

**BAY OF PLENTY REGIONAL COUNCIL**  
**PROPOSED CHANGE 5 (KAITUNA RIVER)**  
**MINUTE 1 AND DIRECTION OF THE FRESHWATER HEARINGS PANEL**  
**Hearing Procedures, Notice of Hearing, Hearing Process and Presentations**  
**and Site Visits**

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1. E ngā mana, e ngā reo, e ngā karangatanga maha, e mihi kau ana ki a koutou i mua i ō tātou mahi hei whakakotahi ai tātou whakaaro ki te mahere mo te awa o Kaituna. Me tuku atu ngā mihi ki to tātou kaihanga, nānā nei te timatanga me te whakaotinga o ngā mea katoa, ki ngā tini aitua, o tēnā marae, o tēnā kainga, o tēnā hāpori, huri noa te motu, tēnā koutou, tēnā koutou katoa.

### **INTRODUCTION**

2. This Minute is being sent to you as you are a party to these proceedings - either a submitter (or a representative of a submitter or further submitter), or a section s42A author.
3. The general function of this Minute is to set out some preliminary matters in preparation for the hearings, which have been set down to commence on **Tuesday 11 October 2022**.

### **Overview of the Proposed Change 5 (Kaituna River) Process**

4. Proposed Change 5 (Kaituna River) to the Bay of Plenty Regional Policy Statement was notified for public submissions on 29 June 2021. Submissions closed on 10 August 2021 and 15 submissions were received.
5. The 'Summary of Decisions Requested' was notified on 26 October 2021. The further submission period closed at 4pm on Tuesday 9th November 2021.
6. Proposed Change 5 (Kaituna River) has transitioned from the standard Schedule 1 process to the Freshwater Planning Process. Bay of Plenty Regional Council (BOPRC) provided the Chief Freshwater Commissioner with 'required documentation' in December 2021.

The Chief Freshwater Commissioner is required to convene a Freshwater Hearings Panel to hear this change. On 20 December 2021 the Freshwater Commissioner, Professor Peter Skelton, appointed Antoine Coffin as Chair of the Freshwater Hearing Panel for Proposed Change 5 (Kaituna River). Also appointed was the BOPRC nominee Andrew von Dadelszen, and tangata whenua nominee Rawiri Faulkner.

7. The Freshwater Hearing Panel members are:
  - Antoine Coffin (Chair)
  - Andrew von Dadelszen
  - Rawiri Faulkner

8. The Freshwater Hearing Panel is tasked under section 80A(5) of the Resource Management Act 1991 (“RMA”) to conduct the public hearing of submissions in accordance with its powers set out in Part 4 of Schedule 1 to the RMA, and subsequently make recommendations to BOPRC on this freshwater instrument.

### **NOTICE OF HEARING**

9. Notice is hereby given that the hearing of Proposed Change 5 (Kaituna River) and the submissions and further submissions received by BOPRC will occur on Tuesday 11<sup>th</sup> October 2022 commencing 9.30 am, at Pāpāmoa Community Centre, 15 Gravatt Road, Pāpāmoa. A further half day is reserved in the am on Wednesday 12<sup>th</sup> October if required to hear any submitters unable to attend on Tuesday 11<sup>th</sup> October.
10. At the time of issuing this notice, the Freshwater Hearing Panel expect the hearing will be conducted face to face. Due to the uncertainties of the Covid19 pandemic provision will be made to enable submitters to attend and present their statements of position virtually using Zoom online software.

### **DIRECTIONS**

11. All information relevant to the hearings will be made available on the [Proposed Change 5 \(Kaituna River\) page](#) of BOPRC’s website.
12. Submitters who wish to be heard are advised to view the information on the webpage at all stages of the process before and during hearings.

### **Service on Council**

13. Any evidence or information required by this Minute, and any memorandum or application to the Freshwater Hearings Panel, should be lodged by one of the following means:
  - By email to Rachel Thaugland, Planning Administrator at [Rachel.Thaugland@boprc.govt.nz](mailto:Rachel.Thaugland@boprc.govt.nz)
  - In writing, addressed to Bay of Plenty Regional Council, PO Box 364, Whakatāne 3158, for the attention of the Planning Administrator (Proposed Change 5 – Kaituna River)
  - By delivery to 1 Elizabeth Street, Tauranga.

### **Procedures**

14. It is important at this preliminary stage to establish some procedures to facilitate a smooth and effective pre-hearing and hearing process for all parties. This requires some actions from all the parties in readiness for getting underway with the hearing.
15. In this respect, this minute covers the following matters:
  - (a) Intention of submitters to be heard;
  - (b) Key dates for evidence to be lodged;
  - (c) Hearing process and presentations;

- (d) Recording of hearing; and
- (e) Field trip site and locality visits.

16. Additional Minutes and Directions with further requests and instructions will be issued, before, during and after the hearing.

### **Intention to be heard**

17. A draft hearing schedule is included in this email to submitters and will be posted on BOPRC's webpage showing the proposed sequence and time of submitters who stated they wished to be heard. It includes proposed time allocations granted to each submitter.

18. Submitters who stated they wish to be heard at the public hearings need to confirm by email to the Planning Administrator their intention to be heard no later than **5pm on 6 September 2022** and indicate:

- Whether they wish to change the amount of time allotted to speak to their submission and/or present evidence;
- Whether they wish to address the hearings in te reo Maori;
- Whether they have special requests (e.g. projection equipment and screen / share a presentation); and
- Whether they intend to call expert evidence (including any planning evidence), and the name(s) of their expert witnesses.

19. The Planning Administrator will be in contact to confirm your attendance and the above matters.

### **Key dates for hearings report, evidence and reply**

20. A staff recommendations report will be made available on the above webpage on Tuesday 30 August 2022.

21. The following dates are set for lodging written evidence. These dates allow the hearing panel time to read the submissions and evidence prior to the hearing:

- All evidence in chief by 5pm on Tuesday 13 September 2022
- All evidence in chief posted on webpage Friday 16 September 2022
- All rebuttal evidence by 5pm on Tuesday 27 September 2022; and
- All rebuttal evidence posted on webpage Tuesday 4 October 2022.

22. As set out above the hearing is set down for Tuesday 11<sup>th</sup> October 2022. We expect submitters' evidence to the Freshwater Hearings Panel to conclude no later than Wednesday 12<sup>th</sup> October 2022. In that event we direct BOPRC to lodge any reply evidence and amended draft provisions by Friday 28<sup>th</sup> October 2022, to be posted on the webpage by Tuesday 1 November 2022. The panel will proceed to hear BOPRC's reply evidence, the parties closing submissions, and BOPRC's closing submissions between Tuesday 8 November and Friday 11 November, most likely to be online.

23. It may be the case that BOPRC does not lodge expert evidence and seeks to provide closing submissions verbally on the last day of the hearing, following submitters, and/or provide its closing submission in writing.

24. In either case the Freshwater Hearing Panel is open to how BOPRC may wish to most efficiently and effectively conclude its role in the hearing process.

## **Other matters**

25. Clause 48 of Schedule 1 to the RMA part 4 concerns procedures of Freshwater Hearing Panels. In summary the Freshwater Hearings Panel shall:
- Regulate its proceedings in a manner that is appropriate and fair in the circumstances;
  - Keep a full record of the proceedings; and
  - Permit, regulate or prohibit cross-examination.
26. Cross-examinations can only be undertaken by leave of the Freshwater Hearing Panel. Numbers of parties or their representatives questioning any given witness may be limited, if leave is granted at all.
27. Any applications for leave to cross-examine a witness must be lodged with the panel via the Hearings Secretary in writing by 5pm on Monday 3 October 2022. The application must specify with precision the topic(s) or issue(s) sought to be the subject of questions and the time sought to be allocated for the purpose.
28. There are other powers that the Freshwater Hearing Panel may choose to use to resolve or address matters raised in submissions and evidence. These include:
- Clause 40 – powers of freshwater hearings panel
  - Clause 41 – prehearing meetings
  - Clause 42 – Council's role during hearings
  - Clause 43 – conference of experts
  - Clause 44 – alternative dispute resolution
  - Clause 45 and 46 – commissioning reports and appointing special advisors and friends of submitters
29. The Freshwater Hearings Panel may seek to use these powers before and during the hearings, particularly as it becomes more familiar with the case materials.
30. Further Minutes and Directions may set out our expectations regarding the above and other matters that become apparent before and during the hearing.
31. An audio/video recording of the hearings will be made by BOPRC staff and will be made available on the webpage. Excerpts of the recording may be transcribed at the request of the Freshwater Hearings Panel, or at the request of a submitter if agreed to by the panel.

## **Site and locality visits**

32. While we are generally familiar with the Kaituna River, the Freshwater Hearings Panel may need to undertake a field trip to visit various parts of the Kaituna River catchment following the hearing process.
33. If any party wishes the Freshwater Hearings Panel to visit sites/localities relevant to their submissions, they are to advise such sites/localities to the Planning Administrator in writing at least 5 working days before the set date for the hearing. The Freshwater Hearings Panel will consider such a request.
34. A further opportunity will be available to request a specific site/locality request during a submitter's presentation at the hearing.
35. The Freshwater Hearings Panel will undertake any site/locality visit we deem necessary for our consideration of submissions either by ourselves, or with a

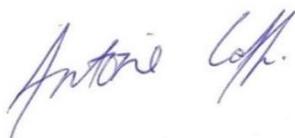
BOPRC representative who was not involved in the preparation of Proposed Change 5.

36. The Freshwater Hearings Panel will not engage with any submitter and/or their representative on the subject of their submission and they should not be present at any site visits we hold (unless this is required for health and safety reasons when visiting a private property), whereupon the Planning Administrator will liaise with the submitter and/or their representative to establish an appropriate site visit protocol so as to preserve our independent role.

### **Next Steps**

37. As summarised above, we now suggest all parties familiarise themselves with the draft procedures in readiness for the Proposed Change 5 (Kaituna River) hearing on 11<sup>th</sup> October 2022.
38. The Planning Administrator's email address is [Rachel.Thaugland@boprc.govt.nz](mailto:Rachel.Thaugland@boprc.govt.nz).

**DATED** this 12<sup>th</sup> of August 2022



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Antoine Coffin  
Freshwater Hearings Panel Chairperson

For and on behalf of Freshwater Hearings Panel members:  
Commissioner Andrew von Dadelszen  
Commissioner Rawiri Faulkner