

Fast-track Approvals Act 2024

MINUTE 7 OF THE EXPERT PANEL Late Comments from KiwiRail

Pound Road Industrial Development [FTAA-2505-1057]

8 December 2025

[1] On the 6th of October 2025 the Panel issued invitations to comment to those parties specified in s 53(2) of the Fast-track Approvals Act 2024 (**FTAA**).

[2] Pursuant to s 54 FTAA comments were to be received by 4th November 2025. A total of 17 comments were received by that date.

[3] The Panel has been advised that late comments have been received from KiwiRail (**Late Comments**), which was a party invited to comment under s 53(2)(l). Those comments were received on 14 November 2025, [8] working days late.

[4] KiwiRail advised that, for reasons unknown, the original invitation to comment was directed to a ‘junk’ email folder, so was not seen until after the time to respond had passed.

[5] As other Panel’s have noted, s 54(4) FTAA provides that:

... there is no right for any person to seek a waiver of the time limit for written comments to be received by the EPA.

[6] While the statutory language in s 54(4) precludes any person from claiming a right

to file written comments after the expiry of the time limit in s 54(1), in s 81(6) a panel:

- (a) is not required to consider any advice, report, comment, or other information it receives under section ... 53 ... after the applicable time frame; but
- (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.

[7] There is a lack of alignment between the two sections on their face, which is regrettable. However, we consider it clear the Panel has a discretion to consider late comments under the latter section at any time before the decision is made. We proceed on this basis.

[8] We consider there is jurisdiction to exercise that discretion because, clearly, the Late Comments were received before a decision under s 81 was made. In fact, the Late Comments were received while the application was under suspension.

[9] Thus, in minute 6 the Panel sought the views of the Applicant on how the Panel should address this matter given the Application was under the Suspension.

[10] By memorandum dated 27 November 2025, the Applicant advised that its position was that “the Panel can accept KiwiRail’s late comments without lifting the suspension”. It considered, in summary, that accepting the comments would be a procedural not substantive step and falls within the scope of work agreed could continue during the suspension period.

[11] The Applicant also stated:

The Panel is entitled to consider this information at its discretion under section 81(6)(b), and the Applicant believes that accepting the comment now will promote efficiency and avoid unnecessary delay.

[12] We agree.

[13] In addition, at paragraph [6] of Minute 7 of the Expert Panel appointed to

determine the Taranaki VTM project¹ set out a list of non-exhaustive factors that Panel considered when determining if it should exercise a discretion to accept comments out of time on that application.² We do not set out those factors here but we adopt those factors and confirm we have considered the same.

[14] In particular, we confirm that we have considered if any prejudice would arise to any party. Because of the Applicant's memorandum, we are comfortable it does not consider itself prejudiced. Turning to other parties, we do not consider any other party will be unduly prejudiced either as the application has been under suspension since shortly after comments were received from other the parties, in effect allowing more time for any interested parties to consider KiwiRail's position once the comments are made available.

[15] We have therefore decided to exercise our discretion and will consider the Late Comments. We direct the EPA to publish the Late Comments on the website in the usual way.

[16] We understand the Applicant has a copy of the Late Comments and can respond to the Late Comments at the same time as it responds to the rest of the comments received (once the suspension has been listed). If that is wrong, we invite the Applicant to advise the EPA and further directions can be given (there is no need to respond if that understanding is correct).



Chris Thomsen

Pound Road Industrial Development Expert Panel Chair

¹ FTAA-2504-1048.

² We note that Panel did not rely on s 81(6) but we consider the factors set out are equally applicable to the approach we are taking.