Fast-track

New Zealand Government
Te Kāwanatanga o Aotearoa

MINUTE 8 OF THE EXPERT PANEL

Request for non-publication order in respect of commercially sensitive information
188 Beaumont Street FTAA-2604-1205
25 August 2026

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[1] On 24 August 2026 the Panel received two memoranda from the Applicant in response to the requests for further information set out in Minute 7. The first seeks an order for non-publication in respect of specific information that it considers to be commercially sensitive (**First Memorandum**). The information proposed to be the subject of the order is contained within a document attached to the First Memorandum and is unredacted. The second (**Second Memorandum**) attaches a redacted version of the document that the Applicant proposes be made publicly available on the Fast Track website in the event that the Panel makes the order sought (**Attachment A**).

[2] In Minute 7, the Panel had sought information (by way of summary if necessary) as to the nature of obligations contained in a Residential Development Agreement (**Agreement**) between the Applicant (or its individual entities) and Auckland Council in respect of the project site. The Applicant's response is contained in a summary document attached to both memoranda.

[3] The precise nature of the information in respect of which the order is sought is set out in the First Memorandum in the following terms[1]:

> [8] The Applicant's response to Minute 7 contains a summary of relevant aspects of the Agreement including the following confidential and commercially sensitive information:
> a) specific project requirements and sunset dates governing project commencement, material works commencement, and practical completion which are contained in a confidential development agreement that would otherwise not be information available to the public; and
> b) monetary figures detailing the capital expenditure of the Applicant and Orams Marine has invested in the Orams Marine Yard ("Site 18A") and 188 Beaumont Street ("Site 18B") to date.

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[1] Applicant’s First Memorandum dated 24 August 2026, at paragraph 8.

[4] As indicated in Minute 7[2], section 42 of the Resource Management Act 1991 (**RMA**) continues to apply to RMA approvals sought under the FTAA as a result of clause 11, Schedule 3 of the FTAA. Section 42 empowers the Panel to make an order protecting sensitive information received or obtained during a proceeding where it is satisfied that the order is necessary to avoid "*unreasonable prejudice to the commercial position of the person who supplied … the information*" and "*in the circumstances of the particular case, the importance of avoiding such prejudice outweighs the public interest in making that information available*". Case law on the application of this test under the RMA notes that the exercise of the discretion must be undertaken in a principled way.[3]

[5] The Applicant is concerned that the project requirements and timing obligations contained in the Agreement reflect the Applicant's commercial commitments and development timeline and, if published, could be used by interested third parties, including competitors, to prevent the Applicant from meeting critical project milestones. The capital expenditure figures comprise commercially sensitive financial information.[4] Other than these specific matters, the Applicant has no objection to publication of the remaining summary information pertaining to the Agreement, with the relevant sensitive information redacted.

[6] The Panel has reviewed the memoranda and the information provided and, subject to one matter discussed below, has determined that it is appropriate to accept the request and make a non-publication order under section 42 of the RMA as sought, for the following reasons:

(a) Publication of the information could result in unreasonable prejudice to the commercial position of the Applicant;
(b) Having regard to the Applicant's willingness to disclose most of the information requested by the Panel in relation to the Agreement, the importance of avoiding such prejudice outweighs any public interest in making the commercially sensitive information available; and
(c) The redacted version of the information provided in relation to the Agreement remains helpful to the Panel in undertaking its decision-

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[2] See Expert Panel Minute 7, paragraph 15.
[3] *Blueskin Energy Ltd v Dunedin City Council* [2017] NZEnvC 57 at [11].
[4] Applicant’s First Memorandum dated 24 August 2026, at paragraph 9.

making task.

[7] Before confirming the order the Panel seeks either:

(a) Confirmation from the Applicant that it has conferred with Auckland Council (ie the counterparty to the Agreement) and obtained consent to disclose the unredacted information; or
(b) Comment directly from Auckland Council on the proposed disclosure, the extent of redactions proposed and the terms of the proposed order set out below.

[8] The Applicant should also confirm that the terms of the order are acceptable and in accordance with its request.

[9] Once the requirements of paragraphs 7 and 8 have been complied with, the order will be confirmed by further minute and published by the EPA together with:

(a) The Applicant's First Memorandum, without the unredacted Attachment A; and
(b) The Applicant's Second Memorandum, with the redacted version of Attachment A.

[10] The non-publication order will be made on the following terms:

(a) The Applicant's response to Minute 7 as it relates to the Agreement may only be provided to parties invited to comment on the Application and made available on the Fast-track website in redacted form, excluding the confidential and commercially sensitive information described at paragraph 8 of the Applicant's First Memorandum; and
(b) The Panel's decision on the Application will not refer to the confidential and commercially sensitive information referred to in (a) above.

Jennifer Caldwell
188 Beaumont Street Expert Panel Chair