
MINUTE 4 OF THE PANEL CONVENER

Procedural steps following compliance with Minute 3

Wairakei South [FTAA-2605-1227]

27 August 2026

Purpose of Minute

- [1] On 5 August 2026 I issued Minute 3, following the convener conference held on 23 July 2026. Minute 3 contained a number of directions to the Applicant and Bay of Plenty Regional Council (**BPRC**) in respect of further information necessary to inform my final decision on an appropriate timeframe for the expert panel to complete its decision-making task.
- [2] A key focus of that information was the stormwater modelling undertaken by the Applicant, but other requests addressed matters including water quality and the impact of the Project on the Kaituna River in the context of the co-governance arrangements in place for that river. I also sought from the Applicant an updated estimate of time for the decision to be made by the expert panel.
- [3] The purpose of this minute is to:
- a. Acknowledge the information provided in response to the directions;
 - b. Respond to a memorandum of counsel filed by the Applicant on 26 August 2026 objecting to what it describes as "unsolicited correspondence" from BPRC in response to the directions;
 - c. Record my views on whether the information provided gives sufficient certainty to enable the expert panel to be appointed and the decision timeframe to be fixed; and

- d. Direct next steps.

Information provided in response to directions

[4] In respect of the stormwater and flood modelling issues, the directions were addressed to the Applicant and BPRC and asked for them to confer and file a joint memorandum to confirm a range of matters including (in summary) unresolved issues, agreement on the steps required to resolve those issues and the likely time required to do so. In respect of water quality and matters raised by Te Maru o Kaituna River Authority (**TMK**), the directions were addressed to the Applicant alone.

[5] The following information has been provided in response to the directions in Minute 3:

- a. From the Applicant, a memorandum dated 21 August 2026 attaching:
 - i. Annexure A – Stormwater and Flood Modelling Joint Memorandum (**Joint Memorandum**), addressing the directions in paragraph [39] of Minute 3 and signed by representatives of both the Applicant and BPRC;
 - ii. Annexure B – Water Quality Response by Ecological Solutions on behalf of the Applicant to issues and comments raised in the BPRC technical review undertaken by SLR Consulting (addressing the directions in paragraph [40] of Minute 3);
 - iii. Annexure C – Memorandum from Collier Consultants on the TMK issues (addressing the directions in paragraph [41] of Minute 3;
- b. From BPRC, a letter dated 21 August 2026 providing its own view on the status of the stormwater and flooding issues that were the subject of the Minute 3 directions and attaching 6 documents including the Joint Memorandum and a Joint Technical Note dated 20 August 2026 signed by the two modelling experts (Noell for BPRC and Bakkes for the Applicant).

- [6] Annexures B and C to the Applicant's memorandum are helpful and will provide a more fulsome picture on water quality and issues of concern to TMK to the panel once they are appointed.
- [7] Annexure A – the Joint Memorandum - is expressed to only address the areas of agreement between the parties. It identifies two specific information gaps, firstly in relation to validation of the Applicant's model and secondly in relation to assessment of the capital expenditure, operational expenditure and lifecycle costs associated with the proposed stormwater infrastructure (**Asset Ownership** workstream), including the potential financial implications of vesting the proposed pumping infrastructure in BPRC ownership.
- [8] The model validation workstream has been broadly agreed. The first step is to agree the scope of that workstream; a draft scope was provided to BPRC on 20 August for review and 3 weeks have been allowed to finalise it, before the validation work commences. The Applicant anticipates that the validation work can be completed within 5 weeks of work commencing. Following completion, the programme allows 2-3 weeks for BPRC feedback, although there is some indication that a period will also be needed to update the assessment of effects prior to the provision of that feedback. A separate time allowance for updating the effects assessment has not been provided.
- [9] A simple calculation suggests that the earliest this workstream can be completed is early November.
- [10] The Asset Ownership workstream allows 5 weeks for the Applicant to undertake its assessment and a further 2-3 weeks for BPRC to provide feedback. It appears that this workstream could be completed by mid-October.

"Unsolicited correspondence" request by Applicant

- [11] The Applicant's memorandum of counsel filed on 26 August 2026 objects to the correspondence filed by BPRC, on the basis that it is "highly irregular and inappropriate", constitutes "significant bad faith" and "can only be seen as a deliberate, calculated (and very ill-advised) lack of transparency and good faith on BOPRC's part". The Applicant appears to interpret my direction to confer and file a joint memorandum as being exclusive; ie only a joint memorandum was in

contemplation and that no further correspondence was invited or otherwise expected from BPRC. The Applicant's memo also claims (at paragraph [2(a)]) that "the joint memorandum does not indicate or record there are *any* outstanding or additional matters that it is agreed BOPRC will address the Convener on separately".

[12] As I noted at paragraph [7] above, this last point is incorrect. The Joint Memorandum clearly states, under the heading "Purpose and Background" that:

This memo only addresses the areas of agreement between the parties.

[13] At no point does it purport to record exhaustively the individual parties' views (or those of their respective experts) on the current state of the modelling information, nor does it answer fully the substance of some of the directions in Minute 3. Validation of the Applicant's model is necessary precisely to provide an agreed basis on which the outputs of that model can then be assessed by the BPRC having regard to the outputs of its own model. There is clearly some way to go, but the Minute 3 directions were intended to assist both parties to reach a point at which further assessment could be undertaken on the basis of reliable model outputs. Paragraph [25] of Minute 3 is very clear about that.

[14] The concerns held by BPRC in respect of the Applicant's stormwater and flood modelling (including the peer review undertaken by Awa) were well-signalled at the convener conference and were presumably recorded in the technical stormwater and flood hazard assessment provided by BPRC to the Applicant on 7 August 2026.

[15] I acknowledge that the Applicant has different views, and in due course (as acknowledged in paragraph [4] of the Applicant's memorandum), those will be put to the expert panel for their assessment. The intention of the direction was to attempt to narrow those differences in order to make the panel's job easier and to ensure a more efficient decision-making process.

[16] I decline the Applicant's request to remove the BPRC correspondence from the EPA website. The BPRC is a statutory participant in the fast-track process and its views will be essential to the panel in the task ahead, whether those views are recorded now or following the panel's appointment.

Is the Application ready for panel appointment and decision on timeframe?

[17] I consider that appointment of the panel and fixing the decision timeframe would be premature at this point. Once appointed, the panel has only 10 working days from commencement to issue invitations to comment. That time period cannot be varied. It is unrealistic to expect the invited parties to respond meaningfully to stormwater and flood hazard issues when the assessment of those effects remains in a state of flux.

[18] I am not prepared to appoint the panel and fix the timeframe until the two stormwater and flooding workstreams identified jointly by the Applicant and BPRC have been progressed further. I will be directing a further conference 4 weeks from now, to check that the scope of work has been agreed and that the work has commenced and remains on track for delivery in early November. At that point, and assuming matters are progressing as intended, I hope to have sufficient confidence to appoint the panel and fix the timeframe.

[19] Given the tenor of the correspondence and memoranda filed by the parties to date, I strongly encourage the Applicant and BPRC to consider joint appointment of a facilitator or mediator to assist them to continue to narrow the issues between them prior to the formal commencement of the panel's consideration of the Application.

Directions

[20] A further convener conference will be held in the week commencing 28 September 2026, with the same participants that attended the first convener conference. The EPA will check parties' availability and then schedule the date and time.

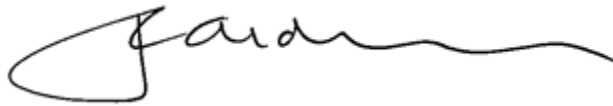
[21] In advance of the conference, the Applicant and BPRC should provide a joint memorandum setting out:

- a. progress made to date on the two workstreams identified in the Joint Memorandum and an update on the expected timeframe for completion of the work; and

- b. progress made on narrowing any further issues between them on issues of stormwater and flood hazard modelling.

[22] Each party may file an additional memorandum setting out the current status of other issues that, in their view, remain unresolved following the provision of the further information in response to Minute 3.

[23] The EPA will confirm the date on which memoranda should be filed in advance of the conference. All memoranda filed are expected to be circulated contemporaneously to the other conference participants.

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

Jennifer Caldwell

Associate Panel Convener for the purpose of the Fast-track Approvals Act 2024