
MINUTE 7 OF THE PANEL CONVENER

Decision on request by Te Whakakitenga o Waikato to appoint an additional member to Green Steel Expert Panel

[Green Steel] [FTAA-2507-1074]

1 October 2025

- [1] On 24 September 2025 the EPA received a memorandum of counsel from Te Whakakitenga o Waikato Inc (Waikato-Tainui) in response to Minute 5 dated 22 September 2025, which recorded my decisions as to panel member appointment and decision timeframe for this application.
- [2] The memorandum expressed concern that the Expert Panel, comprising four members I appointed, is "unbalanced from a River Settlement perspective", and requested:
- ...that the Panel Convener use her discretion under clause 3(7) of Schedule 3 of the FTAA to enable WRA [Waikato River Authority] to appoint an additional panel member to accommodate matters unique to the relevant iwi participation legislation, that being the River Settlement Act.*
- [3] By Minute 6 dated 26 September 2025, I invited all participants who attended the convener's conference to submit any further comments in response to the memorandum from Te Whakakitenga o Waikato by 12pm on Tuesday 30 September 2025.
- [4] The purpose of this Minute 7 is to summarise the views of participants on the request made by Te Whakakitenga o Waikato, to record my decision on the request to appoint an additional panel member and to give further directions in respect of

that decision.

- [5] In summary, for the reasons set out more fully below, I have decided to grant the request to exercise my discretion under clause 3(7) of Schedule 3 of the Fast Track Approvals act 2024 (**FTAA**) to exceed the limit specified in clause 3(1) of Schedule 3, FTAA and, accordingly, to direct Waikato River Authority to provide a nomination for an additional panel member by 1pm, Friday 3 October 2025. If the appointment of an additional member of the panel can be completed promptly it will enable the Expert Panel to commence work on 6 October 2025 without further delay.

Background

- [6] The appointment process issues that have been addressed in the post-conference minutes issued to date (Minutes 4 and 5 in particular) were the subject of earlier Minutes 2 and 3 issued prior to the convener conference. In those Minutes I sought specific advice from Waikato Regional Council (WRC), Waikato District Council (WDC), Waikato River Authority (WRA) and Waikato-Tainui as to the relationship between the hearing panel appointment provisions of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (River Settlement Act) and the expert panel appointment requirements of the FTAA.
- [7] Following receipt of various memoranda responding to those specific requests, and the discussion at the conference, I released Minute 4, dated 10 September 2025, setting out the conclusions I had reached as to the steps required to achieve compliance with the requirements of both section 28 of the River Settlement Act and clauses 3 and 5 of Schedule 3 of the FTAA.
- [8] In summary, I determined that three members of the Expert Panel were to be appointed in accordance with section 28, with the panel convener acting in place of the WRC and conferring with the WRA in respect of those appointments. In addition, however, I also indicated that I would appoint a nominee put forward by WRC and WDC in order to comply with clause 3(3) of Schedule 3 to the FTAA. This is a total of four members. I then issued directions to various parties to implement those conclusions. Minute 5 records my decisions in respect of the appointment of four members of the Expert Panel.

- [9] It is worth recording that none of the conference participants responded to the reasoning set out in Minute 4 but, rather, complied with my directions. Given what has transpired since 26 September, it would have been helpful (not to mention more efficient) if specific concerns with the proposed appointment process had been raised with me before I made the appointment decisions recorded in Minute 5.

Participants' views

- [10] I have received memoranda from the following participants expressing their views in response to the invitation in Minute 6:
- a) WRC agrees with Te Whakakitenga o Waikato that the Expert Panel I have appointed is unbalanced from a River Settlement Act perspective, and that it should be amended to achieve an uneven number of members by either removing or adding a panel member. WRC expressed itself to be neutral as to which option should be taken;
 - b) WRA also agreed with Te Whakakitenga o Waikato and adopted the same approach as WRC to the options available to me to achieve an appropriate panel composition. It also expressed itself to be neutral;
 - c) WDC adopts a similar position to WRC and WRA. Interestingly, it does not comment on whether and, if so, how the application of clause 3(3) of Schedule 3 in respect of its own participation in the nomination process should be addressed under the River Settlement Act appointment process;
 - d) The Applicant maintains that a three-person expert panel is appropriate, and acknowledges that it is critical to ensure that the correct representational balance prescribed by the River Settlement Act is maintained. It would prefer to remove the panel member that I appointed and to retain the panel member nominated jointly by WRC and WDC, but indicated that it would not oppose the addition of a panel member if other parties considered that would be the only practical way forward;
 - e) Following receipt of the above memoranda, Te Whakakitenga o Waikato filed a further memorandum, indicating it would be comfortable with a three-person

panel (to include the joint local authority nominee) but that if I wished to proceed with my initial decision to appoint on the basis that I step into the role of the WRC, a fifth panel member should be added.

Decision

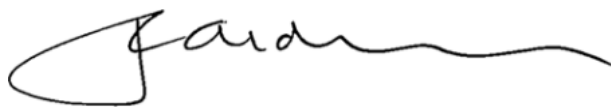
- [11] As is evident from all of the minutes I have issued to date, and Minute 4 in particular, I am in no doubt about the importance of the River Settlement Act provisions, and the role of Te Ture Whaimana in determining this application. The more challenging issue has been determining the relationship between those provisions, given their priority in the FTAA by virtue of sections 7 and 8 and clause 5 of Schedule 3, and the other procedural requirements in the FTAA relating to panel appointments.
- [12] The requirement in clause 3(3) of Schedule 3 to include a nominee of the relevant local authorities on every expert panel is expressed in mandatory terms, and arguably represents the only pathway in a consenting situation involving the River Settlement Act for the relevant district council to have a role in influencing panel composition.
- [13] Given that this is the first FTAA application invoking the section 28 appointment process, it is critical that the relationship between the provisions in both statutes is accurately documented.
- [14] In light of the request made by Te Whakakitenga o Waikato I have given further consideration to the local authority nominee requirement in clause 3(3) of Schedule 3, and have reached the view recorded in the following paragraphs.
- [15] Clause 3 of Schedule 3 already contemplates several situations in which a district council may not have an opportunity to influence panel composition;
 - a) Clause 3(5) provides that where the relevant local authorities nominate more than one person, the panel convener must decide which person to nominate. While in many cases the local authorities tend to confer and offer identical nominations, nevertheless it is possible that a panel convener will select a regional council nominee rather than a district council nominee;
 - b) Clause 3(6) addresses the situation where the local authorities make no

nomination – in this case, the panel convener may appoint a person with appropriate skills and expertise;

- [16] Clause 3(7) provides important context to the mandatory requirement of clause 3(3). The limitation on four panel members may be exceeded where the panel convener considers at her discretion that a larger panel is warranted to accommodate some specific situations. These include (at clause 3(7)(d)) matters unique to any relevant iwi participation legislation or (at clause 3(7)(e)) the collective knowledge and experience needed under clause 7.
- [17] The relationship of clause 3 Schedule 3 with the appointment process in section 28 of the River Settlement Act clearly qualifies as a matter unique to "relevant iwi participation legislation".
- [18] Section 28 of the River Settlement Act requires an equal number of appointees from WRC and WRA plus a jointly appointed independent chair.
- [19] I accept that a panel of four comprised of one member nominated by WRA, one nominated by the panel convener standing in for WRC, one jointly nominated by WRC and WDC and a chair jointly appointed by the panel convener (for WRC) and WRA does not fully comply with section 28 of the River Settlement Act because the appointment of WRC nominees exceeds the appointment of WRA nominees.
- [20] Although not necessary for the purpose of my decision today, I note that for future applications that invoke the River Settlement Act appointment provisions, I consider that clause 3(3) of Schedule 3 could be applied by the panel convener, acting as WRC pursuant to clause 5(2)(a) of Schedule 3, taking steps to confer with the relevant local authorities (in this case WRC and WDC) as to appropriate appointments prior to following the section 28 process.
- [21] In this case, however, I need to determine how best to bring the expert panel appointment process into full compliance with clause 5, Schedule 3 and section 28 of the River Settlement Act.
- [22] In my view it is not appropriate to re-make the decisions I have already made in respect of appointments to the Expert Panel. That decision was made on 22

September 2025, and administrative law principles (and case law) establish that the circumstances in which an administrative decision, once made, can be revoked, revised or corrected are quite limited.

- [23] In light of this and having taken into account the Participants' views summarised above, the preferable option at this point is therefore to make a further decision to appoint a fifth member to the Expert Panel. For the reasons set out above, I am persuaded that it would be appropriate to make a further appointment to ensure that the broader co-governance intentions of the River Settlement legislation are met, and that the WRC and WRA have equal representation on the decision-making body that section 28 requires to be established.
- [24] To that end, I direct that the WRA identify, no later than 1pm on Friday 3 October 2025, a further appointee to the Green Steel Expert Panel pursuant to section 28(2) of the River Settlement Act. That will enable appointment formalities to be undertaken by EPA before the end of the day on 3 October, which will in turn enable the Expert Panel to commence work on Monday 6 October 2025 as intended. No delay should arise to the Expert Panel's work to determine the application.
- [25] For the purpose of section 28(3) of the River Settlement Act, I can make myself available at short notice to discuss the appointment if the WRA elects to do so.

A handwritten signature in black ink, appearing to read 'J Caldwell', with a long, wavy horizontal line extending to the right.

Jennifer Caldwell

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