

---

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 APPLICATION FOR  
DIRECTION TO PRODUCE DOCUMENTS

5 Pipiri | June 2025

---



**Te Tari Ture  
o te Karauna**  
Crown Law

Pouaka Poutāpeta PO Box 2858  
Te Whanganui-a-Tara Wellington 6140  
Waea Tel: 04 472 1719

**Whakapā mai:    Contacts:**

Geoffrey Melvin | Daniel Hunt  
Geoffrey.Melvin@crownlaw.govt.nz | Daniel.Hunt@crownlaw.govt.nz

RECEIVED

Waitangi Tribunal

6 Jun 25

Ministry of Justice  
WELLINGTON

**MAY IT PLEASE THE TRIBUNAL:**

1. By this memorandum the Crown responds to the joint application of several claimants in the Wai 3450 inquiry for a direction to the Crown to produce documents,<sup>1</sup> in accordance with the direction of the Presiding Officer.<sup>2</sup>
2. The claimants seek a direction that the Crown produce all “correspondence between” or advice to Ministers and Ministries, listed non-exhaustively, “and/or the Speaker of the House”, on various topics said to relate to their claims concerning the Fast-track Approvals Act 2024.<sup>3</sup>
3. The Crown opposes the application and submits that it should be declined for the following reasons.
4. Principally, the application is premature. While the Tribunal has commenced the Wai 3450 kaupapa inquiry, the Tribunal has not yet determined the claimants’ application for a priority hearing or, therefore, commenced any inquiry (priority or otherwise) into claims concerning the Fast-track Approvals Act 2024. It would not be appropriate, at this stage, for the Tribunal to exercise its statutory power to direct the production of documents, which must be exercised “For the purposes of the inquiry”.<sup>4</sup> The Tribunal has previously declined an application for the production of documents where no standing inquiry had been convened.<sup>5</sup>
5. If the Tribunal were to grant the claimants’ application for a priority hearing, the Crown would provide disclosure in the usual way as part of standard interlocutory processes for urgent or priority inquiries.<sup>6</sup> These processes would also include the Tribunal’s determination of the issues for

---

<sup>1</sup> Wai 3450, #3.1.45.

<sup>2</sup> Received via email from the registrar dated 30 May 2025, directing the Crown to respond to the application by 5pm on 5 June 2025.

<sup>3</sup> The application document refers to “the Bill” but the Crown anticipates that the claimants mean to refer to the Act.

<sup>4</sup> Commissions of Inquiry Act 1908, s 4C.

<sup>5</sup> Wai 3309, #2.5.7 Memorandum-directions of the Deputy Chairperson, dated 5 March 2024 at [14].

<sup>6</sup> Waitangi Tribunal *Guide to the Practice and Procedure of the Waitangi Tribunal* (August 2023) at [5.22] “Disclosure for urgent inquiries”.

inquiry which would set the scope of relevance in any disclosure exercise.<sup>7</sup> In the normal way, counsel for the Crown would also seek to work with claimant counsel to agree the appropriate scope of disclosure, once the issues are determined and an inquiry is actually underway. An application and direction under s 4C (Commissions of Inquiry Act 1908) should not be necessary, and certainly not in the first instance.

6. The application is also premature because the issues for any priority inquiry are not clear at this juncture and would likely need to be the subject of discussion between inquiry participants, and submission if necessary, before determination by the Tribunal. The Wai 745 claimants' reply submissions for their priority hearing application state that "FTAA-related issues" should be heard in a priority inquiry alongside an "inquiry into certain parts of the wider resource management legislative scheme".<sup>8</sup> The claimants then say the specific issues they propose are not exhaustive and the claimants acknowledge that other claimants may seek to include further issues.<sup>9</sup> It would be inefficient and premature for the Crown to be required to undertake the wide-ranging disclosure sought by the claimants before any inquiry issues are settled.
7. The ground for the application that the "request is focused, and the documents sought are directly relevant to the issues to be determined" is not made out for an additional reason.<sup>10</sup> The claimants' request for documents is overly broad in scope and would capture large numbers of documents of limited to no relevance to any inquiry by the Tribunal. This concern arises, for example, from the categories of documents sought of all "correspondence between ... Ministers, [and] Ministries" which would, on its terms, capture all emails between officials in those Ministries. Additionally, the documents sought concerning advice to the Speaker of

---

<sup>7</sup> Contrary to the claimants' application (see Wai 3450, #3.1.45 at [5(b)], issues for any priority hearing (if granted) have not yet been determined.

<sup>8</sup> Wai 3450, #3.1.44 at [7.2] and [30].

<sup>9</sup> Wai 3450, #3.1.44 at [31].

<sup>10</sup> Wai 3450, #3.1.45 at [5(c)].

the House would be subject to Parliamentary privilege.<sup>11</sup>

8. Furthermore, the Crown, specifically the Ministry for the Environment, has proactively released Cabinet papers, briefings to Ministers, and related documents concerning the Fast-track Approvals Bill (now Act) on its website.<sup>12</sup> Other agencies have also publicly released information which may be relevant.<sup>13</sup> The claimants' application does not identify whether the claimants have reviewed these materials and, if so, what is missing from these publicly available documents that makes an application for the production of documents necessary. The claimants' assertion that production of documents by the Crown now would mean relevant documents are available to them in good time is not made out—at least some relevant documents are available to the claimants now.
9. For these reasons the Crown submits that the application should be declined.

5 Pipiri | June 2025



---

G Melvin / D Hunt  
Counsel for the Crown

**TO:** The Registrar, Waitangi Tribunal  
**AND TO:** Claimant Counsel

---

<sup>11</sup> Parliamentary Privilege Act 2014.

<sup>12</sup> See <[Cabinet papers and regulatory impact statements | Ministry for the Environment](#)> which sets out a list of the various tranches of these documents relating to the Bill that have been proactively released by the Crown.

<sup>13</sup> See for example information tranches proactively released by the Department of Conservation <[Official Information Act responses 2025](#)> and the Ministry for Business, Innovation and Employment <[Document library | Ministry of Business, Innovation & Employment](#)>.