

Before the Expert Panel

**FTAA-2505-1057**

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Under Fast-track Approvals Act 2024 (**FTAA**)  
In the matter of Pound Road Industrial Development  
Between **NTP DEVELOPMENT HOLDINGS LIMITED**  
Applicant

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**Memorandum in response to Minute 3 of the Expert Panel**

Date: 19 December 2025

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**Applicant's solicitors:**

Jo Appleyard | Tallulah Parker  
Anderson Lloyd  
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011  
PO Box 13831, Christchurch 8141  
DX Box WX10009 Christchurch  
p + 64 3 379 0037



**anderson  
lloyd.**

- 1 The substantive application for the Pound Road Industrial Development [FTAA-2505-1057] (**Application**) by NTP Development Holdings Limited (**NTP** or **Applicant**) is currently being processed.
- 2 In Minute 3, the Panel clarified that Mr Andrew Metherell has been appointed as a transportation technical advisor to help assess the traffic impacts of the Application. The purpose of this memorandum is to respond to the Panel's directions in Minute 3 for the Applicant to:

provide comments on the proposed scope, purpose and rationale of Mr Metherell's engagement and any legal submissions ...

### **Executive summary**

- 3 In summary:
  - (a) Overall, and having regard to the FTAA, the Guidance Note and relevant case law, we consider that Mr Metherell's engagement should be limited to the discrete areas of disagreement between the Applicant, CCC, NZTA and KiwiRail that fall within his expertise. Any broader remit would contravene s 10 of the FTAA, which requires that functions under the Act be exercised in a timely, efficient, consistent, and cost-effective manner.
  - (b) As a practical next step, the Panel should ask CCC, NZTA and KiwiRail to confirm, after reviewing the Applicant's response under s 55 of the FTAA, what outstanding areas of disagreement remain in relation to the matters set out in paragraph 16. Once that position is clear, the Panel can determine whether there is any further value Mr Metherell can add and whether any remaining issues fall within his expertise. Noting that it is also possible that all issues will be resolved between the parties at that stage.
- 4 The Applicant acknowledges the confirmation provided by the Panel in Minute 3 that it will not include a peer review and that the Applicant will have an opportunity to respond to any advice from the technical advisor before the Panel's decision-making.

### **Technical advisor engagement under the FTAA**

- 5 The purpose of the Fast-track Approvals Act 2024 (**FTAA** or **Act**) is to "*facilitate the delivery of infrastructure and development projects with significant regional and national benefits.*" All functions exercised under the

Act, including the engagement of a technical advisor, are required to be exercised in alignment with this purpose.

- 6 In meeting this purpose, clause 10 of Schedule 3 of the FTAA provides the Panel with broad discretion to regulate its own procedure in a manner that best promotes the just and timely determination of the approvals sought in the Application. This discretion aligns with section 10 of the FTAA, which requires all functions and powers under the Act to be exercised using timely, efficient, consistent, and cost-effective processes that are proportionate to the task.

*Panel Conveners Practice Procedure Guidance Note*

- 7 A Practice and Procedure Guidance Note (**Guidance Note**)<sup>1</sup> was prepared by panel conveners under the Act to provide practical guidance for all participants in the fast-track process, particularly panels, to ensure consistency and fairness in decision-making.
- 8 Clause 14 of the Guidance Note outlines the procedure for commissioning specialist and technical advisers, advice and reports:

14.2 At any time before making its decision, a panel may also appoint:

(a) a special adviser to assist the Panel with a substantive application in relation to any matters the Panel may determine; and

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

14.3 The applicant pays the fees and expenses of the special and technical advisers.

14.4 While advisers are not members of the Panel, and are not involved in decision-making, they may sit with it and provide assistance as determined by the Panel

...

14.9 The Panel may consider appointing a technical adviser or mātanga to:

(a) facilitate the conferencing of expert witnesses or wānanga;

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<sup>1</sup> Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance (22 July 2025).

(b) report to the Panel on selected issues of disputed fact or opinion and methodology;

(c) question a participant or witness on behalf of a panel; and

(d) review or assist with drafting the proposed conditions of an approval.

(Emphasis ours.)

- 9 While Clause 14 of the FTAA permits the appointment of technical advisers, the scope of their role is deliberately narrow. Advisers are not decision-makers and may only assist the Panel in specific, defined ways. Their involvement is limited to supporting the Panel's deliberations, in areas of disputed fact or opinion and methodology, not expanding or directing them in relation to new material.
- 10 The scope for technical advisers is supportive and limited to specific tasks, rather than contributing new evidence or influencing the Panel's decision-making. Allowing a broader scope is contrary to section 10, which requires all functions to be exercised using timely, efficient, consistent, and cost-effective processes.

*Court's commentary on the engagement of technical advisors*

- 11 Under other legislation, courts have appointed experts to assist in decision-making, and case law provides guidance on how to exercise this discretion.<sup>2</sup> The consistent principle is that such appointments should occur only when expert input is necessary to resolve an important question in which there is disagreement.
- 12 Relevant cases that illustrate this approach:
- (a) In *Kyle v Kydell Downs Ltd*, the Court outlined the matters to be considered in deciding whether to appoint an expert. The issues that were emphasised in determining whether or not to appoint an expert were:<sup>3</sup>

(a) Is a report from an expert likely to resolve an important question in the proceeding? If not,

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<sup>2</sup> Rule 9.36 of the High Court Rules 2016 (**HCR**) in a judge-alone trial, the court may appoint an independent expert, known as a "court expert"; and Under the Resource Management Act 1991 (**RMA**), the Chief Environment Court Judge may appoint a "special advisor" to assist in the Environment Court proceeding (section 259). The Environment Court also has the powers of the District Court, including the power to commission a report from an "independent expert" on any matter raised in an appeal, and must be available to be cross-examined by any party (section 278).

<sup>3</sup> *Kyle v Kydell Downs Ltd* [2024] NZHC 2849 at [45].

there would appear to be no reason to incur the expense of appointing such an expert; and

(b) Does the expert have the necessary specialised knowledge or skill gained from study, training or experience to enquire and report upon the proposed questions of fact or opinion?

(b) Similarly, in *Purucker v Huebler*, the Court acknowledged that, for the appointment of an expert witness, there must first arise a '*question for an expert witness*'.<sup>14</sup>

(c) In *Percy v Percy*<sup>5</sup>, the Court accepted the submission that there was no agreed question to be put to the experts; it was far less likely to resolve the critical issues between the parties. On this, the Court noted that:

[101] I also accept Mr O'Connor's submission on the absence of any agreed question to be put to the experts. Appointments of this nature are far more likely to resolve important issues where the parties agree on both the appointee and the matters the appointee is required to investigate. That is not the position here.

13 These cases make clear that the scope of any technical advisor must be narrowly defined and preferably agreed upon by the parties. The Applicant submits that this approach aligns with the FTAA's purpose and procedural principles of efficiency, fairness, and proportionality.

14 Overall, and having regard to the FTAA, the Guidance Note and relevant case law, we consider that Mr Metherell's engagement should be limited to the discrete areas of disagreement between the Applicant, CCC, NZTA and KiwiRail that fall within his expertise. Any broader remit would contravene s 10 of the FTAA, which requires that functions under the Act be exercised in a timely, efficient, consistent, and cost-effective manner.

### **Outstanding matters of disagreement and the proposed scope of Mr Metherell's engagement**

15 In Minute 3, the Panel outlined matters it proposed to request the technical advisor to consider, noting that it had not yet received comments from the other parties.<sup>6</sup> The Applicant notes that these areas of concern have largely been resolved among the Applicant, the New Zealand Transport Agency

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<sup>4</sup> *Purucker v Huebler* [2023] NZHC 981.

<sup>5</sup> *Percy v Percy* [2017] NZHC 1989 at [101].

<sup>6</sup> Minute 3 of the Expert Panel dated 3 November 2025 at [10].

(NZTA), KiwiRail Limited (**KiwiRail**), and the Christchurch City Council (**CCC**).

- 16 In the Applicant's opinion, the outstanding matters of disagreement between the parties in relation to traffic are:
- (a) whether the Applicant or CCC is responsible for the upgrades to Barbers Road and Hasketts Road opposite the Site;
  - (b) whether the CCC should contribute toward the funding of shoulder widening on Pound Road along the site frontage;
  - (c) the need for a shared path along Pound Road between the proposed Site access roundabout and the Pound Road / Waterloo intersection;
  - (d) the timing and funding of the Pound Road / Waterloo Road and Pound Road / SH1 intersection upgrades; and
  - (e) whether a Level Crossing Safety Impact Assessment is required prior to development occurring at the site.
- 17 Additionally, we note that there remains potential that the above areas of disagreement are further reduced should the CCC, NZTA and KiwiRail accept the responses provided by the Applicant under s 55 of the FTAA.
- 18 There is general alignment between the Applicant and CCC, and the internal transport arrangements are satisfactory for all parties. Furthermore, subject to resolving the need for a shared path on Pound Road and the appropriate time for a Level Crossing Safety Impact Assessment, there is also a consensus between the Applicant, CCC, NZTA and KiwiRail that the off-site transport effects are acceptable once the Pound Road / Waterloo Road and Pound Road / SH1 intersection upgrades are completed.
- 19 As such, the points of disagreement are essentially around funding of upgrades and timing of the Pound Road / Waterloo Road and Pound Road / SH1 intersection upgrades. As this is an administrative and operational decision and noting that s 84A of the FTAA provides that any conditions need only *ensure the relevant infrastructure can be made adequate*, we consider the matter to fall outside the scope of Mr Metherell's expertise.
- 20 As a practical next step, the Panel should ask CCC, NZTA and KiwiRail to confirm, after reviewing the Applicant's response under s 55 of the FTAA, what outstanding areas of disagreement remain in relation to the matters set out in paragraph 16. Once that position is clear, the Panel can determine whether there is any further value Mr Metherell can add and whether any remaining issues fall within his expertise, in light of the above discussion.

Noting that it is also possible that all issues will be resolved between the parties at that stage.

Dated this 19 December 2025

A handwritten signature in black ink, appearing to read "Jo Appleyard". The signature is written in a cursive, flowing style.

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Jo Appleyard / Tallulah Parker  
Counsel for NTP Development Holdings Limited