

**BEFORE THE WAITANGI TRIBUNAL**

**WAI 3450  
WAI 1194  
WAI 1212**

**IN THE MATTER OF**

the Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF**

the Natural Resources and Environmental Management Kaupapa Inquiry (**WAI 3450**)

**AND**

**IN THE MATTER OF**

a claim by **Colleen Skerrett-White, Te Ariki Morehu** and **Kelvin Cassidy** for and on behalf of the Taumanu Land Claim, **Ngāti Te Rangiuuora** and the iwi of **Ngāti Pikiao** (**WAI 1194**)

**AND**

**IN THE MATTER OF**

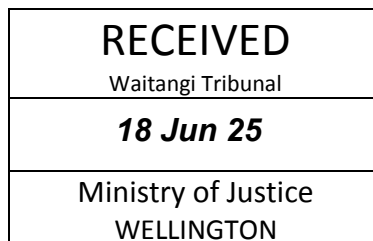
a claim by **Colleen Skerrett-White, Timitapo Hohepa, Te Ariki Morehu** for and on behalf of **Ngā Uri o Te Tokotoru a Manawakotokoto** (**Rakeiao, Kawatapuarangi and Apumoana**) (**WAI 1212**)

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**MEMORANDUM OF COUNSEL REPLYING TO CROWN**

Dated on this 18<sup>th</sup> day of June 2025

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## **TĒNĀ E TE TARAIPUNARA:**

### **Introduction**

1. This Memorandum of Counsel is filed for and on behalf of the following claim and respective claimants:
    - 1.1 **Wai 1194**, a claim by Colleen Skerrett-White, Te Ariki Morehu and Kelvin Cassidy for and on behalf of the Taumanu Land Claim, Ngāti Te Rangiunuora and the iwi of Ngāti Pīkiao; and
    - 1.2 **Wai 1212**, a claim by Colleen Skerrett-White, Timitapo Hohepa, and Te Ariki Morehu for and on behalf of Ngā Uri o Te Tokotoru a Manawakotokoto (Rakeiao, Kawatapuārangi and Apumoana).
- (“the Claimants”)**

### **Background**

2. On 4 June 2024, the Claimants filed a priority application to be heard alongside the Wai 745 application for priority issues relating to the Fast-track Approvals Act 2024 (“**FTAA**”/“**the Act**”) in the Wai 3450 Natural Resources and Environmental Management Kaupapa Inquiry. Filed with this application were the accompanying amended statement of claim and supporting affidavits of Colleen Skerrett-White and Michael Dawson.<sup>1</sup>
3. By way of Memorandum-Directions dated 6 Piripi 2025, his Honour, Judge Armstrong directed the Crown and any other parties to file any submissions in response to the application by 5pm, Friday 13 June 2025.<sup>2</sup>
4. The Claimants were directed file submissions in reply to those of the Crown and other parties by 5pm, Friday 20 June 2025.
5. This Memorandum replies to:
  - 5.1 the Crown memorandum responding to the Claimants’ application for priority hearing dated 13 June 2025; and
  - 5.2 the affidavit of Ilana Robyn Miller dated 13 June 2025.

### **Reply submissions**

6. At [3] of the Crown memorandum, the Crown says that it maintains its original

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<sup>1</sup> Wai 1194, #2.27, #A2 & A3; Wai 1212, #2.26, #A1 & #A2.

<sup>2</sup> Wai 3450, #2.5.8.

response to the Wai 745 claimants' application for a priority hearing. It refers to its previous submissions on the matters the Tribunal may wish to consider when determining the sequencing of issues for this kaupapa inquiry.

7. At [4], the Crown also opposes the application for a priority hearing regarding the Tāheke 8C Hydroelectric Scheme Project on the basis that the project is not subject to processes under the Act, and immediate prejudice are not made out.
8. At [6] of the affidavit of Ms Miller, she advised that as at 13 June 2025, MfE have not received a further application for referral from the project proponent for Tāheke 8C Hydroelectric Scheme Project.
9. As outlined in the letter annexed to the affidavit of Ms Miller as **IRM-1**, the grounds for non-approval of the application are given, which includes the project involving ineligible activity under s 5(1)(a) of the FTAA. It was noted that in order to resolve this, "*any future application should confirm that the status of the Māori roadway and obtain the written agreement from all owners. It is noted that the application as lodged included written agreement from The Proprietors of Taheke No.8C and Adjoining Blocks Incorporated but did not include the written agreement from the other registered owners of the Māori roadway.*"<sup>3</sup>
10. The Claimants are relieved that at present, the project has not been approved under the FTAA but remain concerned that despite not being subject to processes under the Act, there are live issues regarding the FTAA that remain prejudicial to the claimants and Te Arawa generally.
11. Prior to the Crown's memorandum of response and the provision of information given in Ms Miller's affidavit, the Claimants were unaware of the status of the Tāheke 8C Hydroelectric Scheme Project being returned to the applicant for not complying with the criteria for referral on 1 May 2025. We say that this occurs largely because the process operates under a veiled sense of secrecy with communities around these issues being confined to the Crown and the applicant in the FTAA process.
12. At [4], the Crown notes that "*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.*"
13. The Claimants understand this to mean that although the application under the

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<sup>3</sup> IRM-1 to the Affidavit of Ilana Robyn Miller dated 13 June 2025 at [1(a)].

FTAA is not currently “live”, there is nothing to stop the project proponent from re-submitting an amended application that does resolve and satisfy the grounds it has yet to meet, thus obtaining approval.

14. Given the significant social, cultural, environmental and economic interests involved in such a project for the hapū and iwi of Ngāti Pikiao, the Claimants submit that it should not have to take an application to this Tribunal panel for a priority hearing to be informed of Crown decisions that relate to their taonga and taiao.
15. The Claimants remind that FTAA’s purpose is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. The Act, they say, is anti-democratic, open to corruption, undermines te Tiriti and puts nature under threat.
16. Fast-track is a ‘one-stop-shop’ that provides projects with an alternative to current processes for the resource consents, notices of requirement, and certificates of compliance usually required under the Resource Management Act 1991, or other Acts. There is little or no transparency around applications that are being lodged.
17. Under the Fast-track pathway, expert panels will consider required approvals as a single application package. This will create a more streamlined system than current processes, which require separate applications for different types of approvals.
18. Panels are only required to seek comment from the following:
  - 18.1 Local authorities;
  - 18.2 Iwi authorities;
  - 18.3 Treaty settlement entities;
  - 18.4 Customary marine title groups;
  - 18.5 Protected customary rights groups;
  - 18.6 Land owners/occupiers (including those adjacent);
  - 18.7 Various government ministers;
  - 18.8 The Director-General of Conservation; and
  - 18.9 Requiring authorities having designations on the land or adjacent land.
19. Outside of this list, it is discretionary whether any other party will be invited to provide feedback on a project. That means that unless you live next door to a

project, you're not entitled to have your say. Even if you are as the case study shows the engagement is not robust.

20. Ngāti Pikiao maintain that what engagement between the developers and their whānau; hapū and iwi that has occurred has meant they were marginalised in decision making processes over their own tipuna awa and the future wellbeing of the awa itself. This is inconsistent with their obligations of rangatiratanga and kaitiakitanga to actively protect their taonga for present and future generations.

**Continued support for the Wai 745 application for priority on the FTAA**

21. The Claimants continue to support the Wai 745 claimants in seeking priority for the FTAA issue as a part of the wider Wai 3450 Natural Resources and Environmental Management Inquiry.
22. The Submissions in Reply to the Crown filed by counsel for the Wai 745 claimants on 20 May 2025 outlines reasons adopted here for the need to progress with a priority hearing on the FTAA.
23. Additionally, the Claimants say that it is a logical decision for the Tribunal to prioritise the FTAA as an inquiry issue, because of the pressing breaches of te Tiriti that arise from it. The FTAA offers much more limited protections for the rights and interests of Māori than is required under te Tiriti that has been typically included in other pieces of environmental or conservation legislation.
24. The changes arising from and initial consequences of the FTAA are being felt by Māori communities now.

**DATED** at Rotorua/Hamilton this 18<sup>th</sup> day of June 2025



Annette Sykes



Jack Potaka



Maia Te Hira

**Counsel for the Claimants**