesday 20 May.[4]

4. These submissions are filed on behalf of the Claimants.

BACKGROUND

5. In its Reply Memorandum, the Crown stated it does not oppose the Claimants' application for a priority hearing on the FTAA within the Natural Resources and Environmental Management Kaupapa Inquiry (**Wai 3450 Inquiry**).[5]

6. The Tribunal has discretion to decide whether to grant a priority hearing.[6] In assessing the Application, the Tribunal is faced with making the following determinations:

    6.1. Whether the Application on issues caused by the FTAA meets criteria guidelines for a priority hearing;

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[1] Wai 745 #3.1.5, Memorandum of Counsel on behalf of the Claimants dated 21 March 2025.
[2] Wai 3450, #2.5.7, Memorandum-Directions of the Presiding Judge dated 17 April 2025, at [4].
[3] Wai 3450 #3.1.36, Memorandum of Crown Counsel dated 6 May 2025 (**Reply Memorandum**).
[4] Wai 3450, 2.5.7 at [5].
[5] Reply Memorandum, at [2].
[6] Waitangi Tribunal, *Guide to Practice and Procedure of the Waitangi Tribunal: A Comprehensive Practice Note Issues,* 2023, at 3.15. Guide to the Practice and Procedure of the Waitangi Tribunal.

6.2. To what extent, if at all, FTAA issues should be heard alongside inquiry into the wider environmental management landscape; and

6.3. Whether a priority hearing of FTAA issues is the best way of planning the Wai 3450 Inquiry.

7. Counsel for the Claimants make the submissions that:

7.1. the Application meets criteria guidelines for a priority hearing;

7.2. FTAA-related issues should be prioritised, and heard alongside an inquiry into certain parts of the wider resource management legislative scheme (specifically parts of the Resource Management Act 1991 (**RMA**)); and

7.3. a priority hearing on the FTAA is the best approach to planning for the Wai 3450 Inquiry.

CRITERIA FOR PRIORITY HEARING

8. As explained in an earlier memorandum of counsel filed by the Claimants, the Tribunal may have regard to several factors when determining whether to grant priority to claims that raise particular issues. These include:[7]

8.1. the readiness of claimants to proceed;

8.2. the time that a claim has been outstanding on the register;

8.3. the availability of hearing time allowed by gaps in the hearing of active inquiries; and

8.4. any other relevant factors.

[7] Waitangi Tribunal, *Guide to Practice and Procedure of the Waitangi Tribunal: A Comprehensive Practice Note Issues,* above n 7, at 3.16.

9. Further indication is provided by criteria for adjustment of the Tribunal's priorities, including:

   9.1. the removal of the Tribunal's ability to inquire;

   9.2. the immediacy of the *take* or potential remedy;

   9.3. the seriousness of the alleged breach or prejudice;

   9.4. the importance of the *take* to claimants;

   9.5. the importance of the *take* to Māoridom; and

   9.6. the importance of the *take* to the nation.

10. Finally, priority is placed on issues concerning current Crown policy and practice where there is "substantial claimant support and readiness for early hearing and reporting, provided that doing so would remain relevant alongside any Crown-initiated policy development or inquiry process under way".[8]

11. Counsel submits the criteria guidelines are met for reasons set out in paragraphs 12 – 25 of the Application.[9]

CROWN SUBMISSIONS

12. In its Reply Memorandum, the Crown provided a summary of the FTAA. Most significantly, it stated it does not oppose the Application. It also argued the Tribunal should consider: [10]

   12.1. the place of the FTAA in the wider legislative scheme;

   12.2. the FTAA's complex operation; and

   12.3. impact on inquiry planning.

[8] At Appendix B, paragraph 19.
[9] Wai 745 #3.1.5, Memorandum of Counsel on behalf of the Claimants dated 21 March 2025.
[10] Reply Memorandum at [31].

13. We respond to these three points below.

Place of the FTAA in the wider legislative scheme

14. The government has proposed a three-phased reform to the resource management system.[11] The first phase entailed repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023. The second phase, in two parts, involves the implementation of the Fast-track Approvals Act 2024 and the Resource Management (Consent and Other System Changes) Amendment Bill. Finally, phase three is a complete reform of the RMA and the introduction of the National Environment Act and Planning Act. These are expected to be introduced to Parliament by the end of 2025.[12]

15. We acknowledge that the FTAA sits as one of these three phases. However, it is submitted that the FTAA needs to be considered by the Tribunal as a priority hearing within the Wai 3450 Inquiry for three reasons.

16. Firstly, the FTAA was passed into law under urgency on 23 December 2024. The absence of consultation with Māori (or anyone) that preceded is evidence of a strong breach of te Tiriti principle of partnership by the Crown. It stripped the Claimants, among all others, of the opportunity to be heard on parts of the Bill that would directly impact them. It is imperative the Claimants get that opportunity to be heard imminently, by way of priority hearing in the Waitangi Tribunal before further significant impacts materialise.

17. Secondly, while we acknowledge that the FTAA fits within a framework of resource management legislation, there is no explicit mention within the FTAA of its relationship or applicability with the RMA and wider framework. This is in stark comparison to the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**Covid Fast-track Act**).

[11] Beehive, New Zealand Government, Speech to NZ Planning Institute Conference delivered by the Honourable Chris Bishop on 28 March 2025. Accessed at: https://www.beehive.govt.nz/speech/speech-nz-planning-institute-conference.
[12] Above n 11.

18. The Covid Fast-track Act (now repealed) was clear that it existed within the framework of the RMA. For example, a resource consent granted under the Covid Fast-track Act would have the same force and effect as if it were granted under the RMA.[13] The FTAA is void of signposts to this effect raising questions of how the existing FTAA and RMA interact with each other.

19. It is submitted that this refines the degree to which the wider legislative scheme (in this case, specifically the RMA) needs to be engaged with for the Waitangi Tribunal's purposes of a fast-track priority hearing. Consequently, this makes it easier for the Tribunal to deal with the FTAA as the first issue under the Wai 3450 Inquiry.

20. Thirdly, hearing issues on the FTAA as a matter of priority is a proactive way to approach the ongoing reform of the RMA by front footing fundamental issues before amendments are passed into law and/or providing the necessary findings and recommendations in advance.

21. As outlined above, the government is in its third phase of wider resource management reform. The government is expected to substantively introduce the RMA reform (by way of two main pieces of legislation) by the end of 2025.[14] It is imperative to assess the FTAA approach (including its purpose, processes, and lack of environmental and cultural bottom lines) to inform the Tribunal, claimants and Crown of its impacts to inform prospective changes under the reform.

22. It is most logical to address the FTAA first to lay the foundation for the wider resource management scheme. If the Tribunal chose to take a different approach by addressing the RMA and other legislation substantively first, and FTAA later, it will delineate from the most pressing issues in front of the Tribunal at this time.

[13] Covid Fast-track Act (repealed), s 12(2)(b).
[14] Beehive, Speech to NZ Planning Institute Conference, above n 12.

Complexity of the FTAA

23. The Crown alluded to complexity of the FTAA and wider regime with regards to multiple pieces of legislation, including the RMA, Conservation Act, Heritage New Zealand Pouhere Taonga Act, and the Crown Minerals Act.[15] However, the Crown itself follows this submission by stating that understanding the operation of these Acts is not necessary in order to consider the FTAA.[16]

24. Counsel agrees with the position that an understanding of the many pieces of legislation under the resource management framework is not required to assess the issues with the FTAA.

25. We make the submission that consideration of the wider resource management framework for the Waitangi Tribunal's purpose of a priority hearing can be limited to discrete parts of the RMA.

26. Key issues to be considered in a priority hearing are outlined below at paragraphs 30.1 – 30.4. Counsel for the Claimants submit that these issues are general, and consideration of them by the Tribunal does not require a wide analysis of the broad resource management framework.

Impact on inquiry planning

27. As outlined above from paragraphs 14 – 22, given the government's phased approach to resource management reform, it is only prudent to take a similar approach with the Wai 3450 Inquiry by addressing it in phases, starting with the FTAA.

28. The Crown stated in its Reply Memorandum that "a sequential approach [to the inquiry] will be easier for all parties to resource".[17]

29. Counsel does not consider the fact that we are yet to receive detail on the third phase of the reform to be an issue. A priority hearing on FTAA issues provides the Tribunal, claimants, and the Crown a fitting opportunity to take a proactive approach in addressing impacts of

[15] Reply Memorandum at [35].
[16] Reply Memorandum at [35].
[17] Reply Memorandum at [32].

resource management legislative reform on Māori while still operating within the lens of current Crown actions and breach.

KEY ISSUES UNDER A PRIORITY HEARING

30. Considering the reasons for a priority hearing set out above, the Claimants consider the key substantive issues under the Application to include:

    30.1. the definition of affected parties and lack of consultation opportunities;[18]

    30.2. limiting rights to appeal, including only being able to appeal on a matter of law and restricting the group of persons who can appeal a decision under the FTAA;[19]

    30.3. constrained timeframes throughout the entire process under the FTAA;[20] and

    30.4. the lack of consideration for Māori and environmental interests, as per sections 6 – 8 of the RMA.[21]

31. The above is not an exhaustive list and it is acknowledged that other claimants may seek to include further issues for the Tribunal's consideration.

CONCLUSION

32. To conclude, it is worthwhile noting that the Application was not opposed by the Crown, and was supported by 15 claimant counsel, with many of those counsel representing multiple claimants around the motu. Therefore, support for a priority hearing on the FTAA is evident.

[18] Wai 745 #3.1.5, Memorandum of Counsel on behalf of the Claimants dated 21 March 2025, at [20].
[19] At [21].
[20] At [15]-[17].
[21] At [25].

33. Addressing the FTAA as a matter of priority in the first phase of the Wai 3450 Inquiry is logical and will enable further kōrero on the wider scheme to entail in later stages.

34. The Claimants make the submissions that criteria guidelines are met for a priority hearing on the FTAA. A priority hearing is necessary, and it is the best use of Tribunal time and resources in the Wai 3450 Inquiry.

DATED at Auckland this 20th day of May 2025

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Kelly Dixon / Harriett Morrow
Counsel for the Claimants