
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 3450

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Natural Resources and Environmental
Management kaupapa inquiry

MEMORANDUM OF CROWN COUNSEL RESPONDING TO WAI 1194 AND WAI
1212 APPLICATION FOR PRIORITY HEARING

13 Pipiri | June 2025

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WELLINGTON



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o te Karauna**
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MAY IT PLEASE THE TRIBUNAL:

Introduction and the claims for which priority is sought

1. By this memorandum the Crown responds to the application for a priority hearing filed by the Wai 1194 claimants and Wai 1212 claimants in respect of their claims concerning the Fast-track Approvals Act 2024 (the **Act**).¹
2. The claimants' (joint) amended statement of claim says the claim is brought in response to an application by the Proprietors of Taheke 8C & Adjoining Blocks Incorporation under the Act.² The claim also states that the claimants support a priority hearing into the inconsistency of the Act with Te Tiriti o Waitangi.³ The claimants consider that immediate prejudice arises to them under the Act where there are current fast-track applications within their rohe.⁴ The application in respect of the Taheke 8C hydroelectric scheme project is the only application identified in the claim.⁵

Crown response in summary

3. First, to the extent the claimants seek a priority hearing into their claims concerning the scheme of the Act, the Crown maintains its original response to the Wai 745 claimants' application for a priority hearing. The Crown refers to its previous submissions on the matters the Tribunal may wish to consider when determining the sequencing of issues for this kaupapa inquiry.⁶ Those previous submissions are not repeated here.
4. Second, in relation to the application for a priority hearing regarding the Taheke 8C hydroelectric scheme project, the Crown opposes the application and says the claim of immediate prejudice arising to the claimants is not made out. The project is not currently subject to processes under the Act. The project was subject to a referral application, which the Crown returned to the applicant for not complying with the criteria for

¹ In accordance with the Tribunal's memorandum-directions Wai 3450, #2.5.8 at [5] and [28]–[30].

² Wai 1194 and Wai 1212 Amended Statement of Claim, dated 3 June 2025 at [20].

³ Wai 1194 and Wai 1212 Amended Statement of Claim, dated 3 June 2025 at [33].

⁴ Wai 1194 and Wai 1212 Amended Statement of Claim, dated 3 June 2025 at [35].

⁵ See in particular [70]–[83] of the Amended Statement of Claim.

⁶ Wai 3450, #3.1.36 at [29] and following.

referral on 1 May 2025. If a further application was filed by the project proponent and accepted by the Ministry for the Environment (**MfE**), the project proponent would then be able to lodge a substantive application for consideration by a panel. However, referral does not guarantee ultimate approval.

5. The submissions below elaborate on these reasons and address the provisions of the Act relating to the referral application process and the status of the Taheke 8C project.
6. The status of the referral application for the Taheke 8C project is also addressed in the evidence of Ilana Miller filed with this response.⁷

Referral process under the Act

7. The Crown refers to its previous submissions regarding the Wai 745 application for priority which provide a description of the processes under the Act.⁸
8. As explained in those submissions, referral projects are one of two pathways established under the Act for applicants seeking to use the fast-track process to obtain approvals. The other pathway is for listed projects,⁹ which are not addressed further here. A referral project is a project in respect of which an application has been made under s 13 of the Act to use the fast-track approvals process and has been referred to that process by the Minister for Infrastructure. All projects not listed in sch 2 of the Act must go through the referral application process. The Taheke 8C project is not listed in sch 2.
9. For ease of reference, the Crown reiterates its previous submissions addressing the referral process provisions of the Act, with some further detail where relevant. Information in relation to the referral process is also

⁷ Affidavit of Ilana Robyn Miller, dated 13 June 2025.

⁸ Wai 3450, #3.1.36 at [10] and following.

⁹ Listed projects being those listed in sch 2 of the Act.

available online.¹⁰

- 9.1 Under s 13, a party may apply to use the fast-track approvals process by lodging a referral application with the Secretary for the Environment.
- 9.2 Section 13 sets out the criteria for a referral application. In short, these include general requirements,¹¹ such as the manner and form in which the application must be lodged, and information requirements including: a description of the proposal, the activities it would involve, how the application complies with s 22 of the Act,¹² and a description of the anticipated and known adverse effects of the project on the environment; the persons likely to be affected, including relevant local authorities, relevant iwi authorities and Treaty settlement entities;¹³ and a summary of the consultation completed for the purposes of s 11, which requires the applicant to have consulted any relevant local authorities and any relevant iwi authorities, hapū, and Treaty settlement entities. In addition, under s 13(4)(y) specific approvals have specific information requirements, set out elsewhere in the Act, that must be included with the referral application.
- 9.3 Under s 14, MfE must determine whether the application complies with s 13, is capable of satisfying the criteria in s 22 and does not appear to involve an ineligible activity (the meaning of which is defined in s 6 of the Act).
- 9.4 If MfE determines the application meets these criteria, it must provide the application to the Minister for Infrastructure.¹⁴
- 9.5 Under s 15, the Minister must consider the application and comply

¹⁰ See <[Referral application to use the Fast-track | Fast-track website](#)>.

¹¹ Section 13(1)–13(3).

¹² Section 22 prescribes the criteria for assessing a referral application.

¹³ Section 13(j).

¹⁴ Section 14(4).

with ss 17 to 19 of the Act,¹⁵ which includes inviting comments from local authorities and identified Māori groups, and reporting on Treaty settlements and other obligations. Section 22 then provides that the Minister may accept a referral application if satisfied of certain matters and prescribes the circumstances in which the Minister must decline a referral application.

9.6 If satisfied that the relevant criteria have been met, the Minister may refer the whole or part of the project to the fast-track approvals process (s 26). The Minister may specify restrictions that apply to the project or other matters, including a deadline by which a substantive application must be lodged and information that must be submitted with the substantive application (s 27).

10. If the Minister for Infrastructure refers a referral application to the fast-track approvals process, it is then open to the project proponent to make a substantive application under s 42 of the Act for one or more fast-track approvals. A project will not be considered for fast-track approval prior to the lodgement of a substantive application. The Crown refers to its previous submissions which addressed the requirements for substantive applications.¹⁶

Status of the Taheke 8C project

11. Filed with this memorandum is the affidavit of Ilana Miller, who is responsible for overseeing the team at MfE that assesses referral applications under s 14 the Act.

12. Ms Miller's evidence explains that:

12.1 On 14 April 2025, the referral application for the Taheke 8C hydroelectric scheme project was officially lodged (the application fee and levy having been paid).

12.2 MfE had ten working days to assess the application, with the final

¹⁵ Unless the Minister decides to decline the application in accordance with s 25.

¹⁶ Wai 3450, #3.1.36 at [15]–[16].

day falling on 1 May 2025.

- 12.3 On 1 May 2025, MfE, having determined that the application did not comply with the requirements of s 14(2) of the Act, advised the applicant by letter that the application was non-compliant. Ms Miller has provided a copy of MfE's 1 May 2025 letter to the applicant's representative.
- 12.4 As at the date of Ms Miller's evidence, MfE has not received a further application for referral in relation to the Taheke 8C hydroelectric scheme project.
13. As illustrated by Ms Miller's evidence, the Taheke 8C project is not currently subject to any processes under the Act. If a further application for referral were submitted in relation to the project, that application, in its entirety, would need to be assessed by MfE to determine whether it complied with s 14 of the Act. In accordance with the process described above, if MfE determined that the application complied with s 14, the application would then be provided to the Minister for Infrastructure to consider and decide whether to refer the project in whole or part to the fast-track approvals process. Only then would a substantive application for approvals under the Act be able to be submitted by the project proponent for consideration by a panel (having been considered by the Environmental Protection Agency for completeness first).¹⁷ However, referral does not guarantee ultimate approval.

Conclusion on application for priority in relation to Taheke 8C project

14. The Taheke 8C hydroelectric scheme is the only project in relation to which the claimants assert immediate prejudice. That project is not currently subject to processes under the Act and, if resubmitted for referral, would need to be processed in accordance with the steps set out above and comply with the criteria in the Act before reaching the step of being eligible to proceed through the substantive application process for fast-track

¹⁷ Refer to the Crown's previous submissions describing the expert panel process: Wai 3450, #3.1.36 at [17] and following.

approvals.

15. For the reasons set out above, the Crown submits that the application for a priority hearing in relation to the Taheke 8C project has not made out the case of immediate prejudice to the claimants and should be declined.

13 Pipiri | June 2025



G Melvin / D Hunt
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel