

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of Submissions and Further Submissions
on the Proposed Hutt City District Plan

Minute 18

Proposed District Plan – Hearing Stream 6: Infrastructure – Directions and Requests for expert conferencing, information, technical discussions, and legal advice

30 September 2026

Contents

Introduction.....	3
Provision of information to the Panel	3
Powerco – Mr Scolfield.....	3
Tiaki Wai (Wellington Water) – Ms Viskovic & Mr Blackman	3
Fire & Emergency NZ – Mr McGimpsey	3
Royal Forest and Bird Protection Society of New Zealand Inc – Emilia Geary	4
Waste Management NZ – Ms Goodwin	4
Integration with OPD across the PDP	4
Questions for s42A Author for Infrastructure and Transport	5
TR-R4 and the NES – Detached Residential Minor Residential Units.....	5
Consideration of consent order provided by Powerco	5
Questions for s42A Author for Three Waters and Renewably Electricity Generation Chapters	5
Expert Conferencing & Technical Discussions.....	6
Definitions for ‘Repair’ and ‘Maintenance’ – Ms Bennett, Mr McDonald, Ms Heppelthwaite (KiwiRail), & Mr Blackman (Tiaki Wai).....	6
Setbacks and Minor Upgrades - Mr McDonald & Mr Blackman (Tiaki Wai)	7
NES-ENA: PDP Duplication and Conflict – Mr McDonald and Ms Whitney.....	7
Legal Questions for Mr Quinn	8
Rule THW-R2(2) notification preclusion clause.....	8
KiwiRail’s requested 5m setback and qualifying matters evaluation requirements.....	9
The requested ‘Orphan Objective’ to protect the Waiwhetū Aquifer	9
Section 44A and removing duplication or conflict with National Environmental Standards.....	10
Lawfulness of provisions in a plan referring to resource consents as a pre-qualification for permitted activity status	10
From here	11

Introduction

1. The Hutt City Council (HCC) Proposed District Plan (PDP) Hearings for Hearing Stream 6 – Infrastructure commenced on Tuesday, 22 September 2026. Proceedings continued through Wednesday, 23 September and are now adjourned pending receipt of further information from various parties.
2. The purpose of this minute is to set out the specific directions and information we requested during the hearing proceedings and the timetables for receiving that information.

Provision of information to the Panel

3. Over the course of the hearing we requested information from several submitters, who agreed to provide the requested information. Below we set out our requests and any timeframes agreed during the hearing for the provision of this information.

PowerCo – Mr Scholfield

4. In response to a request by the Chair, Mr Scholfield agreed to provide a copy of the consent order relating to the PowerCo appeal on the Proposed Wairarapa Combined District Plan. Mr Scholfield has subsequently provided a copy of the consent order to the Hearings Administrator and this has been uploaded to the Hearing Stream 6 webpage.

Tiaki Wai (Wellington Water) – Ms Viskovic & Mr Blackman

5. In response to a request from the Chair, Mr Blackman agreed to provide a technical assessment setting out which policies and methods within the PDP would connect to the requested new objective to protect the Waiwhetū aquifer. We request Mr Blackman provides his findings of this technical evaluation to the Hearings Administrator by **4:00pm 9 October**, and this will then be uploaded to the Hearing Stream 6 webpage.

Fire & Emergency NZ – Mr McGimpsey

6. In response to a request from Commissioner Muspratt, Mr McGimpsey agreed to confirm whether there was any publicly available information from Auckland Council that could be shared with the Panel demonstrating the legislative ‘gap’ Mr McGimpsey referred to between the RMA and other legislation that addresses the safe and efficient access to buildings for fire and emergency personnel and equipment.
7. For the avoidance of doubt, Commissioner Muspratt is only requesting any information that is publicly available and that Fire & Emergency NZ may wish to provide for the Panel’s consideration.
8. As discussed at the hearing, it would also be useful to the Panel if FENZ could provide

examples from other operative district plans which have successfully addressed this matter in a similar way to that requested by the submission.

9. Should Fire & Emergency NZ wish to provide this information, it is to be provided to the Hearings Administrator by **4:00pm 9 October 2026**, and this will then be uploaded to the Hearing Stream 6 webpage.

Royal Forest and Bird Protection Society of New Zealand Inc – Emilia Geary

10. During the hearing, Ms Geary agreed to provide her speaking notes which would be uploaded to the Hearing Stream 6 webpage. For the record, Ms Geary provided her speaking notes shortly thereafter, and they are now available on the Hearing Stream 6 webpage.

Waste Management NZ – Ms Goodwin

11. In response to a question from Commissioner Jones, Ms Goodwin agreed to provide her opinion on whether applying the objectives and policies of the infrastructure chapter to waste management facilities, but not the infrastructure rules, would be consistent with National Planning Standards requirements.
12. We request Ms Goodwin to provide this information to the Hearings Administrator by **4:00pm 9 October 2026**, and this will then be uploaded to the Hearing Stream 6 webpage.

Integration with OPD across the PDP

13. It is our understanding that as signalled within the s42A report for Hearing Stream 1, integration of the Proposed District Plan provisions with those that will remain in force as a consequence of the Plan-stop exemption and subsequent withdrawal of certain provisions from the PDP are to be addressed in each hearing stream.¹ The Panel is highlighting this and confirming this remains our expectation for the remaining hearing streams.
14. We acknowledged that these matters are intended to be comprehensively addressed by the Council as part of Hearing Stream 10 – ‘Wrap-up’; however, we request that s42A report writers consider and address these matters as far as practicable within each hearing stream.
15. The Panel will shortly issue a separate Minute in relation to integration issues particular to the infrastructure chapter.

¹ Section 42 Officer’s Report Hearing Stream 1: Opening Hearing, at paragraph 50:
https://hccpublicdocs.azurewebsites.net/api/download/d8937615b4d04c4eabe99da68ac79ed3/_dplanreview/3f17393164344684a80b8e85fd2ca053dee

Questions for s42A Author for Infrastructure and Transport

16. In addition to any other matters Mr McDonald would like to address within his right of reply, the Panel would appreciate his advice on the following matters:

TR-R4 and the NES – Detached Residential Minor Residential Units

- (a) Please confirm whether rule TR-R4 (Activities within the Highly Constrained Roads Overlay), standard 1(a) that limits an affected site to one residential unit conflicts with the requirements of the NES for Detached Residential Units. If there is a conflict, we request a solution be advised that considers the legal advice of Mr Quinn in response to our legal question on how to best address conflict or duplication between proposed district plan provisions and a national environmental standard.

TR-R3(1)(c) - 5% Trip Generation Increase

- (a) Please advise how permitted activity status would be demonstrated for the increase in motor vehicle trip generation up to the 5% threshold for an alteration or expansion of an existing high trip generating activity. Is the drafting sufficiently clear, or does some other detail need to be specified to ensure consistent administration?

Consideration of consent order provided by PowerCo

17. Upon receipt of and consideration of the consent order provided by Mr Scholfield under our information request above, please provide a response for our consideration of this matter.
18. Mr McDonald is to provide his right of reply to the Hearings Administrator, after having considered the legal advice of Mr Quinn as requested within this Minute, by **4:00pm 22 October 2026**, which will then be uploaded to the Hearing Stream 6 webpage.

Questions for s42A Author for Three Waters and Renewable Electricity Generation Chapters

19. In addition to any other matters Ms Bennett would like to address within her right of reply, the Panel would appreciate her advice on the following matters:
- (a) Please reflect upon the use of the term 'ownership' within matter of discretion 6 for rule THW-R2(2) and advise on whether you consider this to be sufficiently clear when applied in a 'landuse consent only' resource consent scenario.
- (b) Please reflect upon the assessment of the requested changes sought by Forest & Bird to matter of discretion (6) of rule REG-R2.2, as set out within paragraphs 185 to 186 of the s42A report. In particular, we request consideration as to whether:
- (i) The notified wording 'minimising' has a technically equivalent meaning to the

RMA term 'mitigating'; and

- (ii) Whether 'remediation' as requested by Forest & Bird would provide a higher rather than a lower threshold for the consideration of effects under the matter of discretion – noting that the notified provisions are limited to 'avoiding, or minimising'.

- (c) We note that we have requested legal advice from Mr Quinn below regarding the 'tests' and limits of using Clause 16(2) of Schedule 1 of the RMA to make amendments to notification clauses within rules, and also whether allowing the limited notification of a resource consent application that does not meet the hydraulic neutrality requirements of rule THW-R2 would be contrary to the requirements of section 77G of the RMA. In addition to requesting that advice from Mr Quinn, we request Ms Bennett to consider whether the recommended change to the notification clause within rule THW-R22 could result in unanticipated adverse effects on adjacent sites, such as an increased flood effect that would be greater than 'less than minor' and therefore require limited notification of affected persons.

- 20. Ms Bennett is to provide her right of reply to the Hearings Administrator, after having considered the legal advice of Mr Quinn as requested within this Minute, by **4:00pm 22 October 2026**, which will then be uploaded to the Hearing Stream 6 webpage.

Expert Conferencing & Technical Discussions

- 21. Throughout the hearing for Hearing Stream 6 we confirmed with relevant submitters and their experts and the reporting s42A authors that they agreed to participate in expert conferencing on specific topics that remain in contention. Accordingly, we set out our directions for expert conferencing below.

Definitions for 'Repair' and 'Maintenance' – Ms Bennett, Mr McDonald, Ms Heppelthwaite (KiwiRail), & Mr Blackman (Tiaki Wai)

- 22. The parties are to conference on the definitions for 'repair' and 'maintenance' in an attempt to resolve the outstanding differences in opinion between the Council's s42A planning experts and the submitters' planning experts.
- 23. The Panel directs that this discussion is to include the consideration of:
 - (i) The effect of designations with respect to the applicability of district plan provisions

² As discussed, and recommended at paragraphs 138-147 of the Three Waters s42A report.

under section 176 of the RMA; and

- (ii) The relevance of these definitions for works that are to be carried out within a designation by a requiring authority for the designated purpose; and
 - (iii) The information that is required to be provided to Council as part of an outline plan or works submitted by the requiring authority under section 176A of the RMA i.e. for the entirety of the KiwiRail designation, and the designated Tiaki Wai (HCC) three waters assets.
24. The parties are to conference and prepare and sign a joint witness statement setting out the areas of agreement, areas that remain in disagreement with reasons, and any agreed recommended amendments to the PDP. This is to be provided by **4:00pm 9 October 2026** to the Hearings Administrator, which will then be uploaded to the Hearing Stream 6 webpage.

Setbacks and Minor Upgrades - Mr McDonald & Mr Blackman (Tiaki Wai)

25. Mr McDonald and Mr Blackman are to discuss the outstanding matters relating to infrastructure setbacks with respect to minor upgrades, infrastructure works and upgrades within high flood hazard areas, and any other matters that remain in contention under the Wellington Water submission.
26. Mr McDonald and Mr Blackman are to provide a brief memo setting out any agreed changes to the provisions, and setting out any remaining areas of contention that have not been resolved, with reasons. This is to be provided by **4:00pm 9 October 2026** to the Hearings Administrator, which will then be uploaded to the Hearing Stream 6 webpage.

NES-ENA: PDP Duplication and Conflict – Mr McDonald and Ms Whitney

27. Mr McDonald and Ms Whitney are to evaluate and identify the amendments to the PDP that would be necessary to remove duplication and conflict with the NES-ENA.
28. The Panel advises that we have requested legal advice from Mr Quinn in this Minute below on the method, timing, and the Panel's involvement in the process to remove duplication and conflict from a proposed district plan under s44A of the RMA. The Panel notes that the technical work conducted by Mr McDonald and Ms Whitney will be of benefit regardless of the process advised by Mr Quinn.
29. Mr McDonald and Ms Whitney are to provide a brief memo, including their agreed recommendations for amendments to the provisions to remove duplication and conflict between the PDP and the NES-ENA, supported by a technical explanation setting out why

each recommended amendment falls under section 44A of the RMA, and setting out any other agreed changes that would not fall under section 44A of the RMA and therefore would remain under the Schedule 1 PDP process.

30. This is to be provided by **4:00pm 16 October 2026** to the Hearings Administrator, which will then be uploaded to the Hearing Stream 6 webpage.

Legal Questions for Mr Quinn

31. The Panel would appreciate Mr Quinn's legal advice on the following matters that have arisen through the Hearing Stream 6 process:

Rule THW-R2(2) notification preclusion clause

32. The first question has two interrelated components, which directly relate to rule THW-R2(2) and the s42A recommended amendments to this rule using Clause 16(2) of Schedule 1 of the RMA. The explanation for the recommended amendments is to ensure the notification provision within rule THW-R2 is lawful under section 77G of the RMA regarding the incorporation of the Medium Density Residential Standards. Our questions are as follows:
33. Please advise the extent of the ability for Council to use Clause 16(2) Schedule 1 of the RMA regarding the key legal tests or considerations to inform a determination on whether a potential amendment is '*of minor effect*' or corrects '*any minor errors*'. The recommendation the Panel wishes to explore is that discussed within section 4.2.13 of the section 42A report for the three waters topic³, which recommends the modification of the notification clause to also preclude limited notification for applications that do not meet the hydraulic neutrality permitted activity requirements for new buildings in an Urban Zone under Rule THW-R2(1).
34. The key question for the Panel is whether adding limited notification to the notification preclusion clause within the rule is of minor effect, or whether it corrects a minor error. This leads to our second question as follows:
35. The rationale contained within the section 42A report for modification of the limited notification clause within rule THW-R2(2) is that it is required to make the notification provisions of rule THW-R2(2) as notified lawful under section 77G of the RMA for the residential zones which are required to incorporate the Medium Density Residential

³ Section 42A report for Three Waters, at paragraphs 138 to 141:

https://hccpublicdocs.azurewebsites.net/api/download/d8937615b4d04c4eabe99da68ac79ed3/_dplanreview/27051d921473613e4675a9ad6740bc1c9d3a

Standards. The Panel notes that hydraulic neutrality is not a Medium Density Residential Standard, and therefore we would appreciate legal direction on whether the rationale and cited legal basis for amending the notification clause within the rule are correct⁴.

KiwiRail's requested 5m setback and qualifying matters evaluation requirements

36. The submission of KiwiRail requests a new permitted activity standard requiring a 5.0m building setback from the edge of the rail corridor designation boundary as a new qualifying matter to make the Medium Density Residential Standards less enabling of development. This is on the basis that under RMA s77I(e) it is a '*matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure*'.⁵ The submission includes a section 32 evaluation report.
37. The Panel wishes to confirm whether, as a new qualifying matter, the requested new 5m building setback would also need to be supported by an evaluation of the matters specified within section 77J of the RMA.

The requested 'Orphan Objective' to protect the Waiwhetū Aquifer

38. The submission of Wellington Water and Mr Blackman's evidence for Tiaki Wai⁶ request an amendment to the Three Waters chapter to include a new objective as follows:

Protect the Waiwhetū aquifer from the adverse effects of urban development and adverse effects of existing infrastructure.

39. The submission does not request any specific policies or rules/standards to achieve this objective. As a separate question within this Minute, we request Mr Blackman to provide his evaluation as to whether any notified provisions of the PDP connect with this requested objective. In parallel with Mr Blackman's advice that we have requested separately within this memo above, and to cover the scenario where no related provisions are identified by Mr Blackman, the Panel wishes to confirm the requirements of section 75(1) of the RMA where an objective is contained within a district plan but there are no policies to implement the objective, and no rules to implement the policies.

⁴ At paragraphs 138 to 141.

⁵ As discussed within the KiwiRail legal submissions provided by Ms Dibley, at para. 5.16 to 5.18: https://hccpublicdocs.azurewebsites.net/api/download/d8937615b4d04c4eabe99da68ac79ed3/_dplanreview/874d80af18530f7846d9a948a5b8f122e20c

⁶ Planning Evidence of Timothy Michael Blackman for Tiaki Wai Ltd, dated 7 September 2026. At paragraphs 68 to 72: https://hccpublicdocs.azurewebsites.net/api/download/d8937615b4d04c4eabe99da68ac79ed3/_dplanreview/b4cdda711591ae10466a913b7224beaee5be

Section 44A and removing duplication or conflict with National Environmental Standards

40. Due to the timing of the notification of the PDP and the continuous amendments to existing national environmental standards, in addition to new national environmental standards recently coming into force, we have heard from the s42A authors and submitters that the PDP contains numerous provisions that either duplicate or are in conflict with national direction contained within national environmental standards.
41. The Panel wishes to confirm the process for Council, and the role of the Panel (if any) in addressing all instances of duplication or conflict between PDP provisions and current national environmental standards. It is our understanding that Council is required under section 44A of the Act to amend its operative and proposed district plans to remove conflict or duplication with a national environmental standard without using the process in Schedule 1 of the RMA. On this basis we would appreciate advice on the best way forward, including:
- (b) The necessary legal process and timing to address this matter;
 - (c) The responsibilities and actions necessary for Council and the Panel in meeting the requirements of section 44A;
 - (d) How best to integrate or capture this process through the PDP hearings process to ensure duplication or conflict is removed, that all relevant submission points are noted/addressed, and to ensure that the Panel is not in the position of addressing s44A matters under the Schedule 1 hearing process.
 - (e) Any other advice on how best to expediently resolve this matter.

Lawfulness of provisions in a plan referring to resource consents as a pre-qualification for permitted activity status

42. The submission of Te Kārearea Ltd and Rosco Ice Cream Ltd, and the evidence submitted by Mr Gibson request an amendment to the High Trip Generating Thresholds for a specific site at 30 Benmore Crescent, by adding a maximum 'vehicle trips per day' standard that has been confirmed via a resource consent, while also seeking reference within the permitted activity standard to 'or similar resource consent with the same vehicle trips'.⁷
43. The Panel wishes to understand the lawfulness of including provisions in a district plan that include rules or standards where activity status is dependent on the future grant of a

⁷ Statement of Evidence of David Gibson for Te Kārearea Ltd and Rosco Ice Cream Ltd, Dated: 7th September 2026, at paras. 32 to 33:

https://hccpublicdocs.azurewebsites.net/api/download/d8937615b4d04c4eabe99da68ac79ed3/_dplanreview/4734579815933fe14bda92d62e318983fdc7

resource consent. For example, whether the same lawfulness issues arise as those identified by the Environment Court through the case *Queenstown Airport Corporation Limited v Queenstown Lakes District Council (2014)*, NZEnvC 93.

44. We request Mr Quinn provide this legal advice to the Hearings Administrator by **4:00pm on 16 October 2026**, which will then be uploaded to the Hearing Stream 6 webpage.

From here

45. Should the timing or any other procedural questions arise from this Minute, please address those to the Hearings Administrator, Ms Shetty, in the first instance.



DJ McMahon

Independent Commissioner

Deputy Chair Hutt City Proposed District Plan Hearing Panel

30 September 2026