

4 June 2026

Chairperson  
Expert Panel – North West Rapid Transit  
C/- Environmental Protection Authority  
Private Bag 63002  
Wellington 6140

**For:** Lachlan Muldowney  
**By email to:** [REDACTED]

Dear Panel

### **Disclosure of Interests and Management of Potential Conflicts of Interest**

1. You have sought my advice on the identification, disclosure, and ongoing management of potential conflicts of interest in the context of the North West Rapid Transit Fast Track application (**Project**). The need for this advice arises in the context of concerns raised by New Zealand Retail Property Group Limited (**NZRPG**) about members of the Expert Panel being conflicted on account of their involvement in a matter pertaining to the development of land within Zone 6 of Sub-precinct B of the Westgate precinct (**Zone 6 Land**).
2. You have asked me to consider whether there is any validity to the concerns raised by NZRPG, and if so, what (if any) additional steps members of the Expert Panel should take.
3. This advice focusses on the interests of the Expert Panel members that have been disclosed in relation to the litigation involving the Zone 6 Land, and the extent to which those interests intersect with other interests in the context of the Project. I have not considered any other interests disclosed to date.

### **Executive Summary**

4. I have considered the factual context within which the concerns were raised, together with the legal framework governing the identification, disclosure, and management of potential conflicts of interest under the Fast-track Approvals Act 2024 (**FTAA**).
5. The concerns raised by NZRPG centre on the Chairperson's role as lead counsel for Stride Holdings Limited (**Stride**) in judicial review proceedings concerning resource consent decisions about development of the Zone 6 Land. That interest was disclosed by the Chairperson.
6. The other members of the Expert Panel have also disclosed an interest in the Zone 6 Land, and so I have also considered whether those interests give rise to a conflict of interest.

7. In my opinion, the Chairperson's disclosed interest does not give rise to any actual conflict of interest, or to any reasonable apprehension of bias, requiring recusal or any further steps beyond disclosure at this point in time. While the Chairperson's role is capable of being characterised as raising a potential conflict of roles, or a question of predetermination, the relevant interests are too remote to amount to a material conflict in the circumstances of this Project.
8. My conclusion is driven principally by the geographical separation between the land the subject of the judicial review proceedings and the land the subject of the Project. The Zone 6 Land involved in the judicial review litigation is neither land to which the substantive fast-track application relates, nor land identified by the Expert Panel as adjacent land for the purposes of inviting comments. In those circumstances, the extent to which one matter could affect the other is low.
9. The same reasoning applies to the disclosed interests of Mr Blakey and Mr Langwell. Although their prior roles in relation to the Zone 6 Land are different in nature, they arise in the same factual context and are likewise too remote from the Project to give rise to an actual or potential conflict requiring further management measures.
10. I have also considered the matter through the lens of the apparent bias principles reflected in the High Court Recusal Guidelines, and the authorities referred to in this advice. In my view, a fair-minded and fully informed lay observer, aware both of the geographical separation of the relevant land and of the FTAA context in which expert panel members are appointed from a pool of practising professionals, would not reasonably apprehend that any Panel Member would fail to decide the Project on its merits.
11. Accordingly, I do not consider that any further steps are required at this stage beyond the disclosure already made in the Register of Members' Interests. Panel Members should, however, remain alert to any appearance of bias as the process continues, continue to approach their decision-making impartially, and keep the Register of Interests under active review in case any additional interests need to be disclosed as matters develop.

## Background

12. The New Zealand Transport Agency (**NZTA**) has sought various approvals necessary for it to develop a rapid transit link and associated infrastructure and connections between Brigham Creek and Auckland City Centre (the **Project**). The Project is listed in Schedule 2A of the FTAA, and has now been referred for consideration by an Expert Panel.
13. On 6 April 2026, the Associate Panel Convener appointed the Expert Panel for the Project. The Panel comprises the following members:
  - (a) Lachlan Muldowney, Barrister – Chairperson;
  - (b) Richard Blakey, Planner; and
  - (c) Todd Langwell, Traffic Engineer.
14. On 10 April 2026, the Environmental Protection Agency (**EPA**) was sent an email from NZRPG which stated:

We are a landowner of the Westgate Shopping Centre. This property is substantially affected by this Fast-track application.



A Panel has just been appointed in relation to this application. We are concerned to note that members of this panel have recently been directly involved in proceedings against interests that own the Westgate Shopping Centre. We are currently considering the extent to which this creates a conflict of interest. We note in this respect that the Fast-Track Approval Act Panel Conveners Practice and Procedure Guidance refers to (cl.9) Protocols agreed with the EPA to actively manage any conflicts of interest of panel members. We urgently wish to review these protocols to consider our position and request that they be provided as soon as possible.

15. Further correspondence was received from NZRPG on 23 April 2026, which stated (relevantly):

**2. Chairman's Conflict – Stride Property Holdings**

We advise that our concern does not relate to conflicts arising from relationships with NZTA or panel members, but rather to the chairman's current involvement as lead counsel for Stride Property Holdings (Stride). Stride pursued judicial review proceedings against NZRPG, challenging the resource consents of an NZRPG development. This matter was heard in the High Court in February, and the parties are awaiting a decision. Depending on what the Court decides, these proceedings are very much alive.

The chairman's role with Stride is further complicated by the fact that Stride also holds land within the footprint of this designation, north of Fred Taylor Drive. As a consequence, Stride's interests will require direct consideration by the Panel in addressing NZTA's application. Our concern, therefore, is that the chairman's representation of Stride gives rise to concurrent conflicts that are not merely peripheral but go to the substance of the proceedings before the Panel.

Given this, can we confirm that the conflict analysis to be published on the project website later this week will expressly address this matter? Specifically, it will set out how this potential conflict has been identified, assessed, and will be managed to ensure that no actual conflict of interest arises and, equally, that no reasonable perception of such a conflict occurs

16. This correspondence was considered by the Associate Panel Convener, who issued a Minute dated 28 April 2026, confirming that she was satisfied that the matters raised by NZRPG did not give rise to a conflict, nor to any reasonable apprehension of bias.<sup>1</sup> The Associate Panel Convener went on to say:<sup>2</sup>

...Contrary to NZRPG's assertion, I do not accept that the case gives rise to an actual or potential conflict which goes to the substance of the proceedings before the Panel.

17. In conclusion, the Associate Panel Convener confirmed that the Expert Panel was to remain in place.
18. In the intervening period, members of the Expert Panel completed a Register of Members Interests, dated 24 April 2026. That Register disclosed the members' interests relevant to the Project.
19. Notwithstanding the Associate Panel Convener's decision that the Expert Panel was to remain in place, you have sought my advice as to whether there is any validity to the concerns raised by NZRPG and, if so, whether the Panel should take any further steps.

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<sup>1</sup> Minute 4 of the Panel Convener, dated 28 April 2026.

<sup>2</sup> At [9].

## Legal Framework

20. The Expert Panel has the powers, functions, and duties set out in the FTAA. Panel Members are appointed by the Panel convener (or Associate Panel convener, as the case may be), in accordance with Schedule 3 of the FTAA.
21. Expert Panels appointed under the FTAA are required to invite comments on the substantive application from parties listed in section 53(2) of the Act, and may invite comments from any other person the Panel considers appropriate under section 53(3) of the Act. Panels may request further information or reports, and may commission advice on proposed concession, land exchange, or access arrangements. Panels may also, but are not required to, hold a hearing on all or part of an application, following the procedure set out in sections 57 and 58 of the Act.
22. Panels are then required to issue a draft decision, before granting or declining the approvals sought. If the draft decision is to grant, then draft conditions are to be provided. Such decisions can be the subject of appeal (to the High Court on questions of law, by parties with standing) or subject to judicial review.
23. The Panel is the decision-maker in the context of the approvals sought under the FTAA, and given that such decisions affect the rights and interests of participants in the process and are capable of appeal, and could be subject to judicial review, it is clear that the Panel fulfils a quasi-judicial role in this context. As such, the legal principles that apply to managing conflicts of interest on the part of decision-makers, are relevant.
24. In the context of managing potential conflicts of interest, the general principles are helpfully set out in the Auditor-General's published guide, *Managing conflicts of interest: A guide for the public sector (AG Guidelines)*.<sup>3</sup>
25. Two important aspects to dealing with conflicts of interest emerge from the AG Guidelines:<sup>4</sup>
  - (a) Identifying and disclosing the conflict of interest (primarily the responsibility of the Panel Member); and
  - (b) Deciding what action, if any, is necessary to best avoid or mitigate any effects of the conflict of interest.
26. It is also important to recognise that not all interests that a Panel Member may have, or discloses, will amount to a conflict of interest.
27. The AG Guidelines also categorise conflicts of interest in the following way:
  - (a) Financial conflict (e.g., a Panel member owns property that is affected by the Project);
  - (b) Non-financial conflict (e.g., a family member of a Panel member or close friend of the Panel member owns property that is affected by the Project);

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<sup>3</sup> Controller and Auditor General Good Practice Guide published under s 21 of the Public Audit Act 2001 dated June 2020.

<sup>4</sup> At [4.1].

- (c) Conflict of roles (e.g., a Panel member holds a separate role within an organisation affected by the Project); and
  - (d) Predetermination (e.g., a Panel member has made up his or her mind before considering all of the relevant information for the Project).
28. When considering potential conflicts of interest, it is useful to categorise each interest according to each of these categories because such categorisation informs what might be done to manage a potential conflict.
29. Once a potential conflict is identified and categorised, the Panel must decide what action, if any, is required to manage it. The action to be taken will be dependent on the level of seriousness. When assessing the seriousness of a potential conflict of interest, the following factors should be considered:<sup>5</sup>
- (a) the type or size of the person's other interest;
  - (b) the nature or significance of the particular decision;
  - (c) the extent to which the person's other interest could specifically affect, or be affected by, the decision; and
  - (d) the nature or extent of the person's current or intended involvement in the decision.
30. The AG Guidelines recognise that seriousness is a question of degree:<sup>6</sup>
- Seriousness is a question of degree. It involves a spectrum of directness and significance – how close and how big. Directness (and its opposite, remoteness) is about how closely or specifically the two interests concern each other. Significance is about the magnitude of the potential effect of one on the other.
31. There are a range of actions that might be taken in response to the identification of a conflict of interest. The assessment as to the level of seriousness involved will inform the actions to be taken. Such action might range from simply disclosing the interest, Panel members not participating in discussions and decision-making on a particular issue (if such issue is capable of being effectively severed), through to stepping down as a result of recusal or the Panel convener exercising powers under Schedule 3 of the FTAA.<sup>7</sup> Such responses are necessarily on a spectrum, and will be proportionate in response to the seriousness of the conflict of interest involved.
32. Stepping down / recusal is the most significant action that could be taken by a panel member. Such a step should not be taken lightly. Further guidance in this regard can be found in the High Court Recusal Guidelines (**HC Guidelines**).<sup>8</sup>

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<sup>5</sup> At [4.31].

<sup>6</sup> At [4.32].

<sup>7</sup> FTAA, schedule 3, clause 9, empowers the panel convener to remove any person appointed to a panel for just cause.

<sup>8</sup> Section 171 of the Senior Courts Act 2016 requires the Chief High Court Judge, in consultation with the Chief Justice, to develop and publish recusal guidelines for the High Court. The guidelines can be found here: <https://www.courtsofnz.govt.nz/about-the-judiciary/judicialconduct/high-court-recusal-guidelines>

33. The HC Guidelines first set out general principles, and then go on to examine particular circumstances which might give rise to a conflict of interest. The following General Principles are apposite:

**General Principles**

- 1.1 A judge has an obligation to sit on any case allocated to him or her unless grounds for recusal exist.
- 1.2 A judge should recuse him or herself if, in the circumstances, a fair-minded, fully informed observer would have a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.
- 1.3 The standard for recusal is one of “real and not remote possibility”, rather than probability.
- 1.4 The test is a two-stage one. The judge must consider
  - 1.4.1 First, what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits; and
  - 1.4.2 Second, whether there is a “logical and sufficient connection” between those circumstances and that apprehension.
- ...
- 1.6 Conflicts of interest can arise in a number of different situations. A judge should be alert to any appearance of bias arising out of connections with litigants, their legal advisors or witnesses.

34. Part 2 of the HC Guidelines addresses the situation where a relationship exists. The following clauses are relevant:

**Recusal where relationship exists**

- 2.1 The existence of a relationship with a party, lawyer or witness will not in itself create a reasonable apprehension of bias. There must be some logical connection between the relationship and its capacity to influence the judge to deviate from the course of deciding a case on its merits alone.
- ...
- 2.4 The fact a judge has a friendship or past professional association with lawyers engaged in the case, will not generally be sufficient to require recusal. The test as always is whether a fair minded fully informed observer would reasonably apprehend the judge might not be impartial in the circumstances of the case.

35. The HG Guidelines also set out the principles relating to disclosure, as follows:

**Disclosure of conflict of interest: principles**

- 6.1 Adequate disclosure protects the integrity of the judicial process and is also a defence against later challenges to the decision.
- 6.2 Disclosure does not constitute an acknowledgement that the circumstances give rise to a reasonable apprehension of bias.
- 6.3 Disclosure of any matter which might give rise to objection should be undertaken even if the judge has formed the view that there is no basis for recusal. There may be circumstances not known to the judge which may be raised by the parties consequentially upon such disclosure.

36. The HC Guidelines are informed by, and are consistent with, the Court of Appeal's decision in *Muir v CIR*,<sup>9</sup> and the Supreme Court's decision in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd*.<sup>10</sup> Those cases considered the concepts of apparent bias and conflicts of interest in a judicial capacity.
37. In the context of apparent bias, the Supreme Court in *Saxmere* adopted the test laid down in Australia, namely that a Judge is disqualified:<sup>11</sup>
- ...if a fair-minded lay observer might reasonably apprehend that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide.
38. As to what might constitute a fair-minded lay observer, the Court in *Saxmere* said:<sup>12</sup>
- The fair-minded lay observer is presumed to be intelligent and to view matters objectively. He or she is neither unduly sensitive or suspicious nor complacent about what may influence the judge's decision. He or she must be taken to be a non-lawyer but reasonably informed about the workings of our judicial system, as well as about the nature of the issues in the case and about the facts pertaining to the situation which is said to give rise to an appearance or apprehension of bias.
39. It is also important to consider the Context of the FTAA when considering issues of apparent bias. Whilst the leading authorities and the HC Guidelines are of some assistance in relation to the general principles, they deal with judicial decision-making by members of the judiciary. As becomes readily apparent from the scheme of the FTAA, members of Expert panels are not (current) members of the judiciary. Rather, they are appointed because of their specialist knowledge and experience.<sup>13</sup>
40. Clause 4 of schedule 3 of the FTAA deals with the appointment of the chairperson of the panel. The chairperson must be a suitably qualified lawyer or resource management planner, or other person who is accredited under section 39A of the Resource Management Act 1991.
41. There is no requirement that the Chairperson, or other members of the Expert panel, cease all existing work upon being appointed (in contrast to a judicial appointment). In this regard, there is an inherent recognition that practitioners appointed to Expert panels will be continuing in practice. It is clear that Parliament intended for such previous experience to be a qualifying matter, rather than a disqualifying matter in relation to the composition of panel under the FTAA. A similar issue was considered by the Court of Appeal in *Lab Tests Auckland Ltd v Auckland District Health Board*, whereby the Court, after analysing the statutory scheme (in that context) rejected the criticism about the decision-makers involvement in the sector, as Parliament had wished to encourage practicing members of the relevant sector to make their expertise available to decision-making bodies.<sup>14</sup>
42. The Court of Appeal in *Glenpanel Development Limited v Expert Consenting Panel*, also considered issues of apparent bias in the context of the COVID-19 Recovery (Fast-track

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<sup>9</sup> *Muir v CIR* [2007] NZCA 334.

<sup>10</sup> *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122.

<sup>11</sup> *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

<sup>12</sup> *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35, at [5].

<sup>13</sup> FTAA, schedule 3, clause 7.

<sup>14</sup> *Lab Tests Auckland Ltd v Auckland District Health Board* [2008] NZCA 385, [2009] 1 NZLR 776, at [214].

Consenting) Act 2020 (the predecessor to the FTAA).<sup>15</sup> There, the Court recognised that the scheme of that Act reflected that Parliament anticipated that professionals with knowledge and experience of the operation of the Act would accordingly be appointed to decision-making panels. The Court expressly recognised that:<sup>16</sup>

A fair-minded observer would recognise this when assessing whether suggested involvement with other activities would mean that a person should not be appointed.

43. In my opinion, the statutory scheme of the FTAA informs the approach that must be taken when considering an apprehension of bias. In this regard, a fair-minded lay observer must necessarily be informed about the workings of the fast track system, including the basis upon which appointments to Expert panels are made, including the fact that such appointments are not purely judicial appointments, and that members of panels will be continuing on their ordinary practice.
44. Against this legal framework, I now examine the factual circumstances giving rise to the concerns raised by NZRPG.

### **Factual circumstances giving rise to the concerns**

45. As set out in email correspondence from NZRPG, its concerns stem from the Chairperson's involvement as lead counsel for Stride. Stride is currently challenging the validity of resource consents associated with a NZRPG development. The challenge was brought by way of an application for judicial review, with a hearing in February this year. A decision (declining the application for judicial review) was issued on 20 May 2026, but as at the time of writing, the appeal period is still running.<sup>17</sup> As such, this litigation remains live.
46. A closer examination of the interests involved is required.
47. The NZRPG development that is the subject of the judicial review proceeding involves a challenge to a decision of Auckland Council allowing variations to resource consents permitting development of the Zone 6 Land.
48. Westgate Town Centre (2017) Ltd (**WTCL**) is the owner of the Zone 6 Land. WTCL is a wholly owned subsidiary of NZRPG.
49. It is helpful to show the location of the Zone 6 Land on a plan. Zone 6 is shown below. I have added a red circle around the land, for ease of reference.

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<sup>15</sup> *Glenpanel Development Limited v Expert Consenting Panel* [2025] NZCA 154; at [59].

<sup>16</sup> At [55].

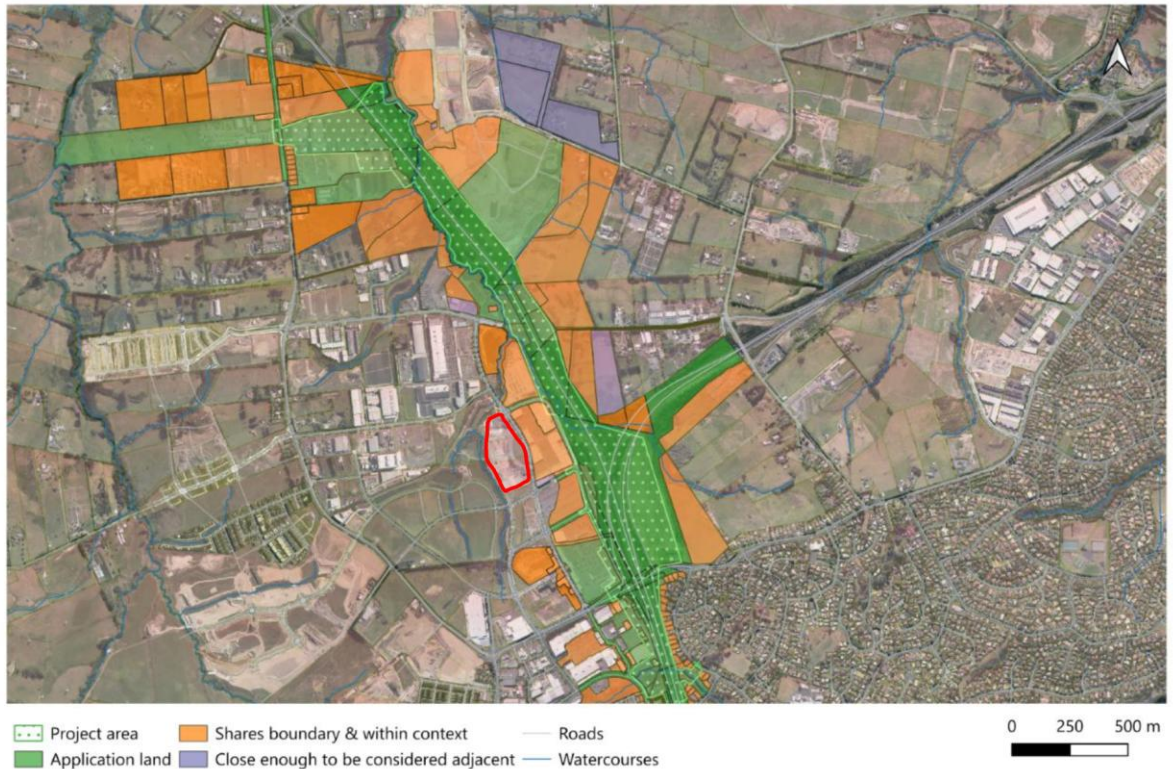
<sup>17</sup> *Stride Holdings Ltd v Auckland Council & Ors*, [2026] NZHC 1358.



50. The Project involves extensions to the North Western Motorway, in the vicinity of the Westgate precinct.
51. Section 53(2)(h) and (i) of the FTAA states that the owners and occupiers of the land to which the substantive application relates and the land adjacent to that land must be invited to make comments.
52. After considering information from the Applicant and advice from the EPA, and having reviewed the application material with the benefit of the site visit, the Expert Panel determined that the owners and occupiers of land shaded green, orange and purple on the Maps in Appendix 2 and listed in Appendix 3 of Minute 2 should be invited to comment.<sup>18</sup> The relevant map for present purposes is copied below:

<sup>18</sup> Minute 2 of the Expert Panel – Invitations to Comment, dated 28 April 2026.

## North West Rapid Transit Map 1



53. The Zone 6 Land is within the red outline on the map above (the red outline is my addition to the map to aid identification of the land the subject of the judicial review proceeding). As is apparent from this map, The Zone 6 Land is neither:
- (a) land to which the substantive application relates (which is land shaded green in the map above); or
  - (b) land identified by the Expert Panel as being adjacent to land to which the substantive application relates.

### Disclosure of the Expert Panel Members' interests

54. As noted at paragraph [18] above, each member of the Expert Panel disclosed their interests in the Register of Members Interests. In relation to the Westgate precinct, the members disclosed the following interests:

#### Lachlan Muldowney

I am senior counsel acting for Stride Holdings Limited in its High Court judicial review against Auckland Council and Westgate Town Centre (2017) Limited and NZ Retail Property Group Limited relating to resource consent decisions concerning development within sub-Precinct B of the Westgate Town Centre (CIV-2025-404- 1858). The case was heard in February 2026 and a decision is pending.

**Richard Blakey**

<b>Matter</b>	<b>Applicant/Requiring Authority</b>	<b>Parties</b>	<b>Role</b>	<b>Period</b>
Westgate Zone 6, variation of conditions [proximate, project land/adjoining]	Westgate Town Centre (2017) Ltd	Non-notified	Independent (duty) commissioner	Dec 2024

**Todd Langwell**

<b>Matter</b>	<b>Applicant/Requiring Authority</b>	<b>Parties</b>	<b>Role</b>	<b>Period</b>
Westgate Zone 6, S127 RC application for retail development	Westgate Town Centre (2017) Ltd NZ Retail Property Group	Non-notified	<p>I prepare [sic] a transport assessment to support the RC application for the Applicant.</p> <p>I also prepared an affidavit in support of Westgate Town Centre (2017) Ltd and NZ Retail Property Group Limited relating to the same resource consent decision ( CIV-2025-404-1858).</p> <p>I am providing ongoing advice to Westgate Town Centre (2017) Ltd for the building consent for the same proposal.</p>	Dec 2024 - ongoing

55. I have also inquired of the Chairperson whether he acts for Stride in relation to any other matters (that he was at liberty to disclose). The Chairperson confirmed that he did not act for Stride on any other matters, and had only acted for Stride, on instruction from MinterEllisonRuddWatts, in the judicial review proceeding referred to above.

### Specific concerns raised

56. NZRPG raised two specific concerns regarding the Chairperson:
- (a) That the Chairperson's representation of Stride gives rise to concurrent conflicts that are not merely peripheral but go to the substance of the proceedings before the Panel; and
  - (b) That Stride holds land within the footprint of the Project, and as a consequence Stride's interests will require direct consideration by the Panel.
57. Whilst the concerns raised by NZRPG were expressly directed at the Chairperson, given that the other members of the Expert Panel disclosed interests in the development of the Zone 6 Land, I have also considered whether their interests give rise to a conflict and, if so, whether any further steps need to be taken to manage them.

### Analysis

58. I start by considering the Chairperson's interest in the development of the Zone 6 Land. The Chairperson's interest arises in his capacity as lead counsel in the judicial review application. This interest remains because the High Court decision that has recently been issued may be the subject of an appeal.
59. This interest gives rise to the potential for a conflict of interest that may fall into either of the following two categories (as described in the AG Guidelines):
- (a) Conflict of roles; or
  - (b) Predetermination.
60. The potential for a conflict of roles to occur arises because the Chairperson acts as lead counsel on the judicial review proceeding and owes duties to Stride, in circumstances where Stride's interests are in conflict with those of NZRPG in the context of the development of the Zone 6 Land. The potential for predetermination arises as a consequence of the Chairperson's duties that arise as a function of him acting for Stride in such circumstances.
61. The next step is to examine the seriousness of the potential conflict. With reference to the factors identified in paragraph [29] above, I consider:
- (a) That the type of interest is sizeable, but is confined in the sense that it relates to a specific proceeding, involving a specific piece of land that whilst in the vicinity of the Project, is not contiguous with or adjacent to the land the subject of the Project;
  - (b) the nature and significance of the decision is high. That is because the decision affects the legal rights and interests of parties, and is made in a quasi-judicial capacity;
  - (c) in relation to the extent to which the interest could affect, or be affected by, the decision, there is a low risk. That is because of the geographic separation of the land that is the subject to the judicial review proceeding, and the location of the land to which the Project relates; and
  - (d) the Chairperson's involvement in the decision is significant.

62. Ultimately, the question of seriousness is a question of degree. This requires consideration of directness/remoteness and how closely the two interests concern each other. Put another way, the seriousness is about the magnitude of the potential effect of one interest on the other interest.
63. Given the geographic separation between the land that was the subject of the judicial review proceedings, and the land that is the subject of the fast-track application, I consider that the interests are too remote so as to be materially in conflict with each other. The land that is the subject of the judicial review proceeding has not been identified as land adjacent to the Project, and nor have comments been invited from the owners and occupiers of that land.
64. For completeness, I also observe that the non-identification of the Zone 6 Land as land adjacent to the land on which the substantive Project will occur, is consistent with the approach taken by the Expert panel with respect to other, similarly located parcels of land in the vicinity of the Project. In this regard, I see no indication that the Zone 6 Land has been improperly excluded from identification as adjacent land. In this regard, I do not apprehend any evidence of predetermination at play here.
65. Whilst the factors identified in paragraph [61] indicate that the nature and significance of the decision is high, and the Chairperson's involvement is significant, because of the degree of geographical separation of the land in question, it is my opinion that the Chairperson's disclosed interest does not amount to a serious conflict of roles such that any further steps, beyond the disclosure already made, are required.
66. I have also considered these interests through the lens of the two-stage test set out in the HC Guidelines. The first stage of that test is to ask what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits. In this context, it is the Chairperson's role as lead counsel in litigation involving parties who have an interest in the Project that *might* give rise to such an apprehension. However, whilst the possibility of such an apprehension does exist, in my opinion, a *fully informed* observer, with knowledge of:
- (a) The geographical separation as between the land the subject of the Project, and the land the subject of the judicial review proceedings; and
  - (b) The scheme of the FTAA which sets in place a framework for appointing panel members with suitable knowledge, skills, and expertise relevant to the approvals sought, who are appointed from a pool of practicing practitioners, in contrast with judicial appointments

would not apprehend that the Chairperson would decide the case other than on its merits.

67. Even if such an apprehension did exist, the second stage of the test is not met. Stage two requires consideration of whether there is a logical and sufficient connection between those circumstances and the apprehension. For the reasons given above, I do not consider there to be a logical and sufficient connection between the interest as disclosed, and the interest involved in chairing the Expert Panel. That applies both to the potential conflict of roles and the potential conflict of relationship, noting that the relationship in question here is one and the same, being that the Chairperson is acting as lead counsel, on instruction, in an unrelated legal proceeding. Based on the information I have to hand, the Chairperson's relationship with

Stride does not extend beyond this capacity. As such, the duty of loyalty owed by the Chairperson to Stride does not extend more generally beyond the scope of that retainer.<sup>19</sup>

68. I have also turned my mind to whether there is any risk of predetermination or bias arising in the broader context whereby both Stride (as landowner of other land) and NZRPG, may participate in the process for the Project having both been invited to make comments on the Project. Given the remoteness of the interests that are said to give rise to the risk of predetermination, I am of the opinion that there is no (current) foundation which elevates that risk such that anything further than disclosure of the interests is required.
69. Next, and for completeness, I consider whether the interests disclosed by the other members of the Expert Panel give rise to a conflict of interest. I deal with this briefly.
70. Mr Blakey's interest in the context of the Zone 6 Land arises as a consequence of his having been the delegated decision-maker in respect of the decisions that were the subject of the application for judicial review. Whilst this interest is different from the interest of the Chairperson, the same reasoning in relation to remoteness applies here. I come to the same conclusion in relation to Mr Blakey's position, in that I consider the interests which might be said to be in conflict are not, in fact, materially in conflict.
71. The third member of the Expert Panel is Mr Langwell. His disclosed interest in the Zone 6 Land is that he assisted NZRPG with the original applications for resource consent for the development of Zone 6, gave expert evidence for NZRPG in the judicial review proceedings, and also provides ongoing advice to NZRPG in relation to the building consent required for development of that land. It is of some note that NZRPG did not raise any concerns with Mr Langwell's membership of the Expert Panel, but I take that matter no further.
72. Mr Langwell's interest is again different from the other Panel members. However, his interest arises in the same context, a context which I consider to be too remote to give rise to a conflict of interest. Again, the same reasoning applies to Mr Langwell's interest as considered with respect to the Chairperson's interest.

### Further steps

73. For all of the reasons set out above, I do not consider that any further steps are required at this stage, beyond the disclosure that has already occurred.
74. I observe, though, that members of the Expert Panel must remain alert to any appearance of bias emerging as they undertake their role, particularly when considering comments made by the parties about whom they have disclosed an interest.
75. Whilst I am satisfied that there is no evidence of predetermination or bias based on the documents that I have read, members of the Expert Panel must continue to approach their role of decision-making in a fair-minded and impartial way. They must also remain alive to the potential need to disclose additional interests, particularly once comments have been made and the parties with an interest in the Project, and key issues in contention, have crystallised. In this regard, the Register of Interests should be kept up to date, as appropriate.

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<sup>19</sup> The duty is captured by rr 5.2 and 13 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008. See *Tuiara v Frost & Sutcliffe (a firm)* [2003] 2 NZLR 833 (HC) at [42], citing *Midland Bank Trust Co Ltd v Hett, Stubbs & Kemp (a firm)* [1979] Ch 384 at 402–403 where Oliver J held “[t]he extent of [a lawyer's] duties depends on the terms and limits of [the] retainer”.

**Conclusion**

76. Please let me know if you have any questions of clarification.

Yours faithfully

A handwritten signature in blue ink that reads "P. Maw". The signature is written in a cursive style with a large initial 'P' and a smaller 'M'.

**Philip Maw**  
Barrister

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