TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3450

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

te Natural Resources and Environmental Management Kaupapa Inquiry

---

HE WHAKATAUNGA O TE PAEWHIRI O NGĀ TONO AROTAU

DECISION OF THE PANEL CONCERNING THE APPLICATIONS FOR PRIORITY

23 Pipiri 2025

Hei tīmatanga kōrero / Introduction

1. This decision determines applications for a priority hearing filed by:

   (a) the Patuharakeke Hapū Lands and Resources (Wai 745) claim (Wai 745, #3.1.5); and

   (b) the Taumanu Land (Wai 1194) claim and the Ngā Uri o Ngā Tokotoru o Manawatokotoko Lands and Resources (Wai 1212) claim (Wai 1194, #2.27).

2. These applications concern issues relating to the Fast-track Approvals Act 2024 (FTAA).

Ko te horopaki ki ngā kerēme / Background to the claims

3. The FTAA was enacted on 23 December 2024. The purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits by implementing a streamlined process for obtaining resource consent and a wide-range of other approvals.[1]

4. FTAA-applicants have been able to apply for projects to be considered for this process established by the FTAA from 7 February 2025. There are currently 149 infrastructure projects listed at Schedule 2 of the FTAA which are pending consideration by a FTAA-panel.

Ko te hātepe ture o te tono nei / Procedural history

5. On 4 April 2025, the Tribunal received a memorandum of counsel on behalf of Wai 745, making an application for priority relating to the FTAA, alongside an amended statement of claim and a supporting affidavit of Juliane Chetham (Wai 745, #3.1.5, #1.1(v) & #B1).

6. On 11 April 2025, the Deputy Chairperson, Judge Sarah Reeves, referred this application to Judge Armstrong as Presiding Officer, and Tā Pou Temara, Professor Emeritus David Williams, and Professor Tafaoimalo Tologata Leilani Tuala Warren as members appointed to the Wai 3450 Inquiry Panel (Wai 3450, #2.5.6).

7. On 17 April 2025, we directed the Crown and other parties to file submissions in response by 6 May 2025. We also directed the applicant to file submissions in reply by 20 May 2025 (Wai 3450, #2.5.7).

8. On 4 June 2025, the Tribunal received an additional application for priority relating to the FTAA from Wai 1194 and Wai 1212, alongside an amended statement of claim, an affidavit of Colleen Skerrett-White and an affidavit of Michael Dawson (Wai 1194, #2.27, #A2 & #A3).

9. On 6 June 2025, we directed the Crown and other parties to file submissions in response to the second application by 13 June 2025. We also directed the applicant to file submissions in reply by 20 June 2025 (Wai 3450, #2.5.8).

Ngā tāpaetanga a ngā Kaitono / Submissions of the applicants

Submissions of the Wai 745 applicants

10. Counsel for the Wai 745 claim submits that the FTAA breaches the principles of te Tiriti o Waitangi and seeks that the application for a priority inquiry into issues relating to the FTAA be granted as soon as possible (Wai 745, #3.1.5 & #1.1(v)).

11. The applicants submit that mechanisms within the FTAA prioritise economic interests over environmental, cultural and social interests and breaches the principles of the Treaty of Waitangi (Wai 745, #1.1(v)).

[1] Fast-track Approvals Act 2024, section 3; Process | Fast-track website.

12. Further, the applicant's argue that the time pressure throughout the fast-track process limits proper consideration of the adverse effects arising from the fast-track applications and is a failure by the Crown to engage in good faith with Māori (Wai 745, #1.1(v) & #3.1.5).

13. Counsel submit the claimants are likely to suffer significant and irreversible prejudice given parties are now able to undertake an alternative and swift pathway to obtain consent for activities, including those which are prohibited or have previously been declined under the Resource Management Act 1991 (RMA) and the Supreme Court.[2] The applicant submits further prejudice is heightened by the limits to rights of appeal under the FTAA (Wai 745, #1.1(v) & #3.1.5).

14. In the applicant's submissions the potential harm to the natural environment arising from the FTAA is compounded by the lack of consultation. They contend that the Crown's failure to engage in meaningful consultation with the applicants is an 'abhorrent abuse of power' and breach of te Tiriti principles (Wai 745, #1.1(v)). The applicant submits this is heightened by virtue of the six projects listed under the FTAA which are within the applicants rohe (Wai 745, #3.1.5).

Submissions of the Wai 1194 and Wai 1212 applicants

15. The application for priority from Wai 1194 and Wai 1212 raises similar arguments to that in the Wai 745 application.

16. The applicants submit that the FTAA is inconsistent with te Tiriti o Waitangi as it has been developed without the applicants input and will be imposed over their hapū, rohe and resources without their consent (Wai 1194, #2.27, #A2 & #A3).

17. The applicants submit that of particular concern is the imminence with which projects listed under Schedule 2 could commence upon approval of an FTAA-application. The applicants are particularly concerned with a proposed hydroelectric power scheme project on Taheke 8C and the serious adverse affect it will have on the applicants' rohe (Wai 1194, #2.27).

18. Counsel submit the FTAA legislative framework has distanced the ability of the applicants to have mana and authority over their taonga (Wai 1194, #2.27).

Ngā tāpaetanga a te Karauna / Crown's submissions

Crown submissions on the Wai 745 application

19. On 7 May 2025, Crown counsel filed submissions in response. The Crown does not oppose the Wai 745 application for priority but suggests that the Tribunal should determination the application with a careful approach to inquiry planning (Wai 3450, #3.1.36).

20. The Crown argues that the FTAA does consider the Treaty of Waitangi in three main ways (Wai 3450, #3.1.36):

    (a) Section 7 of the FTAA provides that decision-makers must act in a manner consistent with the obligations arising under existing Treaty settlements and customary rights;

    (b) In the fast-track referral process, the Minister for Infrastructure must obtain and consider a report prepared by the Ministry for the Environment under section 18, which lists a series of matters related to the Treaty of Waitangi, and rights and interests of Māori; and

[2] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127.

(c) Section 53 provides that a panel set up to determine an application must invite comments from 'a wide range of groups' and can choose to invite further comment.

21. Counsel for the Crown draw attention to the early-stage of the applications listed at Schedule 2. The Crown also refers to the legal opinion sought and now released by the Panel Convener of the FTAA-panel as to the duties and powers of a Convener under the FTAA, which, in the Crown's submissions, address some of the issues raised by the applicants (Wai 3450, #3.1.36).[3]

22. Crown counsel submits that if the Tribunal grants priority into these issues, the focus will likely be drawn away from the wider kaupapa inquiry for the duration of the priority inquiry (Wai 3450, #3.1.36).

23. Counsel submit the FTAA and its regime are complex and draw together the operation of a number of sophisticated schemes, and that it may be beneficial for the Tribunal to have a general understanding of the broader RMA landscape. However, counsel submit this will require further and more detailed articulation in order to carefully describe the regime. Due to the complexity of the issues, counsel submit any timetabling of a priority inquiry must allow sufficient time to prepare the necessary information (Wai 3450, #3.1.36).

24. Additionally, counsel submit that prejudice to the claimants is not as imminent as suggested, and the publicly available material suggests that statutory deadlines will not be triggered for projects in the claimant's rohe in the short term (Wai 3450, #3.1.36).

Crown submissions on the Wai 1194 & Wai 1212 application

25. On 13 June 2025, the Tribunal received a memorandum of counsel for the Crown responding to the Wai 1194 and Wai 1212 application, alongside the affidavit of Ilana Miller (Wai 3450, #3.1.48 & #A1).

26. The Crown maintains its original response to the Wai 745 application where it did not oppose the application for priority. However, the Crown does oppose a priority hearing regarding the Taheke 8C hydroelectric scheme project. Crown counsel submit the claim of immediate prejudice concerning this project is not made out (Wai 3450, #3.1.48).

27. Counsel submit the Taheke 8C hydroelectric scheme is a referral project. The Ministry for the Environment has already determined that the Taheke 8C project does not comply with the referral requirements under the FTAA. A further application for referral has not been received. As such, the Taheke 8C project is not currently a project subject to any of the processes under the FTAA (Wai 3450, #3.1.48).

Ngā tāpaetanga kōrero a ngā hunga tāpiri / Other party submissions

28. The Tribunal received submissions in response to the Wai 745 and Wai 1194 & Wai 1212 applications for priority from the following interested parties:

(a) Tukau law on behalf of Wai 49, Wai 682, Wai 1464 and Wai 1546 (Wai 3450, #3.1.28);

(b) Wackrow Panoho & Associates on behalf of Wai 1140 (Wai 3450, #3.1.29);

(c) Woodward Law on behalf of Wai 2024 (Wai 3450, #3.1.30);

(d) Te Pono Legal on behalf of Wai 3219 (Wai 3450, #3.1.31);

(e) Te Nahu Legal on behalf of Wai 1944 (Wai 3450, #3.1.32);

[3] Roles-and-Powers-of-the-Fast-track-Approvals-Act-Panel-Convener-Kitt-Littlejohn_Redacted.pdf

(f) Bryce Lyall on behalf of Wai 3288 (Wai 3450, #3.1.33);

(g) Dixon & Co Lawyers on behalf of Wai 2003 and Wai 2764 (Wai 3450, #3.1.34 & 3.1.49); and

(h) Tamaki Legal on behalf of Wai 2460 (Wai 3450, #3.1.35 & #3.1.50).

(i) Bennion Law on behalf of Wai 2139 (Wai 3450, #3.1.37);

(j) Oranganui Legal on behalf of Wai 3468 (Wai 3450, #3.1.38);

(k) Annette Sykes & Co. on behalf of Wai 1194 and Wai 1212 (Wai 3450, #3.1.39);

(l) Tu Pono Legal on behalf of Ngāti Kuku hapū and Whareroa Marae (Wai 3450, #3.1.40);

(m) Te Mata Law on behalf of Dr Mere Kepa (Wai 3450, #3.1.41); and

(n) Hockly Legal on behalf of the Horowhenua 11 Part Reservation Trust (Wai 3450, #3.1.42).

29. A summary of the submissions in support of the urgent application are set out below.

Lack of consultation and process undertaken

30. The parties submit that the FTAA breaches the principles of the Treaty of Waitangi through lack of consultation with iwi, hapu, whānau and Māori generally, and will be imposed on hapū and iwi rohe without their consent.

31. In the parties' submission, the FTAA was enacted with minimum consultation or discussion with Māori. Consequently, there is an apparent lack of adequate safeguards for the rights and interests of Māori in the FTAA.

32. The parties emphasise the truncated public submission period for the Fast-track Approvals Bill (the Bill), and the lack of relevant materials available regarding the proposed FTAA in order for the parties to properly assess the Bill during that period.

Prejudice

33. The parties consider that imminent and immediate prejudice arises from the FTAA as it places importance on efficiency and development, over te Tiriti o Waitangi and tikanga.

34. The parties submit that the FTAA fundamentally denies their rangatiratanga over their taiao and undermines their ability to fulfil their obligations of kaitiakitanga, which will irreversibly harm the natural environment of their respective rohe.

35. The parties submit that the FTAA prescribes a regime that prioritises infrastructure and development projects, excludes them from participating in decisions concerning the use and management of their rohe, and imposes timeframes and low-end costs contributions that do not rationally or reasonably translate to facilitating effective participation and informed decision-making.

36. Further, the parties submit that the FTAA undermines existing rights and guarantees afforded to iwi and hapū in their Treaty settlements, as well as previous decisions of the Environment Court and Supreme Court, which declined some applications now eligible under the FTAA.

37. The parties are concerned that the FTAA constitutes a significant threat to Māori who have interests in resources which may be circumvented by the fast-tracked consent process, especially as the FTAA-process places a heavy burden on them to defend their rohe against the government and corporations.

Limitations to Māori rights and interests in the FTAA

38. The parties submit that the swift processes imposed by the FTAA will limit their rights of consultation and participation in any application process. They are concerned with the omission of section 8 of the Resource Management Act 1991 (RMA) from Schedule 5 of the FTAA. Clause 5 of Schedule 5 lists the information to be included in consent applications and includes an assessment of the activity against sections 5, 6 and 7 of the RMA only.

39. The parties draw attention to the lack of accountability for panels approving applications, at different steps of the process, to consult with Māori. The groups to consult with are narrowly defined as iwi authorities, hapū and Treaty settlement entities as opposed to wide consultation with whānau, hapū and iwi generally. This limitation is emphasised by the short timeframes imposed on panels during different application consultation periods.

40. The parties contend that Maori who have not yet had their claims heard by the Tribunal, nor included in settlement legislation are particularly vulnerable as they have less of a perceived right under the FTAA.

41. Further, some parties submit there is a risk that the FTAA may contravene the intention of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA), where the approval of fast-track applications may undermine MACA applications which are still before the High Court.

Inform resource management policies and laws

42. The parties submit that a priority inquiry is necessary in light of the projects under the FTAA, and the potential influence a report could have to mitigate adverse affects of the FTAA and wider resource management policy changes.

43. The parties support the Tribunal inquiring into the FTAA and its consistency with te Tiriti o Waitangi.

Ngā tāpaetanga whakahoki o te Wai 745 / Reply submissions of Wai 745

Reply submissions of the Wai 745 claim

44. On 20 May 2025, the Tribunal received a memorandum of counsel, reply submissions and a joint application to summons the production of Crown documents, from counsel for the applicant (Wai 3450, #3.1.43, #3.1.44 & #3.1.45).

45. The applicant responds to the Crown's submissions with particular regard to the place of the FTAA in the wider legislative scheme, the complexity of the FTAA and the impact a priority inquiry may have on the wider kaupapa inquiry.

46. Counsel submit there are three main reasons the FTAA should be considered by the Tribunal as a priority within the Wai 3450 Inquiry. Firstly, the FTAA was passed into law under urgency without consultation with Māori (Wai 3450, #3.1.44 at [16]).

47. Secondly, counsel submit there is no explicit mention within the FTAA of its relationship with the RMA and wider framework, which raises questions of how the existing FTAA and RMA interact with each other. Consequently, counsel submit, this makes it easier for the Tribunal to deal with the FTAA as the first issue under the Wai 3450 Inquiry (Wai 3450, #3.1.44 at [17]).

48. Additionally, counsel submit the government is expected to introduce the RMA reform by the end of 2025. Counsel submit it is imperative to assess the FTAA approach to inform the Tribunal, claimants and Crown of its impacts to inform prospective changes under the reform (Wai 3450, #3.1.44 at [18]).

49. Counsel submit that understanding the many pieces of legislation under the wider resource management framework is not required to assess the issues with the FTAA and can be limited to discrete parts of the RMA for the Tribunal's purpose. Additionally, counsel submit that as the government is taking a phased approach to resource management reform, the Tribunal should take a similar approach by addressing it in phases, starting with the FTAA (Wai 3450, #3.1.44).

50. Counsel submit that the key substantive issues for a priority hearing include (Wai 3450, #3.1.44 at [30]–[31]):

    (a) The definition of affected parties and lack of consultation opportunities;

    (b) Limiting rights of 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;

    (c) Constrained timeframes throughout the entire process under the FTAA; and

    (d) The lack of consideration for Māori and environmental interests, as per sections 6 – 8 of the RMA.

Reply submissions of the Wai 1194 & Wai 1212 claims

51. On 18 June 2025, the Tribunal received the reply submissions from counsel for the applicant (Wai 3450, #3.1.51).

52. Counsel for the applicant submits that despite the project not yet being approved under the FTAA, there are still issues associated with the Tāheke No.8C project which prove prejudicial to the applicants and Te Arawa generally (Wai 3450, #3.1.51).

53. The applicants remain concerned with the 'veiled sense of secrecy' the FTAA process operates, which contributes to the applicants not being aware of the status of the Taheke 8C project not complying with the referral criteria under the FTAA (Wai 3450, #3.1.51).

54. Further, due to the significant social, cultural, environmental and economic interests, the applicants should not have been informed of Crown decisions which affect their taonga and taiao by a priority application before this Tribunal (Wai 3450, #3.1.51).

55. In their submissions, the applicants have particular concern with the limited duties of consultation an expert panel has under the FTAA, with whānau, hapū or iwi in relation to projects which will affect their rohe (Wai 3450, #3.1.51).

56. Overall, the applicants continue to support the priority application of the Wai 745 claim, and despite the Crown's submissions, view that a priority hearing into the FTAA is necessary. In their submissions, the applicants state it is logical for this issue to be prioritised due to the pressing breaches of te Tiriti that are being felt by Māori communities now (Wai 3450, #3.1.51).

Kōrerorero / Discussion

What is the approach to prioritising an issue within an inquiry?

57. Whether a particular claim, or issue, should be prioritised is at the discretion of the Tribunal panel for that inquiry. While there are no prescribed criteria for granting priority, the Tribunal may have regard to:[4]

    (a) the readiness of claimants to proceed;

    (b) the time that a claim has been outstanding on the register;

    (c) the availability of hearing time allowed by gaps in the hearing of active inquiries; and

[4] Waitangi Tribunal, *Guide to the Practice and Procedure of the Waitangi Tribunal* (2023), at [3.16].

(a) any other relevant factors.

58. Priority is only granted in exceptional circumstances.

How is the Waitangi Tribunal hearing programme administered?

59. Before determining the applications seeking priority concerning the FTAA, we first consider the Tribunal hearing programme as a whole. This is important given the potential impact that granting priority, in the way the applicants seek, could have on the hearing programme.

60. Per section 6(2) of the Treaty of Waitangi Act 1975, the Tribunal must inquire into every claim submitted to it. While there are some exceptions to this statutory obligation, those exceptions are limited. Since the establishment of the Tribunal in 1975, over 3,000 claims have been filed. Initially, the Tribunal heard and reported on individual claims. However, this proved to be a very slow and inefficient way of determining those claims.

61. The Tribunal has broad statutory authority to regulate its own procedure. To determine claims in a coordinated and efficient way, the Tribunal decided to group claims to be heard concurrently within geographical areas called 'inquiry districts'. While those district inquiries also heard contemporary claims, they were largely dominated by the historical claims in those areas.

62. In 2014, the Tribunal released a strategic direction paper, setting out how it proposed to hear and report on the remaining claims before it over the next decade.[5] This was an important step in overall hearing planning as it recognised that, given the limited Tribunal resource available, claims had to be heard in a coordinated and staged manner through planning years in advance. That strategic direction also recognised that, as the Tribunal completes the remaining district inquiries, it will need to turn its attention to the many outstanding contemporary claims. Many of those contemporary claims raised nationally significant issues affecting Māori as a whole, or a section of Māori in similar ways. As those claims were not confined to geographical areas, they did not fall neatly within the district inquiry programme.

63. In 2015, the then Chairperson Chief Judge Isaac established the kaupapa inquiry programme.[6] This grouped those remaining claims, that were not heard in district inquiries, under particular themes or kaupapa.[7] Chief Judge Isaac also determined the following order in which the kaupapa inquiries would proceed:

(a) Māori military veterans;

(b) Constitution, self-government and electoral system;

(c) Health services and outcomes;

(d) Mana wāhine and mana tāne;

(e) Education services and outcomes;

(f) Identity and culture;

(g) Natural resources and environmental management;

(h) Social services, social development and housing;

(i) Economic development;

(j) Justice system; and

[5] Waitangi Tribunal, *Strategic Direction 2014 – 2025* (2014).
[6] Waitangi Tribunal, Memorandum of the Chairperson initiating the kaupapa inquiry programme (2015).
[7] Generally, this did not include outstanding historical claims not heard in district inquiries. Those are being considered by the Standing Panel (Remaining Historical Claims) (Wai 2800) Inquiry.

(k) Citizenship rights and equality.

64. Chief Judge Isaac also recognised that there would have to be some flexibility with this approach given that new kaupapa grievances may arise and the order of kaupapa inquiries may have to be reprioritised.

65. In 2019, Chief Judge Isaac revised the kaupapa inquiry programme.[8] He referred to claims concerning MACA and housing being severed from larger kaupapa inquiries and being prioritised for hearing. He also reprioritised the kaupapa inquiry programme. As a result, the Natural Resources and Environment Kaupapa Inquiry moved from seventh down to eleventh in the priority order.

66. The Tribunal's strategic direction was updated in 2020 to monitor progress and to set new goals to complete the remaining hearing programme.[9]

67. In January 2024, the kaupapa inquiry programme was revised once again. The Natural Resources and Environment Kaupapa Inquiry was moved further down to twelve out of thirteen in the priority order.

68. As the previous strategic direction projected goals out to 2025, in late 2024, the current Chairperson, Chief Judge Fox, initiated a further review of that strategic direction. She appointed a thirteen-member panel to undertake an initial review and to make recommendations on how the strategic direction could be improved. The strategic review panel completed their report in March 2025.[10] That report has been published on the Tribunal's website. The report considered that on its current trajectory, only a subset of kaupapa inquiries are likely to finish by 2035. The report stated:[11]

> Faster progress could be achieved with additional resourcing (both human resource and funding), but a more rigorously streamlined approach to hearings, research and reporting and a coordinated sequencing of inquiry timelines would also be essential requirements for completing most kaupapa inquiries by 2035.

69. That report also projected a 'best case' scenario if most of the operational and procedural recommendations in the report were implemented. That best case scenario, adopting a coordinated sequencing of kaupapa inquiries, projects that the Natural Resources and Environment Kaupapa Inquiry will still be in pre-hearing in 2030, and will not have completed hearings by 2035.

70. The Chairperson is still considering the report from the strategic review panel. She will update the Tribunal's Strategic Direction in due course.

71. This general approach to the hearing programme is ongoing. The remaining district inquiries are progressing, some high priority kaupapa inquiries are in hearing and some reports on those inquiries have been completed.

72. We also note that, last year, Chief Judge Fox activated the remaining kaupapa inquiries and appointed panels to each.[12] That did not change the Tribunal's overall

---

[8] Waitangi Tribunal, Memorandum of the Chairperson concerning the kaupapa inquiry programme (2019).
[9] Waitangi Tribunal, *The Strategic Direction in 2020: The Waitangi Tribunal's Strategic Goals Updated* (2020).
[10] Waitangi Tribunal Strategic Direction Review Group, 'Review of the Waitangi Tribunal's strategic direction: report to the Chairperson' (March 2025): https://www.waitangitribunal.govt.nz/assets/Strategic-Direction/Review-of-the-Waitangi-Tribunals-strategic-direction-Report-to-the-Chairperson.pdf.
[11] Waitangi Tribunal Strategic Direction Review Group (2025), at 4.
[12] The Education Services and Outcomes (Wai 3310) Kaupapa Inquiry; the Natural Resources and Environment (Wai 3450) Kaupapa Inquiry; the Social Services and Social Development (Wai 3460) Kaupapa Inquiry; the Identity and Culture (Wai 3500) Kaupapa Inquiry; and, the Economic Development (Wai 3550) Kaupapa Inquiry.

approach to a coordinated and staged hearing programme. Rather, Chief Judge Fox took this step, as the Chairperson of the Tribunal, so that each panel could start preparing and coordinating their respective inquiries. This is to ensure that the staged hearing programme proceeds more effectively and efficiently. This did not mean that all kaupapa inquiries are now automatically in hearing.

73. This background demonstrates the coordinated way in which the Tribunal has to organise, hear and determine the many claims before it. This is to ensure that claims are heard efficiently, being grouped with related claims by district or kaupapa. This also reflects the reality that the Tribunal has limited resources and it simply cannot hear all claims before it concurrently. This is recognised in the Tribunal's *Guide to Practice and Procedure* which states:[13]

> The Tribunal, drawing on staff advice, projects and then annually reviews how it will allocate research and other resources to claims and inquiries based on the Tribunal's *Strategic Direction 2020.* The Tribunal may amend its priorities as circumstances require, or after hearing from claimants seeking reprioritisation.

74. Coordinating the hearing of claims in this way also means that those claims lower in the priority order can wait for years, sometimes decades, before they are heard. This can result in some of those claims being superseded by new policy, legislation or events that overtake the issues in those claims. While such significant delays are unfortunate, this is unavoidable when the Tribunal has to determine so many claims with limited resources.

75. The Tribunal also recognises that it needs to be flexible and certain claims may have to be reprioritised in the Tribunal hearing programme. This can occur in a number of ways including:[14]

    (a) an urgent inquiry;[15]

    (b) reordering the priority of the overall kaupapa inquiry programme;[16]

    (c) carving out an issue within a kaupapa inquiry to be heard as a separate, stand-alone priority inquiry;[17] or

    (d) prioritising a particular issue to be heard within an existing kaupapa inquiry.[18]

76. The distinction between these different steps is important as each has a different impact on the overall hearing programme.

Should we grant priority here?

77. We first consider the applications generally seeking a priority hearing into the FTAA. We then consider one of the specific projects raised, the Taheke 8C hydroelectric scheme, given the response from the Crown concerning the status of that project.

78. Both applications before us are seeking that the FTAA issue be prioritised within the existing Natural Resources and Environment (Wai 3450) Kaupapa Inquiry. While the applicants, and their counsel, have not specified any proposed timetable for hearing if priority is granted, it appears both are seeking that we inquire into, and report, on the FTAA this year.

---

[13] Waitangi Tribunal, *Guide to Practice,* above at n 5*,* at [3.6].
[14] Above at n 5 – the Tribunal can also grant an urgent remedies hearing, [3.31]–[3.34], which is not relevant here.
[15] 'Urgency criteria' at [3.28].
[16] 'Reordering of kaupapa inquiry programme' at [3.18].
[17] 'Prioritisation of claim/issue as separate inquiry' at [3.18].
[18] 'Prioritisation of issue/claim within inquiry' at [3.15].

79. In her submissions in reply, counsel for the Wai 745 claim, Ms Dixon, states that the government is planning a complete reform of the RMA, and the introduction of the National Environment Act and Planning Act, by the end of 2025. She argues that it is imperative that we inquire into and report on the FTAA 'to inform the Tribunal, claimants and Crown of its impacts to inform prospective changes under the reform' (Wai 745, #3.1.5).

80. Counsel for the Wai 1194 and 1212 claim, Ms Sykes, does not infer as clearly as Ms Dixon that the FTAA issue should be heard and reported on this year, but she does argue that the 'accelerated pace at which applications under the FTAA are currently unfolding makes it imperative a priority hearing is granted' (Wai 1194, #2.27). In her affidavit in support, Ms Skerrett-White states (Wai 1194, #A2):

> We seek urgent intervention from the Waitangi Tribunal to address these breaches and ensure that any decision-making affecting our awa upholds tikanga Māori, includes Ngāti Pikiao voices, and protects the mauri of our ancestral waters for future generations.

81. We accept that the FTAA raises important issues that may affect Māori. The existing consent regime under the RMA has been criticised by Māori for many years. A number of current claims in the Natural Resources and Environment Inquiry concern the consenting regime under the RMA. Here, the applicants argue that the FTAA provides less recognition of Māori rights and interests than the existing RMA regime. In particular, they argue that the FTAA:

    (a) was introduced with minimal consultation or engagement with Māori;

    (b) allows consents to be granted on an accelerated timeframe;

    (c) does not provide for meaningful engagement by Māori in the consenting process;

    (d) does not properly recognise and provide for Māori interests;

    (e) limits appeal rights; and

    (f) involves significant projects that could cause detrimental harm to land and resources within their tribal areas.

82. We also recognise there is some haste to the FTAA issues. As the Crown has acknowledged, generally there is a 60 working day timeframe from the time a panel is established, to the time it makes its decision.[19] That timeframe could be shorter or longer if the Panel Convenor sets a timeframe for the panel to issue its decision.[20]

83. Finally, it is significant that other claimants in this inquiry support a priority hearing, and the Crown does not oppose.[21] Those factors all support that we should hear this as a priority issue within this inquiry.

84. However, even if we granted priority, that is not going to result in a hearing and report this year. This is where the distinction between urgency, and the different types of priority, are crucial.

85. As noted, the applicants are seeking that we prioritise this issue within the existing Natural Resources and Environment Inquiry. If priority is granted, that does not mean that this issue is prioritised within the overall hearing programme. This inquiry is currently ranked twelfth in the kaupapa inquiry priority order. All other kaupapa inquiries, bar one, are ranked higher in the order. A number of those are already in hearing. This includes: Military Veterans (Wai 2500); Tomokia ngā tatau o Matangireia

[19] Wai 3450, #3.1.36; 10 working days to invite comments, 20 working days for comments to be provided, and 30 working days for the Panel to issue its decision.
[20] Memorandum of Crown Counsel 6 May 2025, Wai 3450, #3.1.36 at [20].
[21] The Crown does oppose a priority hearing into the Taheke 8C hydroelectric scheme. We consider this further below.

- Constitutional (Wai 3300); Health Services and Outcomes (Wai 2575); Mana Wāhine (Wai 2700) and others.

86. On a best-case scenario, the strategic review group projected that this inquiry will still be in pre-hearing in 2030 and will not have completed hearings by 2035. The Chairperson is still considering that report. Once the Tribunal's Strategic Direction is updated that may shed further light on when this inquiry will enter the hearing phase. At present, this inquiry commencing hearings is still a number of years away.

87. Hearing and reporting on the FTAA issue in 2025 would require prioritising this claim over other district and kaupapa inquiries that rank higher on the Tribunal's priority order and which are already in hearing. Hearing and reporting on this timeline, which requires leapfrogging ahead of other inquiries, is akin to an urgent inquiry, not prioritising an issue within an existing inquiry that is not yet in hearing.

88. The significant impact that this leapfrogging can have on the overall hearing programme is expressly recognised in the urgent inquiry application process. The Tribunal's *Guide to Practice and Procedure* states:[22]

> In deciding whether to grant urgent consideration to a claim or claims, the Tribunal must set criteria for determining the proper deployment of its resources to research, hear, and report on all claims before it. The Tribunal will grant an urgent inquiry only in exceptional cases and only once it is satisfied that adequate grounds for urgency have been made out. Such inquiries will inevitably delay active inquiries already in train, and the claims of those seeking urgency must be balanced against the numerous claims involved in active inquiries and those in preparation. Deferral of an existing inquiry may be the practical effect of a decision to grant an urgent hearing.

89. Granting priority on the FTAA issue, on the timeline sought here, would have the same affect. This can be contrasted with other decisions where priority has been granted. For example, on 8 May 2024, the Health Services and Outcomes (Wai 2575) Kaupapa Inquiry Panel granted a priority hearing into the disestablishment of Te Aka Whai Ora.[23] However, at that time, the Health Inquiry was already in hearing. As such, that panel prioritised hearing that issue within its existing inquiry. That decision did not leapfrog that issue above other inquiries higher in the priority order.

90. In addition to these issues, we consider the application seeking priority concerning the Taheke 8C hydroelectric power scheme has not been made out. As the Crown has noted, this is a referral project. The Ministry has already determined that the application did not comply with the referral requirements under the FTAA and so it has been rejected. That project is not currently subject to the processes under the Act and there is no basis to prioritise an inquiry into that project.

What about the Marine and Coastal Area (Takutai Moana) Act and Climate Change Inquiries?

91. We acknowledge that claims concerning MACA and climate change were originally part of the Natural Resources and Environment Inquiry. Those claims were granted priority and were accelerated up the priority order for hearing. However, that is not apposite here.

92. Those claims were not granted priority within the existing Natural Resources and Environment Inquiry. Rather, those claims were carved out and established as new stand-alone inquiries. The inquiries were given new Wai numbers and new separate panels were appointed to hear them. Those new inquiries were then prioritised in the overall Tribunal hearing programme.

[22] Above at n 5, at [3.27].
[23] Wai 2575, #2.6.171.

93. We cannot do that here. Firstly, that is not what the applicants applied for. They applied for the FTAA issue to be prioritised within the existing Natural Resources and Environment Inquiry. For the reasons set out above, it is not appropriate to do so.

94. Secondly, it is not for us, as the panel on the Natural Resources and Environment Inquiry, to make that decision. Chief Judge Isaac, as the former Chairperson, determined that MACA claims would be heard as a separate and stand-alone inquiry. Judge Reeves, as the Deputy Chairperson, made a similar decision on climate change. Those decisions were not made by the panel for the Natural Resources and Environment Inquiry (which had not been appointed at that time).

95. That is not surprising. The grouping of claims to be heard concurrently (whether by district or kaupapa) is for the Chairperson in her role to coordinate the overall Tribunal hearing programme. That includes carving out issues from existing inquiries to create new stand-alone inquiries. Reprioritising the kaupapa inquiry programme (including any new stand-alone inquiries) is also for the Chair. The Tribunal's *Guide to Practice and Procedure* provides that such applications are to be sent to the Registrar to be put before the Chairperson.[24]

96. Accordingly, it is not for us to determine whether to take that approach in relation to the FTAA.

What about the application seeking the production of Crown documents?

97. On 20 May 2025, a joint application was made by the applicants, and a number of interested parties, seeking the production of various Crown documents (Wai 3450, #3.1.45). As we have not granted priority, it is not necessary to consider this. However, we make the following comments.

98. This application was premature in two respects. Firstly, it was filed before we had determined whether to grant priority. It should be obvious that we would have to first grant priority before we could consider whether to issue directions on any interlocutory matters. Counsel may have filed this application in advance so that, if priority was granted, we could move to immediately consider whether to require the Crown to produce those documents. Even if that were the case, the application was still premature.

99. The Tribunal has an established practice of informal voluntary disclosure. Generally, where urgency or priority is granted, the Crown will voluntarily disclose the documents it considers are relevant. We are aware that claimants have argued in a number of recent inquiries that the disclosure volunteered by the Crown was incomplete and excluded key documents. If that occurs, then that is the appropriate time to seek further and better disclosure. If the inquiry is urgent, the timetable for disclosure can be accelerated accordingly. There would have to be exceptional circumstances to require the Crown to produce documents before it has provided voluntary disclosure.

Where to from here?

100. We are aware that an application has been filed seeking an urgent inquiry into one of the projects under the FTAA.[25] That application is currently with the Deputy Chairperson. It has not been referred to us. While we have acknowledged that the impact of the FTAA is an important issue, and that timeliness could be an issue, we do not infer that urgency should be granted for that application. That application will be considered separately by Judge Reeves on its own merits.

101. In the meantime, we will continue with early planning for the Natural Resources and Environment Inquiry. As discussed at the judicial conference last year, and in the memorandum-directions that followed, that may still require prioritising certain issues

[24] Above at n 5, at [3.19].
[25] Wai 3475, #3.1.1.

to be heard first within this inquiry. That will require reassessing what is relevant, and pressing, as this inquiry draws closer to hearing.

Whakataunga / Decision

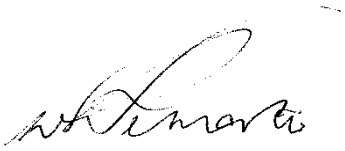
102. For these reasons, the applications seeking a priority hearing into claims concerning the FTAA are dismissed.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3450, the Natural Resources and Environmental Management Kaupapa Inquiry.

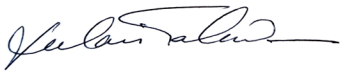
The Registrar is to send a copy of this direction to all those on the distribution list for Wai 3450, the Natural Resources and Environmental Management Kaupapa Inquiry.

Kaiwhakawā Armstrong
Mana Whakahaere
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WHAKAPŪMAUTIA ki Whangārei i te 23 o te Pipiri 2025



Professor Tā Pou Temara
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI



Professor Tafaoimalo Leilani Tuala-Warren
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Professor Emeritus David Williams
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI