

---

**MINUTE 4 OF THE PANEL CONVENER**  
**Post-conference directions in relation to panel appointments and**  
**procedural steps pursuant to Treaty settlement legislation and Joint**  
**Management Arrangements**

**[Green Steel] [FTAA-2507-1074]**

**10 September 2025**

---

[1] On 4 September 2025 I held a convener conference in respect of this application.

[2] The conference was attended by the Applicant, the local authorities (Waikato Regional Council (WRC) and Waikato District Council (WDC)), the Ministry for the Environment (MfE), Te Whakakitenga o Waikato Inc (Waikato-Tainui) and the Waikato River Authority (WRA).

[3] A number of other iwi authorities and relevant Treaty settlement entities identified in a report provided by MfE under sections 18 and 49 of the Fast-track Approvals Act 2024 (FTAA or the Act) were invited to the conference but elected not to attend.

[4] The purpose of this conference (as with all convener conferences held to date) was to canvass views of the statutory participants in respect of the two principal matters that I am required to determine in the exercise of my duties, functions and powers under the Act, namely the appointment of an expert panel to make a decision on the approvals sought in the application, and the setting of a timeframe within which that decision must be delivered. The general matters on which I sought those views were set out in the attachment to Minute 1.

[5] However, because this application is made in respect of a site within the Waikato River (Te Ture Whaimana) catchment, I also issued additional minutes (Minutes 2 and 3) seeking specific additional information from the Councils, the WRA and Waikato-Tainui in respect of:

- (a) the requirements of section 28 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (River Settlement Act) as it pertains to fast-track panel appointments; and
- (b) the procedural requirements of two Joint Management Agreements (JMAs) between Waikato-Tainui and the Councils that also derive from the River Settlement Act.

[6] I received written memoranda prior to the conference from the Applicant, both Councils and Waikato-Tainui. The Applicant's memorandum addressed only the matters identified in Minute 1. Following the conference, the Applicant's counsel filed a further memorandum dated 5 September 2025, recording the Applicant's position on the matter of panel appointments under the River Settlement Act.

[7] The purpose of this minute is to briefly summarise the views of the parties principally pertaining to the matters I raised in Minutes 2 and 3 and to record my directions as to the next steps required to comply with the specific requirements of the FTAA, the River Settlement Act and the related JMAs.

### **Statutory framework**

[8] The panel convener is required to set up expert panels under section 50 of the FTAA in accordance with Schedule 3. Clause 5(2) of that schedule applies if any Treaty settlement legislation "includes procedural arrangements relating to the appointment of a decision-making body for hearings and other procedural matters, such as ... (a) a requirement for iwi or hapū to participate in the appointment of hearing commissioners to determine resource consent applications ... lodged

under the [RMA]".

[9] Where applicable, clause 5(2) goes on to require the panel convener (or panel) to either:

- (a) Comply with the arrangements in such legislation, arrangement or agreement "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, arrangement or agreement to adopt a modified arrangement" that is consistent with achieving the purpose of the FTAA and the other legislation, arrangement or agreement.

[10] The River Settlement Act clearly applies to this application, given the proposed discharge via culvert to the Waipapa Stream which is a tributary or watercourse flowing into the Waikato River.

[11] Section 28 of the River Settlement Act clearly comprises a "procedural arrangement relating to the appointment of a decision-making body" of the type contemplated by clause 5, Schedule 3 of the FTAA. It provides:

## **28. *Hearing committees***

*(1) This section applies if the Council holds a hearing under the Resource Management Act 1991 on the application.*

*(2) 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 Resource Management Act 1991 decision makers; and*

*(b) the same number of members appointed by the Authority who must be persons whose*

*names are recorded in the register; and*

*(c) an independent chairperson jointly appointed by the Authority and the Council, who must be a Resource Management Act 1991 decision maker.*

*(3) The Authority 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.*

[12] The example given in clause 5(1)(a) Schedule 3 of the FTAA confirms this, since section 28 confers on Waikato-Tainui, via the Waikato River Authority, a power to jointly appoint hearing commissioners to determine resource consent applications. It is important to note that this power only relates to situations where a relevant resource consent application involves a hearing. In situations where consent applications are not publicly notified, section 28 does not apply, and the WRC has no direct involvement in the making of the decision.

[13] One other FTAA provision is of particular relevance, and that is clause 3(3) of Schedule 3, which requires the membership of a panel to include one person nominated by the relevant local authorities. In respect of this application, those are Waikato Regional Council and Waikato District Council.

### **Panel appointment process**

[14] In summary, the parties expressed the following views:

- (a) All parties agreed that, as the first FTAA application to be considered within the Waikato River catchment, the Green Steel project would require unique legal and policy settings for Te Ture Whaimana under the River Settlement Act to be given effect to alongside the FTAA framework. This would add an element of legal complexity to the application which otherwise appeared to be reasonably straightforward from a legal perspective;

- (b) At the conference the Applicant indicated that it would be comfortable with a panel comprising 3 or 4 members and expressed no view on the appointment process under section 28 of the River Settlement Act, other than to enquire whether this process was followed under the previous fast track legislation. In its post-conference memorandum, however, the Applicant offers a view that the panel convener retains the power to appoint the expert panel, notwithstanding section 28 of the River Settlement Act, and proposes that the WRC and WRA each nominate one panel member, with the panel convener appointing the panel chair;
- (c) WRC and WDC filed a joint memorandum but have slightly different positions on the issue of panel appointments. Both consider that panel members must be appointed under section 28 unless agreement to a modified arrangement is reached in accordance with FTAA clause 5, Schedule 3, but WDC appears to consider that a modification is required under the River Settlement Act to enable it to nominate a panel member. The Councils confirmed at the conference that while they are open to agreeing modified arrangements, only the WRC presently has delegations to do so. The WRC also advised that the usual process is to appoint committees of 3, 5 or 7 members, comprising equal numbers from both entities (WRC and WRA) and then joint appointment of a chair;
- (d) Waikato-Tainui filed a memorandum expressing a clear preference for the expert panel to be appointed in accordance with section 28 of the River Settlement Act and in collaboration with the WRC, while remaining open to alternative arrangements provided they could ensure robust coverage of all aspects of the application including cultural, environmental, technical and strategic matters relevant to the Waikato River and its management framework;
- (e) The WRA did not file a memorandum but confirmed at the conference that the section 28 process should be followed, that it had extensive experience working with WRC to appoint from a pool of decision

makers accustomed to working within the Te Ture Whaimana framework and had already commenced discussions about potential appointments.

[15] After careful consideration I have reached the view that compliance with clause 5(2), Schedule 3 of the FTAA requires the panel convener to follow the process under section 28 of the River Settlement Act as if I am the relevant decision maker, which in the context of both this application and section 28 is WRC. The Regional Council would be the relevant decision maker on this application had it been lodged under the RMA. Given the possibility of a hearing on this application, it is appropriate to invoke the appointment process as envisaged under section 28 and for me as panel convener to "step into the shoes" of the WRC.

[16] Quite separately from clause 5(2), however, compliance with clause 3(3) is also required.

[17] On that basis, I consider that the following steps must be taken for the appointment of an expert panel in a manner that complies with all relevant statutory provisions:

- (a) Acting as the relevant decision maker (WRC) I will appoint a panel member in accordance with section 28(2)(a) and advise the EPA to complete appointment formalities under the FTAA;
- (b) WRA will select a panel member in accordance with section 28(2)(b) and advise the EPA to complete appointment formalities under the FTAA;
- (c) I will confer with WRA in accordance with section 28(2)(c) to jointly appoint a panel chair and advise the EPA accordingly;
- (d) In accordance with section 28(3), I will discuss with WRA our proposed appointments with a view to ensuring that the panel contains members with an appropriate mix of skills, expertise and experience;
- (e) In accordance with clause 3(3), Schedule 3 of the FTAA I will

separately invite WRC and WDC to confer and jointly nominate a fourth panel member.

[18] The Applicant's post-conference memorandum suggested that I should appoint the panel chair independently, without input from either WRC or WRA. I do not agree; compliance with section 28 of the River Settlement Act (as well as section 7 of the FTAA) requires compliance with all of the steps identified, unless I propose a modification to the process pursuant to FTAA clause 5(2)(b), Schedule 3.

[19] I see no need for any such modification.

### **Procedural requirements under JMAs**

[20] The section 18 report prepared by MfE identifies and summarises the contents of two JMAs between the Waikato Raupatu River Trust (representing Waikato-Tainui) and WRC and WDC respectively.

[21] The joint memorandum filed by the Councils gave a helpful summary of the process and procedural requirements set out in these JMAs that appear to require accommodation within the fast-track process for this application. In particular:

- (a) In the WRC Agreement, matters relating to advice of the application, assessment of the adequacy of information provided in the information supporting the application, and the provision of information to Waikato-Tainui throughout the process as soon as reasonably practicable. WRC considers that these requirements can be regarded as complied with or capable of being complied with by virtue of FTAA processes (including the invitation to comment required to be issued to Waikato-Tainui in accordance with section 53(2) of the FTAA);
- (b) In the WDC Agreement, Schedule B (surface water activity consents) does not apply to this application and Schedule A (monitoring and enforcement requirements) will only be relevant in the event that approvals are granted.

[22] Waikato-Tainui did not address this issue in any detail but noted that

compliance with the JMA requirements may influence the decision timeframe, given technical complexity, mana whenua resourcing constraints, and potential need for hearing time. Waikato-Tainui sees no legal or procedural barrier to accommodating the JMA processes within the fast-track framework.

[23] I am satisfied that, to the extent required at this stage of the FTAA process for this application, any JMA procedural requirements have been met. However, in accordance with clause 5, Schedule 3 of the FTAA, the expert panel when appointed will need to give ongoing consideration to those requirements as they may be relevant to subsequent stages of the decision-making process. Where modifications may be required, the expert panel will need to reach agreement on those with the JMA parties.

### **Directions**

[24] I issue the following directions:

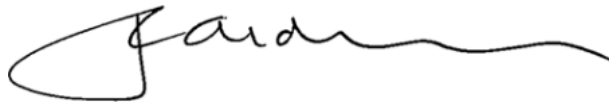
- (a) EPA administrator for this application to set up a convenient time for me to confer with WRA in relation to prospective panel appointees including the panel chair;
- (b) WRA to confirm to EPA the details of its panel appointee and to confirm the joint chair appointee;
- (c) WRC and WDC to confer and advise the EPA of their panel nominee.

[25] I will advise the EPA of my panel appointee, and will formally request the local authorities' nomination, having regard to the mix of skills, expertise and experience of the other panel appointees.



[26] The directions in paragraphs 24 and 25 should be completed by **Friday 19<sup>th</sup> September.**

[27] Following completion of the appointment process, I will confirm the decision timeframe by way of a further Minute.

A handwritten signature in black ink, appearing to read 'J. Caldwell', followed by a vertical line.

Jennifer Caldwell

Panel convener for the purpose of the Fast-track Approvals Act 2024