KRM LITTLEJOHN
Barrister & Mediator

23 April 2025

Jane Borthwick
Panel Convener
C/- Environmental Protection Authority
WELLINGTON

By Email [redacted]

Dear Ms Borthwick,

ROLE AND POWERS OF FAST-TRACK APPROVALS ACT CONVENER

1. I refer to my letter of instruction dated 17 March 2025.

2. You have sought advice on the powers and duties of the panel convener appointed by the Minister under the Fast-track Approvals Act 2024 (Sch 3, cl 1) (**Convener**).

3. The instruction requests a review of the Fast-track Approvals Act 2024 (**Act**) and general administrative law principles in relation to various topics. I address each of these below. Before doing so, I set out some general observations about the role of the Convener under the Act and the scope of their functions.

The role of the Convener under the Act

4. The Convener's role in the processing of substantive applications received by the EPA commences when such an application is provided to them under s 49(2) of the Act. A number of tasks are then required. These are:

   (a) Set up a panel to consider the substantive application under Schedule 3 of the Act (s 50(1));

   (b) Direct the Environmental Protection Authority (**EPA**) to obtain advice from relevant administering agencies (s 51(1(a)) and certain reports (where relevant) (s 51(1)(b));

   (c) Provide information to the appointed panel (s 52);

   (d) Set the time frame within which the appointed panel must issue its decision documents under s 88 of the Act (s 79), with that task[1] to be:

      (i) completed at or before the time that the Convener provides the s 52 information to the appointed panel (s 79(2)(a));

[1] Note, if no time frame is set, the time frame for the issue of a decision by the appointed panel is 30 working days after the date specified for receiving comments under section 53 of the Act.

(ii) a time frame that the Convener considers is appropriate, having regard to the scale, nature, and complexity of the approvals sought in, and any other matters raised by, the substantive application (s 79(2)(b));

(iii) set after consulting the relevant administering agencies (s 79(2)(c)); and

(iv) notified to the applicant (s 79(2)(d)).

(e) Receive any information provided to them by the EPA under s 90 (s 90(4)).

5. In summary, the Convener's role, therefore, is to:

- Determine the composition of and set up the panel to determine substantive applications made under the Act;
- Ensure that all information from relevant administering agencies, specific reports under s 51(1)(b), other information received by the EPA (under s 90), and the application itself are compiled and provided to the appointed panel; and
- Determine the time frame within which the appointed panel must issue its decision.

6. Bearing in mind the purpose of the Act, which is "*to facilitate the delivery of infrastructure and development projects with significant regional or national benefits*" (s 3), this role is instrumental. This is because the Act establishes a procedural framework for the processing and determination of applications to undertake infrastructure and development projects that relies wholly on appointed panels determining completed substantive applications in a timely manner.

Scope of the Convener's functions

7. In undertaking these tasks, s 10 of the Act requires the Convener, being a person performing functions and duties and exercising powers under the Act, to take all practicable steps to use timely, efficient, consistent and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised. This includes a duty to act promptly in circumstances where no time limit has been set for the performance or exercise of a function, power, duty, or requirement under the Act.

8. As the nature of the processes to be taken are not further defined in the Act, it can be assumed that the ordinary and natural grammatical meaning of the words in question is to be adopted.[2] In this regard, the following definitions inform the way in which the described processes are to be taken:

- "timely" – occurring within an expected time frame; prompt.

[2] J F Burrows, *Statute Law in New Zealand* 3rd ed 2003, page 137.

- "efficient" - performing or functioning in the best possible manner with the least waste of time and effort; having and using requisite knowledge, skill, and industry; competent; capable.

- "consistent" - constantly adhering to the same principles, course, form, etc.

- "cost-effective" - producing optimum results for the expenditure.

9. Not only must the processes be timely, efficient, consistent and cost-effective, but they must also be proportionate to the functions, duties, or powers being performed or exercised. This means that the processes adopted should be tailored to the specific functions being exercised at any time and their relative importance in achieving the purpose of the Act.

10. Another important aspect of s 10 is that it requires those to whom it applies to "*take all practicable steps*" to use timely, efficient, consistent, cost-effective and proportionate processes. "'*Practicable' is a word that takes its colour from the context in which it used. In some contexts, the focus is on what is able to be done physically; in others, the focus is more on what can reasonably be done in the particular circumstances, taking a range of factors into account*".[3] In my view, the context in which 'practicable' is used in s 10 is of the latter type. This is because s 10 is focussed on ensuring that persons exercising functions under the Act develop and implement administrative processes in relation to those functions that are timely, efficient, consistent, cost-effective and proportionate. As there are undoubtedly a variety of processes that could achieve these outcomes, the scope of the "all practicable steps" duty is therefore broad.

11. Put another way, depending on the functions etc being performed, the person doing so has a wide discretion in designing the processes to be used, provided they are ultimately timely, efficient, consistent, cost-effective and proportionate.

12. Against these general observations, I now consider the specific matters on which advice has been sought.

Power to publish a practice note and its scope

13. The question posed here is whether the Act precludes the preparation and publication by the Convener of a practice note setting out guidelines that apply to other persons performing functions and duties and exercising powers under the Act.

14. In my view, the Act does not preclude the preparation and publication by the Convener of a practice note. The issue that arises though is the nature of such a practice note, particularly where it is intended to apply to persons other than the Convener.

[3] *Wellington International Airport Ltd v New Zealand Air Line Pilots' Association Industrial Union of Workers Inc* [2017] NZSC 199, [2018] 1 NZLR 780, at [65].

15. I consider that s 10 enables the Convener to prepare and publish a practice note setting out guidelines in relation to the functions, duties and powers that they are charged with administering under the Act, if the Convener considers that doing so would assist them to perform their specific functions in a timely, efficient, consistent and cost-effective manner. In this regard, the creation of a practice note, to be adhered to by the Convener in the exercise of their functions under the Act (as summarised above), can be seen as a "practicable step" to ensure the functions being exercised meet the other delivery and proportionality principles in that section.

16. However, as the principles set out in s 10 apply to the functions, duties and powers being performed personally, in this case, by the Convener, it is reasonable to conclude that the directive and procedural matters to be included in any practice note prepared by the Convener must be limited to those functions. That is, they could not extend to directing other persons performing their functions under the Act (e.g., members of appointed panels) to do so in specific ways, as the s 10 principles apply to them personally.

17. This language essentially means that the Convener is unable to direct adherence by other persons exercising functions under the Act to follow certain processes to achieve the functions for which they are personally responsible.

18. Notwithstanding this limitation on the nature of the content of a practice note, there is still nothing that would preclude the Convener including 'recommended procedures' or 'procedural guidance' to other persons performing functions under the Act in a practice note. When provided with such guidance, panel members, for example, could chose to ignore it confident that they could employ their own practicable steps to exercise their functions in a timely, efficient, consistent, cost effective and proportionate manner. Alternatively, panel members could consciously choose to adopt the 'recommended procedures' or 'procedural guidance' confident that in doing so, adherence to the s 10 principles would be achieved by them when discharging their functions.

19. In summary, referring to my letter of instruction, where it relates to other persons exercising their functions under the Act, I agree that the content and nature of a practice note should be limited to explaining the role of the EPA, and providing guidance, rather than direction, on the functions and duties of, and exercise of powers by, appointed panel members.

20. However, when it comes to the Convener themselves, any practice note content in relation to their functions and duties, and how they will perform them in accordance with s 10, can be more definitive and directive, thereby providing a degree of procedural certainty to applicants and administering agencies who are affected by the exercise of the Convener's functions. Such content can be reviewed and updated overtime by the Convener in response to circumstances as they arise.

21. In this regard, the following Convener functions could therefore be the subject of a detailed practice note:

    (a) How all relevant reports and information relating to the substantive application will be gathered for delivery to the panel;

    (b) How the composition of the panel will be determined; and

    (c) How the time frame within which the appointed panel will be required to issue its decision documents will be determined.

Nature of 'hearings' under the Act

22. You have sought my opinion on the scope of the word 'hearing' in the Act, specifically whether 'inquisitorial' and 'adversarial' hearings are contemplated.

23. The term 'hearing' is used in the Act without definition. In its ordinary usage, the term 'hearing' is associated with an 'opportunity to be heard', and refers to an instance, process or session in which evidence and arguments are presented to an official arbiter, such as a judge.

24. 'Hearings' are a hallmark of an adversarial justice system, which relies on a competitive process between parties contending for, or against, a certain outcome (e.g., prosecution vs defence; plaintiff vs defendant; applicant vs consent authority and/or submitter). In such systems, judges primarily act as neutral arbiters who consider the evidence and arguments presented to them by the parties and then pronounce the outcome of the competition.

25. In contrast, justice systems referred to as 'inquisitorial' are characterised by an active judicial role whereby the judges and other court personnel use various powers and processes to inquire into and gather evidence themselves about the dispute in question with the objective of finding the truth of the matter. While trials or hearings are not precluded in such systems, they are not the primary process by which evidence is collected and outcomes are determined.

26. New Zealand courts use adversarial adjudication methods and New Zealand's justice system is thus generally described as an adversarial one for this reason. Although, overtime, additional practices have been implemented to make the judicial system more efficient and timelier (e.g., judicial settlement conferences, mandatory mediation, expert witness conferencing, and concurrent expert evidence presentation), none of these processes have changed the fundamental adversarial nature of the system into an inquisitorial one. In the face of contested evidential or legal matters, the system still relies on a neutral judicial officer to 'hear' from the parties and determine the outcome.

27. Appreciating this broader context, is there any indication in the Act that the hearings able to be conducted by appointed panels are intended to be hearings of an

inquisitorial, rather than adversarial, nature? I do not think there is. Indeed, the use of the term 'hearing' is a clear indicator in my view that the conventional, competitive/adversarial process is what the Act primarily envisages when it uses this term.

28. However, certain of the powers/procedures in the Act for determining substantive applications modify the conventional competitive process for seeking resource use approvals such that I consider it apt to refer to the fast-track approach more as 'modified-adversarial' or 'quasi-inquisitorial'. These procedures relate to the powers of panels in relation to determining the participants and the extent of their participation in the determination of the substantive application, the process by which that will occur, and the power to seek out information about the application on its motion. These powers are discussed below.

Panel determines participants

29. Panels determine the participants in substantive applications.

30. Section 53(2) lists various agencies and persons from whom panels must invite comments on a substantive application. In addition, s 53(3) empowers panels to invite comments from "*any other person the panel considers appropriate*". The range of potential commenting parties is thus partly (mostly) mandatory, but partly at the discretion of panels, with 'appropriateness' being the sole factor to be applied in the latter case.

31. All comments received within the timeframe set by s 53(1) from parties invited to do so must be considered by the panel when making its decision on the substantive application (s 81(2)(a)), but those parties have no right to be heard further in respect of the matters they put in writing in their comments (s 56).

32. Commenting parties have a right to appeal a panel's decision, but only on questions of law, and only once (unless leave to bring a second appeal is granted) (s 99). They also have a right to apply for judicial review of a panel's decision under the Judicial Review Procedure Act 2016, but within a specified timeframe (s 101).

Panel may seek advice and independent reports

33. Panels may seek advice and independent reports at any time during the processing of substantive applications, thereby giving them quasi-inquisitorial powers in relation to the matters before them.

34. Under s 67, at any time prior to making a decision on a substantive application under s 81, a panel may direct the EPA to:

    (a) Request further information in relation to the application from any or all of the participants at that point (s 67(1)(a));

    (b) Prepare a report on an issue relevant to the application (s 67(1)(b)); or

(c) Commission a report (including from a relevant local authority) on an issue relevant to the application (s 67(1)(b)).

35. Reports commissioned under s 67(1)(b) may be from any person.

36. All further information and reports received by the panel must be considered by the panel when making their decision on the substantive application (s 81(2)(a)), but no party providing such further information or report has a right to be heard in respect of the matters addressed within them (s 56).

Panel not obliged to hold hearing

37. There is no requirement for a panel to hold a hearing in respect of a substantive application (s 56), thereby giving it power to determine the application 'on the papers' without hearing from any party. Only if a panel considers it appropriate to do so (in its "discretion"), may it hold a hearing (s 57(1)).

Panel determines scope of, and participants at, hearing

38. Any hearing held by a panel may be "on" a substantive application, or "on any part of" a substantive application (s 57(1)). The "part" of any substantive application on which a hearing may be held is at the panel's discretion, there being no definition in the Act as to what a "part" of a substantive application is. It could, for example, convene a hearing only in respect of one or other of the "approvals" sought in the substantive application (see s 42(4)); or on only one or other of the components of the substantive application, or its effects on the environment.

39. Determining whether it is appropriate for a hearing of the whole or any part of a substantive application to be held is a power of the panel that must be exercised in a timely, efficient, consistent, cost-effective and proportionate manner (s 10). Ultimately, it will be up to each panel to make this determination based on the substantive application before them. However, bearing in mind the s 10 principles, the purpose of the Act, and the specific matters to be considered as part of the decision-making exercise under s 81, aspects of a substantive application that it may be appropriate to hold a hearing about could include:

(a) important matters of fact, law, or assessment that remain in contention or unresolved even after receiving an applicant's response to comments (s 55), further information, or independent reports; or

(b) matters relating to conditions that are in contention or unresolved.

40. Differentiating between matters that are resolved and/or uncontentious "on the papers" from those that are not, is an accepted technique to reduce the scope of the decision-making task and has been a feature of first-tier resource management decision making since at least 2005, following amendments to s 113 of the Resource

Management Act 1991 (**RMA**).[4] Although drafted more broadly in the Act, the panel's power to determine the matters in a substantive application that will be 'heard' (i.e., not determined 'on the papers'), provides ample scope for the conducting of 'issues focussed hearings'. This is supported by the fact that a panel can elect the persons from whom it may hear, albeit they are confined to the applicant, any person commissioned by the panel to prepare a report, and any person who provided comments (s 57(1)). The only constraint on this discretion is that if the panel chooses to hear from a person who provided comments (but not a person providing a report), it must give the applicant an opportunity to be heard (s 57(2)).

41. Finally, any hearings held must, inter alia, avoid unnecessary formality (s 58(1)(a)), recognise tikanga Māori where appropriate (s 58(1)(b)), and only involve questioning of persons appearing by members of the panel, except with the leave of the chairperson (s 58(1)(d) and (e)). Furthermore, a panel:

    (a) may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with an application for an approval, whether or not it would be admissible in a court of law (s 58(3));

    (b) may limit the circumstances in which persons with the same interests may speak or call evidence to avoid excessive repetition (s 58(6)); and

    (c) may direct hearings or parts of hearings to be held by way of remote access facilities (s 59).

Panel to regulate own processes and can appoint special and technical advisers (Sch 3, cl 10)

42. Clause 10 of Schedule 3 requires a panel to regulate its own procedure "*as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in a substantive application*". In addition, a panel may:

    (a) appoint a special adviser to assist it with a substantive application in relation to any matters the panel may determine; or

    (b) appoint, at any time, technical advisers, including from a department, Crown entity, or relevant local authority, as it thinks appropriate.

43. These powers function to enlarge the role of the panel from mere neutral arbiter of information presented to it, to inquisitor of information and advice about the application before it.

[4] Section 62 of the Resource Management Amendment Act 2005 (2005 No 87); s 86(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Summary

44. Read together, the provisions discussed above support the view that self-directed inquisition by a panel about aspects of a substantive application, are within its powers under the Act, and that 'issues focussed hearings' about parts of an application are a permissible technique to resolve matters in contention. The provisions can be seen as an evolution of the practices for first tier resource management hearings (s 113 of the RMA). Unlike those practices though, under the Act, it is the panel who can choose both the specific aspects of an application that will be 'heard', which may include aspects about which the panel has sought its own reports, as well as those who may be heard in relation to them.

45. This is clearly not a traditional adversarial process, where all parties have rights to be heard and to speak broadly about their concerns. But nor is it a wholly inquisitorial process, in which the panel investigates a proposal placed before it without input from third parties. It is a hybrid. If utilised in accordance with the principles in s 10, it provides panels with significant scope to identify and resolve issues raised by substantive applications in a timely, efficient and cost-effective manner.

Inquisitorial hearing practices

46. You have requested the identification of "inquisitorial hearing practices" that panel members may consider and the principles of natural justice and fairness that would apply to them.

47. Within the framework of the panel's powers to determine the scope of any hearing to be held, the persons entitled to be heard, and the conduct of that hearing as discussed above, I consider there are a number of hearing practices that could be utilised by panels to assist them to determine any contentious or unresolved issues with a substantive application. I summarise these below.

Conventional hearing

48. In relation to an identified issue with the application, a panel could seek statements of evidence and/or legal submissions from the intended participants by way of a timetable and then conduct a hearing using a party-specific sequence (e.g., proponent / contradictor / proponent reply). Evidence and/or submissions could be pre-read with the hearing being focussed on questioning by the panel members of the various participants.

Factual issue hearing

49. In relation to an identified factual issue, a panel could direct a hearing in relation to documents already provided to the panel (e.g., technical reports included with the substantive application; reports provided by commenting parties; reports obtained by the panel directly), with the parties then making the authors of those reports available at the appointed time. Panel members could then question those authors

sequentially, or concurrently, in order to elicit information to assist them to determine the issue in question.

50. If the issue was one of mixed fact and law, this process could be supplemented by an opportunity for the legal representatives of the parties to make submissions following the hearing of the evidence by the panel members.

Legal issue hearing

51. A panel could also direct a hearing in relation to a legal issue arising with the application (e.g., the approach to the s 81 matters). Legal submissions could be sought from the intended participants by way of a timetable and then a hearing conducted using a party-specific sequence (e.g., proponent / contradictor / neutral party / proponent reply). Submissions could be pre-read with the hearing being focussed on questioning by the panel members of the various participants.

Conditions hearing

52. Without prejudice to whether or not a panel intends to approve a substantive application, prior to that procedural step, it could conduct a hearing focussed only on some or all of the conditions proposed to be imposed on a substantive application, or only on one or some of the approvals sought by the application. Any comments received on those proposed conditions, either from invited parties, or persons requested to provide further information or reports (s 67), could be considered at the hearing (albeit subject to the limitation on who the panel may 'hear' from (s 57(1)). The purpose of such a hearing would be to assist the panel to resolve the final form of conditions to be circulated in draft under s 70, or to assure it that proposed conditions otherwise comply with s 83.

53. No doubt there will be variations on the types of hearings that could be utilised by panels depending on the nature of the issues about which a hearing was considered desirable. The key point is that panels are not obliged to utilise only the conventional sequential/adversarial approach for hearings conducted under the Act. In my view, the Act provides scope for panels to design procedures to hear and determine issues arising with substantive applications that best suit the issue in question, utilising the powers given to them and the principles in s 10.

54. However, in any hearing conducted, the over-riding natural justice principles that must be adhered to in my view are encapsulated in the maxim *audi alteram partem*. Aspects of this principle are already provided for in the Act, namely:

    (a) Notice must be given of the time and place of any hearing (s 57(3) and (4));

    (b) The party receiving a notice may attend the hearing, and if they attend may appear and be heard, be represented, and call evidence in relation to the matter being heard (s 57(4)(a));

(c) If the person being heard was a person who provided comments on the substantive application, the applicant must also be given the opportunity to be heard (s 57(2)); and

(d) If a panel proposes to decline an approval under s 81, it must follow the procedure in s 69, which involves providing its draft decision to the applicant and inviting it to withdraw a part of the substantive application, or propose conditions on, or modifications to, any of the approvals sought (s 69(2)).

55. Although s 57 appears to entitle a panel to hold a hearing and hear only from a person commissioned to write a report, depending on the content and conclusions of that report, natural justice principles would still be engaged in my view. That is, where a panel has obtained a specialist report on an aspect of a substantive application that is critical of, or makes additional recommendations in relation to, that application, it ought to provide the applicant an opportunity to be heard in relation to those matters. One of the hearing formats identified above, or a variation thereof, could be utilised to 'hear' the issue in contention.

56. Fundamentally, in every instance where an aspect of the substantive application is the subject of criticism or reasoned opposition by a party involved in the process, as a matter of procedural fairness, the applicant should be provided with an opportunity to respond. In some instances, fairness would also require a party involved in the process to be afforded an opportunity to respond to the critique of an applicant, for example, where the applicant's response provides new information previously unavailable to the reviewing party. However, such opportunities will be circumstance specific and will need to be determined by the panel in question applying the principles in s 10 to the issue at hand.

Consulting on panel composition and decision-making timeframe prior to appointment of panel

57. Are there any constraints on the exercise of the Convener's powers to appoint the chair and members of panels, and to set the time frame within which panels must deliver their decision? More specifically, can the Convener consult with other persons as to the composition of any panel to be appointed and/or seek the views of other persons as to the decision-making time frame that should be fixed for the determination of substantive applications by a panel?

Determining the composition of panels

58. The Convener "*must set up a panel in accordance with Schedule 3*" for each substantive application received from the EPA, and if the application is for a priority project, it must set up the panel for that application prior to any other non-priority application (s 50). As there is no time frame specified for the Convener to complete this task, it must be done "promptly" (s 10(2)(a)).

59. Clause 3 of Schedule 3 sets out the specific requirements applying to the Convener when determining the membership of panels. Before appointing the members of a panel, the Convener "*may, but need not, consult*" either the Minister, or the EPA (for applications that seek approval under s 42(4)(k)) (cl 3(2)).

60. In addition, if any Treaty settlement Act, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or any other iwi participation legislation, or any Mana Whakahono a Rohe or joint management agreement, includes procedural arrangements relating to the appointment of a decision-making body for hearings and other procedural matters, clause 5 provides a process to be followed relating to the appointment of a decision-making body for hearing or other procedural matters.

61. Save in relation to these clauses, Schedule 3 does not provide for consultation by the Convener with any other person as to the composition of a panel to be appointed. Despite that, you have sought my advice whether, as a matter of statutory interpretation, there is anything in the Act that would preclude the Convener from seeking the views of the participants to the applications over the composition of the panel. To that point in the process, those parties would include the applicant, the relevant administering agencies, and relevant consent authorities. Although not a party interested in the application per se, the EPA would also be familiar with it and the issues it raises.

62. Determining the composition of each panel to determine substantive applications is a key function of the Convener and a determination that will have important consequences for their processing. Ensuring the appointment of appropriately skilled and experienced persons, including with specialist knowledge in relation to the approvals sought, will be important to make sure applications are processed in a timely, efficient, consistent and cost-effective manner.

63. Furthermore, clauses 3(7) and 7, both require the Convener, in considering the composition of any panel, to have a thorough understanding of the substantive application and the issues it raises. Gaining such an understanding to enable the appointment of a suitable panel may not be possible for the Convener within a short (prompt) time frame.

64. Faced with this issue, I see no reason why the Convener could not consult with the relevant parties to the application to seek their views on the proposed composition of the panel, in light of the circumstances of the application, with which they will be familiar. In fact, conducting such a process in relation to the duty to appoint the panel would ensure the Convener met the principles in s 10, and in the case of this function, did so promptly.

65. To give effect to this process, the EPA could assist with the task of identifying organisations/persons listed by the Convener at the time it provides the application to the Convener under s 50. The Convener could then invite those parties to a conference with the Convener (or assigned co-Convener) at a future date (due notice being given),

a purpose of which would be to discuss the issues raised by the application and the parties views on the qualifications, skills and experience of panel members that would be most appropriate for the panel to be set up.

Determining the decision-making time frame

66. Is a similar process of consultation with respect to the time frame for the proposed panel's decision precluded by the Act? In my opinion, it is not; indeed, as with the process suggested above with respect to panel composition, I consider that implementing a similar process with respect to determining the decision-making time frame is consistent with the principles in s 10.

67. The time frame for a panel to issue its decision documents under s 88 is either:

    (a) A time frame set by the Convener in accordance with s 79(2) (s 79(1)(a)); or

    (b) If no time frame is set, within 30 working days after the date specified for receiving comments under s 53 (s 79(1)(b)).

68. If the Convener intends to set a time frame to apply instead of the 'default' timeframe in s 79(1)(b), it must be set at or before the time the Convener complies with s 52, being the date on which the Convener provides the panel that it has set up the substantive application and the other documents referred to in s 52.

69. In between the time that the Convener receives a substantive application from the EPA, and the time that it must set up the panel to determine it and provide that panel the information required by s 52, the Convener thus needs to determine the time frame for the proposed panel to issue its decision (i.e., default, or longer). The requirement to act promptly in relation to these functions applies (s 10(2)).

70. A time frame to be set by the Convener (other than the default) must be a time frame that the Convener considers "*is appropriate, having regard to the scale, nature, and complexity of the approvals sought in, and any other matters raised by, the substantive application*" (s 79(2)(b)). In undertaking this exercise, the Convenor must consult the relevant administering agencies (s 79(2)(c)).

71. As with determining the appropriate composition of a panel to determine a substantive application, determining an appropriate time frame for it to be processed also necessarily requires the Convener to have a thorough understanding of the substantive application and the issues it raises, prior. Gaining such an understanding to enable the determination of a time frame for its processing by the panel, including whether the default time frame is adequate, may not be possible for the Convener within a short time frame.

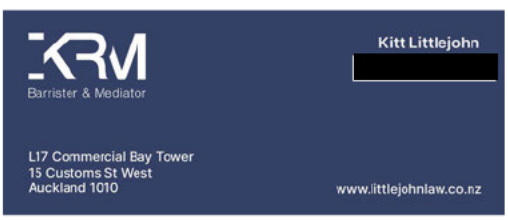
72. Faced with this issue, I see no reason why the Convener could not consult more widely than with just the relevant administering agencies (as it is directed to do by s 79(2)(c)).[5] This mandatory requirement is not crafted in an exclusive way. Moreover, such consultation in relation to this core function of the Convener would clearly be a process aimed at achieving the principles applying to the Convener in s 10. That is, canvassing the parties with the most familiarity of the substantive application and its issues to that point as to their views on whether an enlarged timeframe for its processing is appropriate, having regard to its scale, nature and complexity, would be a timely, efficient and cost-effective process that is practicably available to the Convener.

73. To give effect to this process, the EPA could assist with the task of identifying organisations/persons listed by the Convener at the time it provides the application to the Convener under s 50. The Convener could then invite those parties to a conference with the Convener (or assigned co-Convener) at a future date (due notice being given), a purpose of which would also be to discuss the time frame for the processing of the application.

74. In summary, bearing in mind the s 10 principles and the purpose of the Act, I see nothing in the Act that precludes the Convener, in performing their functions of determining the composition of panels and their decision-making time frame, from implementing a process, which includes consultation with the key parties, between the time that the substantive application is received from the EPA and the time that the panel must be set up, to assist the Convener to consider and determine these two important matters.

Yours sincerely,

Kitt R M Littlejohn
Barrister



[5] As such additional consultees may not be persons performing or exercising functions, duties, or powers under the FTA, their costs may not be recoverable from an applicant (s 104(2)(a)). This will need to be borne in mind in each particular case.