

Before the Panel Convenor

Under the Fast-track Approvals Act 2024, s 42 and in the matter of an application for approvals for the construction and operation of a structural steel manufacturing plant by Green Steel, being a project listed in Sch 2 of the Fast-track Approvals Act 2024

Between **National Green Steel Limited**
Applicant

And **Te Whakakitenga o Waikato**
Interested Party

Memorandum of Counsel for Te Whakakitenga o Waikato

24 September 2025

Bell Gully

N J Garvan / R Te Rito / A J Coomber
Counsel for Te Whakakitenga o Waikato
natasha.garvan@bellgully.com / rebekah.terito@bellgully.com /
anna.coomber@bellgully.com

1 Queen Street
PO Box 4199
Auckland 1140
+64 9 916 8800

May it please the Panel Convenor

1. This memorandum is filed on behalf of Te Whakakitenga o Waikato in response to the Minute 5 of the Panel Convenor dated 22 September 2025.
2. The purpose of this memorandum is to outline the position of Te Whakakitenga o Waikato in relation to the appointment of an additional panel member for the National Green Steel Limited's (the **Applicant**) substantive application in light of the relevant provisions of the Fast-track Approvals Act 2024 (the **FTAA**) and the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**River Settlement Act**).
3. We consider that the key issues are the interpretation of clauses 3 and 5 of Schedule 3 of the FTAA in light of sections 7 and 8 of the FTAA, and what it means to act in a manner that is consistent with the obligations arising under the River Settlement Act when appointing a panel under the FTAA.

Analysis of relevant statutory provisions

What are the relevant provisions of the FTAA?

4. Section 7 of the FTAA provides that all persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with the obligations arising under existing Treaty settlements.
5. We submit that section 7 of the FTAA applies to the Panel Convenor and means you must act in a manner that is consistent with the obligations arising under the River Settlement Act when setting up a panel for the Applicant's substantive application.¹
6. The obligation in section 7 of the FTAA is reinforced by section 8 of the FTAA which provides that Te Ture Whaimana is intended by Parliament to be the primary direction-setting document for the Waikato and Waipaa Rivers and activities within their catchments affecting the rivers. We discuss further below what Te Ture Whaimana encompasses.

¹ 'Treaty settlement' is defined as meaning a Treaty settlement Act which includes an Act listed in Schedule 3 of the Treaty of Waitangi Act 1975, which includes the River Settlement Act.

7. Section 50 of the FTAA provides that the Panel Convenor must set up a panel in accordance with Schedule 3 for each substantive application that the panel convenor receives from the EPA.
8. Clause 5 of Schedule 3 of the FTAA provides further details as to the conduct of hearings and other procedural matters in the context of Treaty settlements. As accepted by the Panel Convenor, this clause applies to the current situation because the River Settlement Act includes procedural arrangements relating to the appointment of a decision-making body for hearings (as discussed further below).² Clause 5(2) of Schedule 3 provides that the panel convenor must:
 - (a) comply with the arrangements in the legislation as if they were a relevant decision maker (such as a local authority, department, Crown entity, or board of inquiry); or
 - (b) obtain the agreement of the relevant party under the legislation to adopt a modified arrangement that is consistent with achieving the purpose of the FTAA and the other legislation.

What is Te Ture Whaimana?

9. Te Ture Whaimana means the vision and strategy set out in Schedule 2 of the River Settlement Act.
10. The vision is for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.
11. To realise the vision, Schedule 2 includes a number of objectives that will be pursued including the following:
 - (a) the restoration and protection of the relationships of Waikato-Tainui with the Waikato River; and

² Minute 4 of the Panel Convenor dated 10 September 2025 at [11].

- (b) the restoration and protection of the relationships of Waikato River iwi according to their tikanga and kawa with the Waikato River.

12. It is clear that Te Ture Whaimana requires an understanding of the Waikato River from the perspective of Waikato-Tainui and other Waikato River iwi. Te Whakakitenga o Waikato submits that to realise and achieve Te Ture Whaimana requires it to be represented in decision-making processes, such as relevant panel appointments under the FTAA. This is reinforced by other obligations in the River Settlement Act as outlined below.

What are the obligations arising under the River Settlement Act as they relate to hearing panels?

13. The Panel Convenor has already identified that the River Settlement Act clearly applies to the Applicant's application.³
14. Section 28 of the River Settlement Act provides that if the Council holds a hearing under the Resource Management Act 1991 (the **RMA**) on the application then the committee to hear and make a decision on the application must consist of:
- (a) a number of members appointed by the Council who are RMA decision makers; and
 - (b) the same number of members appointed by the Waikato River Authority⁴ (**WRA**) who must be persons whose names are recorded in the register⁵; and
 - (c) an independent chairperson jointly appointed by the WRA and the Council, who must be an RMA decision maker.

³ Minute 4 of the Panel Convenor dated 10 September 2025 at [10].

⁴ Schedule 6 of the River Settlement Act sets out the composition of membership of the WRA. In summary, the WRA is to be comprised of 5 members from the River Iwi (including the Waikato Raupatu River Trust) and 5 members appointed by the Minister. Te Whakakitenga o Waikato is the trustee of the Waikato Raupatu River Trust.

⁵ Section 25 of the River Settlement Act provides that WRA must establish and maintain a register of persons who are RMA decision makers and have been appointed for inclusion on the register by Waikato-Tainui, or iwi who appoint members of the WRA.

15. The above decision-making structure reflects the concept of co-management for the Waikato River which is reflected in the purpose of the River Settlement Act.⁶
16. Under the River Settlement Act, the WRA and the Council must discuss the persons to be appointed to the hearing committee with a view to ensuring that the committee contains members with an appropriate mix of skills, expertise, and experience.⁷
17. Similar arrangements apply to applications called in and referred to a board of inquiry under the RMA.⁸

Who is the “relevant decision maker” under the River Settlement Act and therefore clause 5 of Schedule 3 of the FTAA?

18. As acknowledged in the Panel Convenor’s Minute 4 dated 10 September 2025, the FTAA requires the Panel Convenor to follow the process under section 28 of the River Settlement Act, as if the Panel Convenor was the relevant decision maker, which in this context is the Waikato Regional Council (**WRC**).⁹ WRC is the relevant decision maker for the purposes of appointing members appointed by the Council to the hearing committee, and jointly appointing the independent chairperson with the WRA.
19. On that basis, the Panel Convenor considered the following entities should appoint panel members to comply with all relevant statutory provisions:
 - (a) Panel Convenor acting as WRC (in accordance with section 28(2)(a) of the River Settlement Act);
 - (b) WRA;
 - (c) jointly, the Panel Convenor acting as WRC and the WRA;
 - (d) WRC and Waikato District Council (**WDC**).

⁶ Section 4(g) of the River Settlement Act.

⁷ Section 28 of the River Settlement Act.

⁸ Section 29 of the River Settlement Act.

⁹ Minute 4 of the Panel Convenor dated 10 September 2025 at [15].

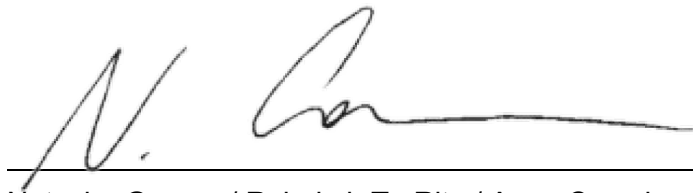
What does it mean to act in a manner that is consistent with the obligations arising under the River Settlement Act when appointing a panel under the FTAA?

20. Te Whakakitenga o Waikato understands that the Panel Convenor has sought to comply with clause 3(3) of Schedule 3 of the FTAA by allowing WRC and WDC to nominate a panel member.
21. However, the process under section 28 of the River Settlement Act anticipates that the panel is made up of an uneven number of members, comprising a joint WRA and local authority chair, plus an equal number of local authority and WRA appointees. Consequently, Te Whakakitenga o Waikato submits that the proposed membership of the panel is unbalanced from a River Settlement perspective.
22. As discussed above, section 7 of the FTAA provides that all persons performing and exercising functions, powers and duties under the Act, are to act in a manner that is consistent with the obligations arising under existing Treaty settlements. We submit that in the context of the appointment of panels under the FTAA the obligation in section 7 requires the Panel Convenor to adhere to section 28 of the River Settlement Act, which clearly establishes a model whereby equal numbers of members are appointed by the WRC and by the WRA, and they jointly appoint the independent Chair.

Te Whakakitenga o Waikato request

23. Te Whakakitenga o Waikato respectfully requests the Panel Convenor use her discretion under clause 3(7) of Schedule 3 of the FTAA to enable WRA to appoint an additional panel member to accommodate matters unique to the relevant iwi participation legislation, that being the River Settlement Act.

24. Te Whakakitenga o Waikato submits that an additional panel appointment by WRA will uphold and be consistent with the co-management arrangements under the River Settlement Act, whilst maintaining the Panel Convenor's obligations under clauses 3 and 5 of Schedule 3 of the FTAA for a panel to include members appointed by the local authorities and that its membership reflects the arrangements arising under existing Treaty settlements.

A handwritten signature in black ink, appearing to be 'N. Coomber', is written above a horizontal line.

Natasha Garvan / Rebekah Te Rito / Anna Coomber

Counsel for Te Whakakitenga o Waikato

24 September 2025