

Fast-track Approvals Act 2024

MINUTE 4 OF THE EXPERT PANEL

Matters raised regarding Panel membership
Waihi North [FTAA-2504-1046]

5 September 2025

A suggestion that a Panel member recuse himself

[1] In its comments made in response to an invitation under s 53 of the Fast-track Approvals Act 2024 (the Act), Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) suggested that Waihi North Panel member Mr Rob van Voorthuysen should recuse himself for apparent bias.

The background

The legal setting

[2] Clause 3(3) of Schedule 3 to the Act provides:

The membership of a Panel must include 1 person nominated by the relevant local authorities.

[3] For this application the relevant local authorities are Hauraki District Council, Thames-Coromandel District Council, and Waikato Regional Council.

The initial approach to Mr van Voorthuysen

[4] On 13 February 2025, an employee of one of the local authorities emailed Mr van Voorthuysen inquiring as to his availability to serve as a panel member.

[5] He responded on the same day saying:

Sounds like an interesting job that I would like to help you with, the only problem is I really have no spare capacity until July, which I imagine will not suit your timeframes?

[6] The employee replied:

It might work. Depends on how quickly they get the application in and how long it takes to get accepted onto the Fast Track process.....

They state they will lodge on 7 March but whether they have sufficient information to lodge in March is another matter. There appear to be a few boxes they need to check first before it can be considered for the Fast Track process.

Can I put you down for a maybe in July? The Councils need to provide a recommendation to be on the Panel.

[7] Mr van Voorthuysen answered in the affirmative, saying:

... put me down as a maybe for July.

Correspondence between 17 and 27 February

[8] The suggestion of apparent bias made by Forest and Bird is based on:

- (a) A letter of 27 February 2025, Mr Christensen (counsel for the Applicant) sent to Jane Borthwick, as Panel Convener. In this letter he addressed the timeframe for the decision-making process and the composition of the Waihi North Panel; and
- (b) Earlier engagement that month between Mr Christensen and employees of the local authorities. The purpose of this engagement included settling the terms of what became the letter of 27 February.

[9] On 17 February Mr Christensen wrote an email to the employee (which was copied to others) which attached a draft of what was to become the letter of 27

February. It dealt in part with timing. As to Panel composition, the draft recorded Mr Christensen's understanding of where the local authorities were getting to with settling on a nominee for appointment to the Panel. He then said:

I understand the individuals under consideration are experienced planners with knowledge of relevant and comparable complex mining developments.

[10] He linked the choice of nominee to the timeframe by saying:

As you will appreciate the Councils cannot confirm a nominee with ascertaining their availability, and to do that an indication as to the likely time commitment would greatly assist.

[11] Mr Christensen met with the local authority employees on 21 February. They told him that the local authorities were thinking of nominating Mr van Voorthuysen. It appears that they also discussed with him the draft of what became the letter of 27 February.

[12] On 26 February, Mr Christensen wrote to the local authority employees. He referred to Mr van Voorthuysen in his email:

I understand from OGNZL that Rob v V is also lined up to be on a Panel considering consents for an expansion at Macraes Mine which is due to be heard around the end of July. I know Rob has a huge ability to get through mountains of work but he is going to be busy! I think originally the Macraes hearing was going to be in late June, but for a variety of reasons has slipped out a month or so. I don't think that changes what we are proposing for WNP but wanted to bring that to your attention.

[13] He attached a revised draft of the proposed letter which referred to Mr van Voorthuysen's likely nomination.

[14] The letter that Mr Christensen sent to Jane Borthwick on 27 February referred to the person to be nominated by the local authorities in this way:

I understand the individuals under consideration are experienced planners with knowledge of relevant and comparable complex mining developments. I understand the Councils have approached Mr Rob van Voorthuysen who has indicated his availability for appointment on the basis that a Panel appointment occurs in April and the Panel has an extended timeframe to complete its work ... This would align well with Mr Voorthuysen's other commitments. As you will be aware, Mr van Voorthuysen is a vastly experienced planning Commissioner. He holds the MRF "Making Good Decisions" certificate with Chair endorsement and has knowledge of relevant and comparable mining developments. It is the view of the Councils that Mr van Voorthuysen would be a suitable person to chair the Panel.

The lodging of the application

[15] The initial Waihi North substantive application was not lodged with the Environmental Protection Authority (EPA) until 7 March 2025.

Jane Borthwick's response to the letter of 27 February and subsequent events

[16] On 10 March Jane Borthwick replied to Mr Christensen's letter of 27 February (and email communication of 5 March), saying:

Now that the Waihi North Project application has been lodged with the Environmental Protection Authority and the fees and levies paid, I am responding to your correspondence. As Panel convener, my response is limited to matters within my function. I cannot direct the Panel on the conduct of any hearing, nor will I comment on Panel appointments until I have heard from the local authorities and other people entitled to participate in the appointment process

[17] The initial application was returned to the Applicant on 28 March 2025. The current application was filed on 10 April 2025 and the decisions regarding s 46 and s 47 of the Act came on 2 May 2025 and 16 May 2025 respectively.

June 2025

[18] On 11 June 2025, the Associate Panel Convener (Jennifer Caldwell) wrote to

the local authorities inviting them to nominate two alternative persons for appointment to the Panel.

[19] On the same day a local authority employee emailed Mr van Voorthysen:

Finding someone who is not conflicted has been a challenge.....

At the moment my understanding is that the timetable would mean the bulk of the work would mostly occur over the October-November period with some preparatory work starting in July/August.

HDC and WRC would see your expertise fit under the planning expertise (including in relation to complex consent conditions). TCDC has a small part of their District within the area of works so they also have a role in nominating a Panel member.

So we were wondering if you were available and could we put your name forward as the Councils nominee.

[20] He responded:

October – November suits me fine so yes, feel free to put my name forward.

[21] On 13 June 2025, the local authorities wrote to the Associate Panel Convener and jointly nominated a single person, Mr van Voorthuysen as a Panel member.

[22] The Associate Panel Convener then contacted Mr van Voorthuysen about appointment.

Why Forest and Bird suggest that recusal is appropriate

[23] Forest and Bird say the letter of 27 February “gives the impression that”:

- (a) The Applicant has influenced the selection of the decision-makers for its substantive application. Given Mr van Voorthuysen’s subsequent appointment, it appears that

the Panel appointment process has been (or could reasonably be perceived to have been) affected by the fact that the Applicant has requested one of the appointees.

- (b) There is a relationship between counsel for the Applicant and Mr van Voorthuysen that is sufficiently close for counsel to have an understanding of Mr van Voorthuysen's availability. Forest & Bird does not know to what extent there were discussions between counsel for the Applicant and Mr van Voorthuysen, but is aware that Mr van Voorthuysen has been the hearing commissioner for other resource consent applications by this Applicant, including the Macraes Phase 4 Project that was heard in July 2025.

[24] Of the earlier engagement between Mr Christensen and the local authority representatives, Forest and Bird say:

It reinforces the clear impression that the Applicant has influenced the Panel appointment process, and that the Applicant's counsel is familiar with Mr van Voorthuysen.

There is no apparent bias

[25] Once the sequence of events set out above is understood, the suggestion of apparent bias falls away.

- (a) The initial approach to Mr van Voorthuysen and his responses were entirely orthodox.
- (b) Mr van Voorthuysen had no engagement with Mr Christensen as to his appointment. Details regarding his other commitments and suitability for the role as appear in the letter of 27 February must have been supplied by other people, presumably the local authority employees given the discussion of his availability in his 13 February email, and the Applicant in relation to his involvement with the Macraes Mine proposal.
- (c) Also entirely orthodox are the exchanges between Mr van Voorthuysen and the local authorities in June this year prior to him being approached by Jennifer Caldwell about appointment.
- (d) The assertions by Forest and Bird in the passage cited in [23] above,

that Mr van Voorthuysen was the hearing commissioner in relation to the “Macraes Phase 4 Project that was heard in July 2025” is not correct. That hearing, at the request of the Applicant, did not proceed. This is of limited moment as it would make no difference if the hearing had proceeded.

[26] Mr van Voorthuysen has done nothing which might lead a fair-minded lay-observer to reasonably apprehend that he might not bring an impartial mind to his role as a Panel member. There is thus no occasion for him to recuse himself

A handwritten signature in black ink, appearing to read 'Wm Young', written in a cursive style.

Sir William Young KNZM KC
Waihi North Expert Panel Chair