

FAST-TRACK APPROVALS ACT 2024: PANEL CONVENERS' PRACTICE AND PROCEDURE GUIDANCE

22 July 2025

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1. INTRODUCTION – PURPOSE OF THE GUIDANCE NOTE

- 1.1 This Practice and Procedure Guidance Note (**Guidance Note**) has been prepared by the panel convener and associate panel conveners (here together referred to as **Panel Conveners** or **Panel Convener**) appointed under the Fast-Track Approvals Act 2024 (**FTAA** or **Act**) to provide practical guidance to all participants in the substantive FTAA approvals processes,¹ and in particular to panels appointed by the Panel Conveners.
- 1.2 Following their appointment, the panels are empowered to determine their own processes. However, the procedural principles in section 10² emphasise the importance of consistent, as well as timely, efficient and cost-effective decision making. In recognition of the need for consistency, the Panel Conveners offer guidance on a range of matters that are expressed in terms of recommendation or encouragement.

Definitions

- 1.1 Unless the context requires a different interpretation '**participants**' means any person who is invited to comment, to provide further information or reports, or who are invited to attend and be heard at a hearing, and '**statutory participants**' means persons who must be invited to comment under section 53 (2)³ of the Act.
- 1.2 '**Māori**' includes iwi and hāpu, relevant iwi authorities and relevant Treaty settlement entities and '**Māori participant**' means persons who have provided the panel comments under section 53.

Other guidance

- 1.3 For panels and participants seeking to understand mātauranga and tikanga perspectives in procedural and substantive contexts the links to the following EPA documents may be useful:
- (a) 'Mātauranga framework' ([link here](#));
 - (b) 'Guide to the Mātauranga framework' ([link here](#)); and
 - (c) 'NGĀ KAIHAUTŪ TIKANGA TAIAO - A Perspective Statement on Tikanga' ([link here](#)).
- 1.4 See also the 'Policy for Fast-track Fees, Levies and Cost Recovery' ([link here](#)).

2. PRINCIPLES OF THE FAST-TRACK APPROVAL PROCESS

- 2.1 The purpose of the FTAA (section 3) is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits". Expert panels are given specific direction in sections 81(2)(b) and (3) as to the weight to be given to this purpose when making decisions on whether to grant or decline each approval sought in an application.
- 2.2 The substantive assessment and procedural frameworks in the FTAA depart from the traditional Resource Management Act 1991 (**RMA**) consenting practices that most legal and planning

¹ Note that this Guidance Note only applies to referral applications once the application has been referred by the Minister for Infrastructure and its substantive application has been lodged with the EPA.

² References to 'section(s)', 'clause(s)', or 'part(s)' are references to sections, clauses and parts in the FTAA, unless stated otherwise.

³ Statutory participant means the 'applicant and persons who must be invited to comment under section 53 (2) (a)-(g) and relevant administering agencies under sub-clause (k). Note: The schedules to the Act list persons who must be invited to comment for the purposes of section 53 (2). See Schedule 5, clause 13; Schedule 6, clause 25 and clause 44; Schedule 7, clause 4; Schedule 10, clause 5; Schedule 11, clause 5 and 18.

practitioners will be familiar with. Applicants and those participating in the process all need to navigate this complexity in a way that gives effect to the purpose and key obligations of the Act, while enabling panels to make robust decisions that observe natural justice and the procedural principles of the Act.

- 2.3 Panels have powers to direct lines of inquiry about a substantive application to identify and resolve issues in a timely, efficient and cost-effective manner. In response, the Panel Conveners recommend that all participants be prepared to engage with a process that has more quasi-inquisitorial features than the typical adversarial processes common under the RMA.⁴ Participants should be ready to offer practical and innovative solutions to disputed matters to ensure timely and efficient decision-making.

Expectations for conduct

- 2.4 All participants are expected to work respectfully and constructively with each other, the Panel Conveners and the panel.
- 2.5 The timeframes in the Act are demanding for participants and panels: the panel must be provided with appropriate time to fulfil the requirements of the Act. A panel must regulate its own procedure as it thinks appropriate without procedural formality and in a manner which promotes the just and timely determination of approvals (Schedule 3, clause 10). Issue identification is a key method to ensure that the timeframe set by the Panel Conveners is appropriate. It is also an important method to achieve timely, efficient, and cost-effective processes under this Act.
- 2.6 For this reason, the willingness of the participants to engage responsibly and proactively with the Panel Conveners is relevant to setting decision timeframes.
- 2.7 All participants are strongly encouraged to be proactive in their approach to engagement. Applicants, statutory participants, administering agencies, and local authorities should be prepared to continue pre-lodgement engagement during the period following the EPA's decision on completeness and competing applications and prior to panel appointment. This will support the Panel Conveners in setting realistic decision timeframes and will support panels to focus their efforts efficiently on resolving the principal issues in contention.

3. ROLE OF EPA, PANEL CONVENER AND PANELS

EPA

- 3.1 The Environmental Protection Authority (**EPA**) has the following administrative functions set out in the Act:
- (a) receive substantive applications under section 42;
 - (b) determine if the substantive application is complete and within scope under section 46; and
 - (c) determine whether the substantive application has any competing applications or an existing resource consent under section 47.⁵
- 3.2 Once these steps are completed, the substantive application is provided to the Panel Conveners.

⁴ The terms 'adversarial' and 'inquisitorial' are used to describe models of justice systems, but these terms have no simple or precise meaning.

⁵ The power under section 47(3) has been delegated to the EPA under an instrument of delegation dated 4 February 2025.

- 3.3 At the same time as referring the substantive application to the Panel Conveners the EPA must obtain a report under section 18 from the Secretary for the Environment as the responsible agency.⁶
- 3.4 The EPA must provide advice and secretariat support to the Panel Conveners and to panels in accordance with clause 12 of Schedule 3 of the Act.

Panel Conveners

- 3.5 The Panel Conveners' functions, duties, and powers under the Act, include:
- (a) setting up a panel under section 50 in accordance with Schedule 3;
 - (b) obtaining other advice and reports under section 51;
 - (c) setting the timeframe of a panel decision under section 79; and
 - (d) providing the substantive application and other information to the panel under section 52.

Expert panels

- 3.6 The panel has functions, duties, and powers set out in the Act and Schedule 3, including:
- (a) the power to regulate its own procedure, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought (clause 10, schedule 3);
 - (b) the power to invite written comments on a substantive application under section 53;
 - (c) The power to appoint special and technical advisors in accordance with schedule 3, clause 10.
 - (d) the power to hold a hearing if this is considered appropriate, noting that there is no requirement to hold a hearing (section 56). If a hearing is held, the provisions in sections 57 to 59 apply;
 - (e) the power to request further information or commission reports or advice under sections 67 and 68;
 - (f) the requirement to provide a draft decision before declining an approval under section 69;
 - (g) the requirement to make decisions on approvals sought in accordance with sections 81-86 and the relevant schedules;
 - (h) the requirement to seek comment on draft conditions before granting an approval under section 70; and
 - (i) the requirement to issue its decision documents in accordance with section 87 (content) and section 79 (timing).

⁶ Section 18 FTAA applies to referral applications. By virtue of section 49 FTAA, this provision also applies to substantive applications.

4. REQUIREMENTS FOR SUBSTANTIVE APPLICATION

4.1 Applicants are encouraged to be aware of the purpose of the FTAA and the requirements set out in section 43. The following recommendations are provided as a guide to applicants:

- (a) follow the application form provided by the EPA as this is designed to allow for each of the matters in section 43 to be appropriately addressed;
- (b) lodge an overview of the application either as a separate document or as a section in the substantive application. One way of doing this is to include a memorandum of legal counsel that succinctly identifies the key issues to be determined, relevant decision-making criteria to be applied, and the recommended approach to be taken to the criteria and other matters for statutory assessment;
- (c) be conscious of the volume of material lodged. Ensure that the amount of application material is proportional to the complexity of the application and the number of approvals sought;
- (d) lodge separate technical and assessment reports in respect of each type of approval to make processing easier. This enables the EPA to package up relevant documents for each administering agency when seeking reports;
- (e) lodge a proposed set of conditions for each administering agency, together with draft management plans or sufficient information as to the purpose, structure, content and drafting process for management plans;
- (f) the structure of the overarching assessment reports should align with decision making criteria – and weighting - relevant to each approval as set out in the Schedules of the FTAA;
- (g) ensure the language used in reports aligns with FTAA terminology and does not default to RMA terminology unless that is anticipated by the relevant decision-making criteria; and
- (h) all technical experts authoring reports should include a statement regarding compliance with the Environment Court Practice Note 2023 (Code of Conduct for Expert Witnesses). This will avoid the need for the panel to address compliance separately. The reports that are intended to be relied on by the panel should not be submitted with a disclaimer stating that the report is not for use by persons other than the applicant.

5. LOCAL AUTHORITIES AND ADMINISTERING AGENCIES

5.1 Local authorities and administering agencies are expected to participate in the process as follows:

- (a) Section 46: to express an opinion on whether the application is complete and within scope. An assessment of the merits is not sought.
- (b) Convener's Conference: to inform the timeframe for a decision, identify likely issues, including disputed facts, opinions, or legal matters. Input from planning and technical advisors will likely be needed, but an assessment of the application's merits is not sought.
- (c) Section 53: Comment on the application. Involving a merits and technical assessment, engaging expert opinion and evaluating the substantive application.

With regards to cost recovery please refer to the EPA Policy ([link here](#)).

6. CONVENER CONFERENCE

- 6.1 The Panel Convener will convene a conference after the substantive application is accepted as being complete and within scope under section 46, a recommendation that there are no competing applications or existing resource consents for the same activity under section 47 has been made, and the application and the report on Treaty settlements (sections 18 and 49) and other obligations, has been provided to them.
- 6.2 The purpose of the conference is to inform two key decisions of the Panel Convener, being:
- (a) the appointment of panel members (Schedule 3), including the expertise required of the panel, and the number of panel members; and
 - (b) the timing of the panel decisions (section 79).
- 6.3 The willingness of the participants to engage responsibly and proactively with the Panel Conveners is relevant to setting decision timeframes.
- 6.4 The following persons will be invited to the conference:
- (a) the authorised person or applicant;
 - (b) relevant iwi authority and relevant Treaty settlement entities and any persons to whom section 53(2)(d-g) applies;
 - (c) relevant administering agency or agencies; and
 - (d) relevant local authority or authorities.
- 6.5 The Panel Convener conference will be held remotely, with access provided to participants. The procedure that applies for access will be advised at least three working days in advance of the conference.
- 6.6 At the conference, the participants will be invited to:
- (a) identify the number and range of approvals sought;
 - (b) comment on the level of complexity such as: any novel or difficult legal issues; any evidential complexity; or any factual complexity.
 - (c) a feature of this complexity, identify the principal issues in contention or other disputed matters;
 - (d) state whether the drafting of proposed consent conditions (including any draft management plan filed) is accepted;
 - (e) propose efficient processes to enable the panel to understand, resolve or narrow the scope of any likely issues and indicate how these processes may be accounted for under the decision timeframe; and
 - (f) if the application concerns an activity the same or similar to one previously lodged with a consent authority, state how requests for information pursuant to section 92 of the RMA have been addressed in this application.
- 6.7 Iwi authorities and Treaty settlement entities will be invited to:

- (a) advise whether tikanga is relevant to the application, how the panel might receive assistance on those matters, and the time required for this to occur;
 - (b) seek guidance on any requirement to protect sensitive information.
- 6.8 The participants will also be invited to consider the knowledge, skills and expertise of the panel and whether there are factors that warrant more than four panel members being appointed.
- 6.9 To be clear, the panel, not the Panel Convener, determine who is to be invited to make a comment under section 53(3).

7. TIMING OF PANEL DECISION

- 7.1 The power to set a timeframe must be exercised consistently with the principles of natural justice and in accordance with the purpose and procedural principles of the FTAA. Once set by the panel convener, the timeframe can only be altered by suspension pursuant to sections 60 and 64 of the FTAA. In the event of such a suspension, all proceedings cease including the work of the panel.
- 7.2 Pursuant to the FTAA, the panel determines its own process (FTAA, Schedule 3). However, by the time the panel is set up, the Panel Convener is required to have decided the timing of the panel's decision (section 79). The conference is to inform the Panel Convener of possible events for which time may need to be provisioned. For example, a site visit, wānanga, commission of further information, reports or advice (section 67 and 68) expert conferencing, mediation, and any form of hearing, together with reading and decision-writing time. Participants should be prepared to discuss the application's future process at the conference and might be required to document their views in a memorandum to be filed in advance.
- 7.3 The conference will assist the Panel Convener in meeting the requirement to:
- (a) take all practicable steps to ensure timely, efficient, consistent, and cost-effective processes (section 10);
 - (b) consult with the relevant administering agencies prior to setting the timeframe (section 79(2)(c));
 - (c) have regard to the scale, nature and complexity of the approvals sought (section 79(2)(b)); and
 - (d) if warranted, consider appointing more than 4 persons, having regard to the matters set out in Schedule 3, clause 3(7).
- 7.4 The level of complexity will have a bearing on the appropriate timeframe for decision making and may include any one or more of the following matters:
- (a) Legal Complexity: novel or difficult legal issues that -
 - (i) involve untested law or interpretation of statute;
 - (ii) involve application for multiple approvals;
 - (iii) interface with two or more statutes; or
 - (iv) engage constitutional law or public law matters.

- (b) Evidentiary Complexity: issues stemming from the volume, type, or technical nature of evidence including -
 - (i) challenges like managing expert reports or dealing with conflicting factual or opinion evidence; or
 - (ii) the need for technical or scientific analysis.
- (c) Factual Complexity: arises from the volume and nature of evidence, requiring -
 - (i) careful management of extensive information or reports, including expert opinion in specialised fields; and
 - (ii) analysis if technical, scientific, or highly specialised subject matters are involved.

8. APPOINTMENT OF PANELS

Expert panels

8.1 Appointment of expert panels is a key duty of the Panel Conveners. A 'panel' means an 'expert panel' appointed under clause 3(1) of Schedule 3. The members of a panel must, collectively, have:

- (a) knowledge, skills, and expertise relevant to the approvals sought in the substantive application;
- (b) expertise in environmental matters;
- (c) at least 1 member who has an understanding of te ao Māori and Māori development; and
- (d) must include at least 1 member nominated by the relevant local authorities. If no person is nominated the appointment is at the discretion of the panel convener with reference to Schedule 3 clause 3(7).

Process leading to appointment of panel members

8.2 While section 10 requires the Panel Convener to act promptly, there is no time limit fixed for the appointment of a panel. Once the EPA is satisfied that the application is complete and within scope (section 46), and has satisfied its obligations under sections 47-48, it must provide the application to the Panel Conveners and request a report in respect of section 18 matters.

8.3 After receipt of each application from the EPA, the Panel Convener will take the following steps:

- (a) await receipt of the section 18 report (to be provided by the responsible agency within 10 days of receiving the request from the EPA);
- (b) schedule a convener conference for the statutory participants;
- (c) consider whether other advice and reports are required pursuant to section 51 and if so, direct the EPA to obtain such advice and reports;
- (d) conduct the conference;
- (e) invite the local authority to nominate a panel appointee and an alternate panel appointee;
- (f) implement any panel appointment-related processes highlighted in the section 18 report;

- (g) fix the timeframe for the panel to make a decision on the application;
- (h) appoint the panel; and
- (i) provide the application and all reports to the panel under section 52.

8.4 Schedule 3 sets out matters related to the appointment of the panel and procedural and administrative matters.

Number of panel members

- 8.5 The Panel Convener may appoint up to 4 persons to be members of a panel unless the circumstances in clause 3(7) of Schedule 3 apply.
- 8.6 Where two or more relevant local authorities are invited to nominate a panel member, the Panel Convener will appoint (at least) one of the nominees made. While the relevant local authorities may confer with each other over potential nominees, local authorities are cautioned against conferring with the applicant.

Panel chair

- 8.7 The Panel Convener shall either:
 - (a) appoint one of the panel members who is a suitably qualified lawyer or a planner with experience in relevant law; or
 - (b) appoint a Panel Convener,
 to be the chair of the panel.

THE PANEL

9. CONFLICTS OF INTEREST

- 9.1 The Panel Conveners have agreed on a protocol with the EPA to actively manage any conflict of interests of panel members, which includes conflicts related to the application and conflicts related to engaging services to support the panel.

10. CONDUCT OF HEARINGS AND OTHER PROCEDURAL MATTERS IN CONTEXT OF TREATY SETTLEMENTS AND OTHER ARRANGEMENTS

- 10.1 The Panel Conveners strongly recommend that, immediately upon commencement, the panel read the report prepared by the Secretary for the Environment pursuant to sections 18 and 49 of the Act and take whatever steps it considers are necessary to satisfy the requirements of Schedule 3, clause 5 (1) (if applicable).

11. INVITING COMMENTS

- 11.1 A panel is to invite written comments on the application. In summary:
 - (a) the mandatory invitees are set out in section 53(2);
 - (b) the EPA will provide guidance to the panel to identify the owners and occupiers of land adjacent to the application land;

- (c) comments may be invited from any other person the panel considers appropriate (section 53(3)); and
 - (d) note that Ministers have a discretion to specify invitees – section 27(3)(b)(iii).
- 11.2 For the purposes of section 53, "written comments" may include the provision of technical reports, legal advice, submissions, personal statements and correspondence.
- 11.3 The Panel Conveners recommend that panels take a principled approach to the exercise of the discretion in section 53(3). The panel should consider the following matters when determining whether to invite other persons to provide comment:
- (a) the purpose of the Act and the procedural principles set out in section 10;
 - (b) any relevant aspect of the public or community interest that requires consideration;
 - (c) the comprehensiveness and quality of the applicant's technical information and how the applicant has addressed the issue of consultation;
 - (d) the likely extent of local authority participation in the application process;
 - (e) whether the activity would otherwise be prohibited under relevant legislation
 - (f) whether the application is for a project that has been previously declined under another statutory process;
 - (g) whether the application is likely to involve novel or contentious legal or disputed factual issues; and
 - (h) any other matter that, in the opinion of the Panel, ought to be considered.
- 11.4 The Panel Conveners recommend that panels consider inviting the Parliamentary Commissioner for the Environment where the project engages or is likely to engage the Commissioner's statutory functions.⁷

Mātauranga, and tikanga and matters of significance to Māori

- 11.5 When considering invitations to comment under section 53(3), panels are strongly encouraged to consider inviting:
- (a) iwi, hāpu, and marae whose rohe includes the area affected by the substantive application; and
 - (b) other Māori groups identified in s 18 (2)(k) of the Act in the report from the Secretary for the Environment.⁸
- 11.6 Without limiting the panel's discretion, in relation to the application, the Panel Conveners encourage panels to invite Māori to comment on:
- (a) matters of significance to them; and

⁷ Environment Act 1986, section 16. The Parliamentary Commissioner's statutory functions may be engaged, for example, on matters involving significant permanent adverse environmental effects, broader public interests, activities that are otherwise prohibited under relevant legislation, and on applications involving novel elements that may pose risks to the environment.

⁸ Section 18 FTAA applies to referral applications. By virtue of section 49 FTAA, this provision also applies to substantive applications.

- (b) mātauranga⁹ and the extent to which the application responds to mātauranga in a manner consistent with tikanga; and
- (c) whether the substantive application is consistent with:
 - (i) any obligations arising under existing Treaty settlement; and
 - (ii) customary rights recognised under —
 - (1) the Marine and Coastal Area (Takutai Moana) Act 2011 or
 - (2) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019; and
- (d) the extent to which matters commented upon by Māori may be addressed through conditions of consent and management plans.

11.7 For further detail on the role of tikanga in the context of hearings, see section 17 of this Guidance Note.

12. SITE VISITS

- 12.1 The Panel Conveners encourage panels to undertake site visits unless access to the site is not practicable or cannot be undertaken without health and safety risks that are not capable of appropriate management.
- 12.2 The EPA has developed a Health & Safety protocol in respect of site visits that will be provided to panels and is expected to be complied with by panel members.
- 12.3 The panel has discretion to determine whether it wishes to set any guidelines or requirements for the site visit, such as the itinerary, timing, additional site-specific health and safety precautions, and which persons can attend. If guidelines or requirements are made these should be communicated by a panel minute in accordance with section 18 of this Guidance Note.

13. CONFERENCES AND HEARINGS

- 13.1 The FTAA sets up novel substantive assessment and procedural frameworks that depart from traditional RMA consenting practices.
- 13.2 Participants need to be prepared to engage in procedural steps that include quasi-inquisitorial features or approaches and to offer practical and innovative solutions to ensure timely and efficient decision-making.
- 13.3 In a legal context, a 'hearing' and a 'conference' serve distinct purposes, though both are part of the panel's process.
- 13.4 A 'conference' is a procedural meeting where the Panel Convener or panel and participants discuss how to manage an application.
- 13.5 A 'hearing' is a formal proceeding before a panel where issues of fact and opinion, or law, are examined and resolved.

⁹ By mātauranga the Panel Conveners mean:

- (a) Mātauranga Māori: knowledge held collectively by Māori.
- (b) Mātauranga ā-iwi: knowledge specific to iwi/hapū, grounded in their unique experiences, whakapapa, and ancestral ties.

- 13.6 The conference and hearing processes are flexible, and the approach adopted by the panel for each application will be determined on a case-by-case basis.
- 13.7 Conferences and hearings are tools that can be used to support the procedural principles in section 10 and the principles of natural justice.

Conferences

- 13.8 This Guidance Note sets out below a range of conference types that may be anticipated as part of the FTAA panel process. Further detail on the convener conference can be found in section 6 of this Guidance Note. Further detail on hearing processes can be found in section 17 of this Guidance Note.
- 13.9 The Panel Conveners offer the following general guidance to panels in relation to panel conferences:
- (a) a panel may hold a conference at any time;
 - (b) the conference may be convened by a panel on the chair's initiative or on the application of 1 or more of the participants;
 - (c) any request for a conference should state the matters proposed to be considered and any direction sought;
 - (d) at the conference, the chair may give directions to secure a timely, efficient, consistent, and cost-effective process to determine the applications for approval that complies with the principles of natural justice;
 - (e) a minute should be issued:
 - (i) inviting participants to the conference; and
 - (ii) recording any directions made.
 - (f) while consideration should be given to the appropriateness of kanohi ki te kanohi (in person) or remote participation attendance, conference participation will usually occur via remote access.
- 13.10 The Panel Conveners observe that a conference may:
- (a) enable the panel and participants to respond flexibly to issues identified by the panel, in a way that is more efficient than the static and sequential exchange of minutes and memoranda; and
 - (b) enable participants to expand on memoranda, clarify misunderstandings, and address questions from the panel in real-time.

Project overview conference

- 13.11 Panels are encouraged to hold a project overview conference with statutory participants within 10 working days of the panel's commencement. The purpose of the meeting is to familiarise the panel with:
- (a) the content of the application for approvals;
 - (b) the content and structure of proposed conditions;

- (c) the key points of evidence (technical reports, assessments and other information) provided in support of the application;
- (d) proposed site visit details;
- (e) relevant legal tests and legal issues in contention; and
- (f) other relevant procedural matters.

Issue conference

13.12 The panel chair could, at any time after receiving comments, direct an issues conference in relation to a disputed fact/s or opinion/s or legal matter/s. The purpose of the conference is to identify and refine the issues and make further direction(s) (if required).

Conference on the appointment of a special or technical adviser

13.13 Before appointing a special or technical adviser (adviser) or seeking a peer review, the panel should seek the views of the participants (see section 14 of this Guidance Note).

Pre-hearing conference

13.14 The purpose of a pre-hearing conference is to make directions for any hearing on a substantive application (or any part of a substantive application) in a manner that promotes natural justice and the procedural principles of the Act.

14. COMMISSIONING OF SPECIALIST AND TECHNICAL ADVISERS, ADVICE AND REPORTS

14.1 The panel must request comment on a substantive application from the persons described in the Act (section 53(2)) and may request further information, advice or reports (see sections section 67 & 68).

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.

Commissioning advice or reports

14.5 Before commissioning advice or reports panels are encouraged to:

- (a) ensure that all application documentation has been thoroughly reviewed. If additional reports are required, be clear on their purpose and the information they are to contain;
- (b) consider what reports or comments have been provided by the local authority;
- (c) consider whether comments from invited participants assist in determining the scope of any additional technical reports;

- (d) Be conscious of the cost involved in commissioning additional reports (see section 27 below) and ensure that the cost is balanced against potential efficiency gains; and
 - (e) when considering whether legal advice is required to support panel decision making, panels should first enquire of the EPA whether similar advice has previously been obtained by panels on other applications.
- 14.6 The Panel Conveners recommend that panels treat with caution legal advice previously obtained by Covid-19 Fast-track panels given the difference in the legislation.
- 14.7 The Panel Conveners may from time-to-time commission legal advice on matters of general application across all FTAA applications. That advice may be provided on the Fast-track website when it offers important guidance for panels.

Special advisers

- 14.8 Without limiting the role of an adviser, the panel may consider appointing the following as a special adviser:
- (a) counsel to assist the panel, including -
 - (i) on the interpretation and application of the FTAA; and
 - (ii) on matters of significant general and public law.
 - (b) an expert (including an expert in law) to assist the panel on decisions or applications that, if granted, are likely to substantively affect the interest of a sector of society which has not commented on the application.
 - (c) the Parliamentary Commissioner for the Environment;
 - (d) mātanga to provide advice or answer questions; and
 - (e) planners to assist with navigating through complex applications or providing assistance in relation to the non-evaluative/non-determinative aspects of a draft decision.

Technical advisers

- 14.9 The panel may consider appointing a technical adviser or mātanga to:
- (a) facilitate the conferencing of expert witnesses or wānanga;
 - (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.

Peer reviews

- 14.10 A technical adviser may be appointed to undertake a peer review.
- 14.11 A 'peer review' is an evaluation of the validity of methods and conclusions in a piece of work, typically conducted by a person with competence and expertise in the subject area. The primary purpose of a peer review is to provide objective feedback on the quality and rigor of the work.
- 14.12 While a peer review may identify errors or disagreements with aspects of the work, its purpose is not specifically to produce a contrary view or opinion but rather to provide an impartial assessment.

This means a peer review should not introduce new information or evidence, but it may indicate that new information or evidence is required. If so, this should be referred to the applicant.

14.13 The panel may consider a peer review if:

- (a) there is no other comment, report or information on the subject area; and
- (b) the panel members do not have the knowledge, skills or expertise to undertake an assessment of methodology.

14.14 Having regard to the timeframe, the panel are strongly encouraged to consider the need for peer review as soon as practicable.

Seeking participant views on appointment of advisers

14.15 Advisers do not have a deliberative role. Except when advisers are drafting any non-evaluative or determinative aspect of a decision, procedural fairness requires that all communications between the panel and advisers are recorded and made available to participants. Panels should consider whether participants should be given an opportunity to respond to the advice provided.

14.16 Before appointing an adviser or seeking a peer review, the panel should seek the views of the participants, having recorded in a minute:

- (a) the purpose and scope of the advice or peer review sought;
- (b) the objective and scope of the advice or peer review setting out what is proposed to be covered and what is outside of scope;
- (c) the reasons why the advice or peer review is being sought; and
- (d) the opportunity to respond or file material in reply once the advice or peer review has been provided.

14.17 Before making a decision, the panel should invite Māori participants to give feedback on the proposed appointment to mātanga role and the purpose and scope of the appointment.

14.18 For the avoidance of doubt, the participants views will usually be sought by way of memoranda and the panel can then determine next steps, without hearing further from participants.

Reports of the advisers

14.19 Unless directed otherwise by the panel, the reports and advice produced by an adviser should be published on the Fast-track website and provided to participants.

15. EXPERT CONFERENCING

15.1 The panel may direct expert conferencing prior to or during a formal hearing, or, if no hearing is held, prior to its formal deliberations.

15.2 While experts participating in the conference may agree on matters within their fields of expertise, their agreement will not bind any party to a particular overall outcome or to the wording of any condition.

15.3 Unless the panel directs otherwise, participation in expert conferencing is limited to experts and the content of conferencing is confidential to those who participate in it. Expert attendees cannot

communicate what took place during the expert conference or its outcome, except via any joint witness statement produced.

15.4 The panel should seek feedback on the form of the expert conferencing with the participants, including:

- (a) the facilitator, if any, noting that conferencing could be facilitated by a special adviser appointed by the panel;¹⁰
- (b) whether the conferencing will be held remotely or in person;¹¹
- (c) the issues to be conferenced;
- (d) the timetable for expert conferencing, including timeframes for exchanging summaries of expert opinion, notice periods for confirming attendance and deadlines for the joint witness statements; and
- (e) the number of days required for expert conferencing.

15.5 To enable all experts to understand the opinions and reasons for opinions by other experts in advance, the panel or the facilitator may direct that the experts prepare a summary of expert opinion. The Panel Conveners strongly recommend that any summaries be prepared in accordance with section 9.4(4)(ii) of the Environment Court Practice Note 2023 (Code of Conduct for Expert Witnesses). Experts are to participate in accordance with the Code of Conduct, including:

- (a) exercising independent and professional judgement; and
- (b) assisting the panel impartially on matters within an expert's area of expertise.

15.6 Any expert conferencing is to be completed in the timeframe directed by the panel to allow the panel to issue its decision in accordance with the timeframe set under section 79.

15.7 Panels are encouraged to consider joint conferencing that brings together experts from scientific disciplines and the corresponding mātauranga Māori¹² to ensure comprehensive, culturally informed discussions. Joint conferencing should be facilitated or co-facilitated by a person having knowledge in tikanga Māori to ensure conferencing is carried out in a way that is culturally appropriate.

Joint witness statements

15.8 Unless directed otherwise this will include:

- (a) the key facts and assumptions agreed by experts;
- (b) identification of any methodology or standards used by experts in arriving at their opinions and any reasons for differences in methodology and standards;
- (c) identification of published standards or papers relied upon in coming to their opinions;
- (d) issues agreed between experts and the reasons for those agreements; and
- (e) issues on which the experts cannot agree and the reasons for those disagreements.

¹⁰ FTAA, schedule 3 clause 10(2).

¹¹ FTAA, schedule 3 clause 10(3).

¹² For example, marine science alongside mātauranga moana and tikanga.

- 15.9 The Panel Conveners expect that any joint witness statement will be completed, signed by all attendees and dated on the day of the conference or as soon as possible after that, unless the panel directs otherwise.

16. MEDIATION

- 16.1 Once all comments, information and reports are received, the panel may encourage mediation where it appears appropriate for the just and timely determination of the approvals sought.¹³ Mediation is an opportunity to resolve any specific issues in dispute on the substantive application, as it will facilitate focus and streamline the panel's decision-making process.
- 16.2 At its discretion, the panel may ask the applicant, the relevant administering agency, the local authority and any other participant involved in the application whether they consent to participating in mediation. If participants consent, the panel may refer the matter to mediation.
- 16.3 The mediation process is confidential for all participants. In accordance with sections 53 and 57 of the Evidence Act 2006, evidential privilege applies to settlement negotiations and mediation, including the exceptions in section 57(3). Any communication or information intended to be confidential and made or given in connection with an attempt to settle or mediate the proceeding, is covered by this privilege. Participants may not disclose what occurred during mediation—except for the outcome report provided by the facilitator—unless all participants present agree. Therefore, mediation is not open to the public or to individuals who are not participants in that specific mediation.
- 16.4 The panel may seek feedback from the participants on the form of the mediation, including:
- (a) the facilitator, noting that mediation could be facilitated by a special adviser appointed by the panel;¹⁴
 - (b) noting also that it is preferable that mediation take place in person;¹⁵
 - (c) the issues to be mediated;
 - (d) the timetable for mediation, including notice period for confirming attendance and deadlines for reporting back on outcomes; and
 - (e) the number of days required for mediation.
- 16.5 Mediation must be completed in the timeframe directed by the panel, to allow the panel to issue its decision in accordance with the timeframe set under section 79.
- 16.6 The role of the facilitator is to be an independent body who will act impartially, fairly and objectively, and to treat the participants in an even-handed way. The role of the facilitator is to assist the participants to arrive at agreement to settle the dispute or resolve particular issues which are part of the wider dispute, and not to make a decision for them. The facilitator may conduct mediation as they think appropriate, with regard to the nature and circumstances of the issues and the wishes of the participants.

¹³ FTAA, schedule 3 clause 10(1).

¹⁴ FTAA, schedule 3 clause 10(2).

¹⁵ FTAA, schedule 3 clause 10(4).

- 16.7 The facilitator should provide the panel, and all participants that attended the mediation, with a report on the outcome of the mediation, which will include:
- (a) the names and contact details of the people who attended;
 - (b) the matters and issues that were agreed among the participants and reasons supporting that agreement; and
 - (c) any matters or issues that were not agreed and a concise summary of the outstanding issues between the participants.

The report should also be signed by all participants that attended mediation.

- 16.8 Participants attending the mediation must be authorised to be able to agree or otherwise settle the matters and issues that are the subject of mediation.

17. HEARINGS

- 17.1 A panel is not required to hold a hearing. Based on their knowledge, skills, and expertise, a panel may evaluate the documents¹⁶ and accept the opinions of the authors without hearing from them directly. If the panel does so, it will provide reasons for accepting these opinions and outline its main findings on the principal issues in dispute.

Requests for hearing

- 17.2 Where the applicant or another participant requests a hearing, that request should be made by way of a written application to the panel, copied to all other participants, setting out reasons for the request and proposing procedural steps that might be taken to ensure that any hearing can be held in a timely, efficient and cost-effective manner pursuant to section 10.
- 17.3 Having regard to the principles of natural justice and to the procedural principles of the Act, any such request for a hearing should be determined by the panel on the basis of the guidance set out in this section of this Guidance Note, and documented (with reasons) in a minute, uploaded to the Fast-track website.

Types of hearing

- 17.4 If a hearing is held, it may be on a substantive application, or on any part of a substantive application. This could include:
- (a) disputed fact or opinion;
 - (b) selected topics or issues on which the panel seeks clarification (whether disputed or not);
 - (c) proposed conditions; and
 - (d) legal issues.
- 17.5 In addition to the conventional adversarial hearing model, panels are encouraged to consider other types of quasi-inquisitorial hearing features, for example:

¹⁶ Documents includes comments, reports and information, advice,

- (a) proceeding on the basis of the documents¹⁷ filed, with the authors of documents available to answer questions from the panel or a special adviser appointed by the panel;
- (b) joint empanelment of group(s) of experts;
- (c) convening a workshop for the panel and participants working interactively to resolve the final form of proposed conditions. The outcome of the event could be a joint witness statement or an agreement between participants lodged with the EPA, for the panel's consideration under section 81(2).

Hearing procedures

- 17.6 If a hearing is required, the panel must ensure that the hearing is conducted in accordance with sections 57 and 58 of the FTAA. This includes avoiding unnecessary formality, recognising tikanga Māori where appropriate, and enabling written or oral evidence in te reo Māori. Panels must also not permit participants (other than the panel) to question a party or witness unless leave has been given to do so.¹⁸
- 17.7 The panel will therefore need to consider and make a range of hearing-related procedural directions if a hearing of any type is held. These may include:
- (a) service and provision of documents;
 - (b) pre-hearing meetings or conferences;
 - (c) conduct of hearing sessions;
 - (d) pre-circulation of evidence and legal submissions;
 - (e) late, supplementary or rebuttal evidence;
 - (f) pre-reading of the submissions and the evidence;
 - (g) cross-examination and questioning; and
 - (h) hearing administration.
- 17.8 The EPA 'Memorandum - Panel procedures where hearing directed' provides template directions and may be adapted to meet the needs of the proceeding.¹⁹
- 17.9 In the event that an in-person hearing is held, the EPA will undertake a risk assessment and will put in place appropriate measures to manage any identified health and safety risks.

Tikanga and hearings

- 17.10 If a hearing is to be held, section 58 requires panels to recognise tikanga Māori where appropriate. It is important that panels consider the need to consult with participants over tikanga requirements ahead of the hearing event in either an exchange of memoranda and directions or in a conference.

¹⁷ 'Documents' meaning statement, document, information or matter that in the opinion of the panel may assist it to deal effectively with an application for approval, whether or not it would be admissible in a court of law. See FTAA, section 58.

¹⁸ FTAA, section 58(1)(d)-(e).

¹⁹ See also, the Environment Court Practice Note is a good source of guidance, as is the Auckland Council Independent Hearing Panel Hearing Procedures Manual.

17.11 Panels are encouraged (with assistance if necessary) to identify relevant tikanga for tāngata whenua or the venue of the hearing, including appropriate provision (within available timeframes and resourcing) for:

- (a) kanohi ki te kanohi (in person) or remote participation hearing²⁰;
- (b) receiving evidence, written or spoken, in te reo Māori (and Te Ture mō Te Reo Māori 2016/ the Māori Language Act 2016 applies accordingly), including for:
 - (i) mihi and giving evidence; and
 - (ii) making available interpreters and translation services.
- (c) conducting karakia at the commencement and conclusion of a hearing or any part of a hearing;
- (d) holding hearings, in whole or in part, on marae and working with tāngata whenua to ensure that kawa and tikanga are observed while recognising the role of the panel in conducting hearings;
- (e) arranging conferencing of expert witnesses on cultural matters;
- (f) providing for tikanga virtually, in the case of remote hearings; and
- (g) arranging site visits, especially to wāhi tapu.

17.12 Even if there is no hearing, panels need to be mindful of tikanga throughout the process they are adopting, including during any activity that requires either remote or face-to-face engagement of the participants, such as at panel conferences, wānanga, expert conferences on cultural values, and site visits.

DECISIONS

18. PROCEDURAL AND SUBSTANTIVE MATTERS

18.1 The panel makes decisions on matters of procedure, and on the merits of the substantive application, including its proposed conditions. Where relevant, tikanga should be considered when making procedural and substantive decisions.

18.2 The making of a decision on procedural matters is the role of the panel. Support and advice is available to the panel from the EPA, but the procedural decision is a decision of the panel.

18.3 Procedural decisions include, but are not limited to:

- (a) appointing an advisor as per section 14 of this Guidance Note;
- (b) seeking further information under section 67 or section 68;
- (c) directing that expert witness conferencing, mediation or any form of case management conference or hearing occur (see section 13, 15 and 16 of this Guidance Note);
- (d) deciding to hold a hearing on part of a substantive application (or part thereof) under section 57;

²⁰ For example, via MS Teams or Zoom.

- (e) directing the EPA to provide the applicant with a draft decision before declining the approval – section 69; and
 - (f) seeking comment on the draft conditions if the approval is to be granted – section 70.
- 18.4 The Panel Conveners encourage the panel to be transparent whenever it is making a decision on a procedural matter and to consider whether, in each case, it ought to invite any comment from the participants to the application. The panel will need to exercise its own discretion in this regard but are reminded that they must be cognisant of the principles of natural justice and the procedural principles of the Act.
- 18.5 The Panel Conveners expect that every procedural decision will be recorded in a minute signed by the panel chair and, unless directed otherwise by the panel, such minutes will be published on the Fast-track website and provided to participants.

19. DRAFTING CONDITIONS

- 19.1 The preparation of appropriate, workable conditions is a critical workstream for any application, made more challenging by the timing constraints of the FTAA. The complexity of condition sets that may be required in respect of specific approvals sought in an application is a factor that should be signalled in the Convener Conference held by the Panel Convener to enable appropriate time to be allowed.
- 19.2 The Panel Conveners recommend that:
- (a) prior to lodgement of the application, applicants engage with relevant administering agencies and local authorities regarding conditions and achieve as much alignment as possible on the form, structure and content of key conditions;
 - (b) any pre-lodgement engagement with other persons or groups should also include a discussion of the potential conditions;
 - (c) applicants provide a draft set of conditions for each approval in the application documentation along with commentary on the extent of engagement undertaken, including with infrastructure providers and operators, and the degree of alignment achieved. Any areas of disagreement (and the basis for these) should be expressly identified;
 - (d) participants should consider and be ready to recommend to the panel what procedural mechanisms would best enable an efficient resolution of condition issues. These could include expert conferencing, conditions workshops or issue-specific mediation sessions; and
 - (e) panels should consider whether the process of resolving conditions would benefit from the assistance of a conditions specialist (i.e., a conditions writer).

20. ADMINISTERING AGENCIES RECOMMENDING CONDITIONS

- 20.1 The Panel Conveners will direct the EPA to obtain advice and report from the administering agencies pursuant to section 51 of the Act.
- 20.2 The directions include seeking a report on the agency's response to the draft conditions, including any management plan attached to the application, recommending track-changed amendments (if any).

- 20.3 In the interests of achieving the procedural principles in section 10, it is important that administering agencies engage substantively with proposed conditions. If the administering agencies do not support the applicant's proposed set of conditions, they are encouraged to respond accordingly and propose alternative or additional conditions or track-change suggested amendments.

21. MANAGEMENT PLAN CONDITIONS

- 21.1 Where conditions are reliant on the preparation of management plans, applicants should provide either draft management plans or sufficient information as to the purpose, structure, content and drafting process for management plans, to provide the panel with confidence that they will be sufficient to address identified adverse impacts. Applicants are also strongly encouraged to consider utilising other condition mechanisms that may provide greater certainty, including:
- (a) performance or environmental standards that specify the standard that must not be breached;
 - (b) trigger responses that provide for resource use to occur provided specified environmental conditions exist;
 - (c) monitoring of triggers and responses, including adaptive management responses;
 - (d) plan design standards, which require the management plan to be prepared in accordance with a specific industry accepted standard or plan;
 - (e) certification by a specifically qualified and experienced person;
 - (f) determination of the certifier's qualifications and experience (for proposals with particularly significant potential adverse effects);
 - (g) as-built certification requirements to ensure that the project meets the required standards;
 - (h) mandatory implementation of the management plan; and
 - (i) local authority monitoring requirements associated with the proposed condition set.

22. SUBSTANTIVE DECISIONS

- 22.1 Each type of approval is subject to different decision-making criteria and weighting of those criteria.
- 22.2 The decision-making function belongs to the panel. Once decisions on key findings and conclusions have been made collectively, the panel Chair may allocate decision writing of sections of the decision to different panel members in accordance with their expertise.
- 22.3 The panel should give early consideration to whether the efficient production of a decision would be assisted by the appointment of a decision writer who can draft factual sections of the decision that do not involve evaluation of technical reports, documentation of key findings, application of decision-making criteria, or the overall assessment of whether the approvals should be granted.

Administering agency approvals

- 22.4 The FTAA sets out the specific requirements for approvals relating to the:
- (a) Resource Management Act 1991 (Schedule 5);
 - (b) Conservation Act 1987, Reserves Act 1977, Wildlife Act 1953 and National Parks Act 1980 (Schedule 6);

- (c) Wildlife Act 1953 (Schedule 7);
- (d) Heritage New Zealand Pouhere Taonga Act 2014 (Schedule 8);
- (e) Complex freshwater fisheries activities (Schedule 9);
- (f) Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (Schedule 10); and
- (g) Crown Minerals Act 1991 (Schedule 11).

22.5 In the cases of all these approvals the administering agency is a Crown agency or Ministry. The panel, rather than the administering agency, make the decisions on the applications for approval. At the direction of the Panel Convener and panel, the administering agency will be involved in the process from the time that the substantive application is lodged.

22.6 As noted at section 10 of this Guidance Note, the Panel Convener will have undertaken an assessment under section 51 of the FTAA and requested additional reports and advice from the administering agencies. These reports and/or advice will be made available to the panel.

23. RELEASE OF DRAFT DECISION OR DRAFT CONDITIONS

23.1 Sections 69 to 72 of the FTAA require the panel to provide its draft decision or draft conditions for comment, before the panel reaches a final decision.

OTHER MATTERS

24. REMOTE PARTICIPATION IN AND VIEWING OF CONFERENCES AND HEARINGS

24.1 As part of case management for substantive applications, the panel should address the extent to which a proceeding may need to be conducted remotely, including:

- (a) any conferences; and
- (b) if the panel considers it appropriate to hold a hearing, whether all or any part of the hearing should be remote.

24.2 The panel may make directions on the conduct and protocol for remote access proceedings, including for example:

- (a) the timeframe in which a party must advise that they intend to participate remotely or call a remote witness;
- (b) requirements for the place where a party intends to participate remotely, including requirements for witnesses providing evidence for a hearing;
- (c) requirements for the conduct of participants attending and participating remotely. This may include protocol around communication with any other person outside the remote proceeding during the course of the matter; and
- (d) methods to enable a party to refer to documentation during the remote proceeding.

- 24.3 If a hearing is required, the applicant, any person who provided a report²¹ on the substantive application, or any person or group who provided comments on the application under sections 35 and 53, may request that the hearing is held remotely (whether full or in part).²² The panel may also direct that a hearing (or part of a hearing) is held remotely on its own initiative.
- 24.4 The panel must ensure that any remote access hearings will, subject to section 48 of the Local Government (Official Information and Meetings) Act 1987 (LGOIMA), be available live and free of charge to the public and either an audio or visual recording or written transcript of the hearing is published online.
- 24.5 Publication of recordings and transcripts is administered by the EPA.

25. OFFICIAL INFORMATION

- 25.1 Panels need to be mindful that all information provided to the EPA in respect of a substantive application, together with all information generated by panel activities undertaken in fulfilment of their FTAA functions, powers and duties, are subject to the OIA.²³ The key exception is in relation to hearings and panel deliberations, which can be excluded under LGOIMA, as set out below.
- 25.2 In addition, the following provisions of the FTAA allow the EPA to withhold information if it is satisfied there would be good reason to withhold it under the OIA if it were requested:
- (a) Section 51(5) (advice and reports directed by the panel convener);
 - (b) Section 68 (advice to panel on land exchange or access arrangement);
 - (c) Section 80 (aquaculture decision);
 - (d) Section 88 (publication of decision documents); and
 - (e) Section 93 (publication of notices and other documents).

Local Government (Official Information and Meetings Act) 1987

- 25.3 Hearings and hearing materials under the FTAA are by default public records. However, a panel may exclude the public or withhold information if it concludes that there are reasons to do so under LGOIMA.
- 25.4 Under sections 57-59 of the FTAA, Part 1 and sections 48 and 53 of LGOIMA apply to panel members during a hearing, with necessary modifications, as if the panel were a Board of Inquiry given authority to conduct a hearing under section 149J RMA. This indicates that a hearing (if required) would be public unless the panel resolves to exclude the public on the grounds in section 48 LGOIMA. Both in-person and remote access hearings are subject to section 48 LGOIMA.²⁴
- 25.5 If there is good reason to do so, a panel may make an order prohibiting or restricting the publication or communication of information received by a panel during the course of the hearing.²⁵ This

²¹ FTAA, section 51.

²² FTAA, section 59(1).

²³ Note that section 93 FTAA requires that all information to and from the EPA should be published on the Fast-track website.

²⁴ FTAA, sections 57(7) and 59(4).

²⁵ In FTAA, section 58(4).

applies even if the information is material to determining the outcome of the substantive application, provided it meets the threshold outlined in sections 6 or 7 of LGOIMA.²⁶

26. SENSITIVE INFORMATION²⁷ AND NON-PUBLICATION DECISIONS

26.1 In accordance with clause 11 of Schedule 3 when a panel is assessing an approval under the RMA section 42 of the RMA applies with any necessary modifications, as if the panel were a Board of Inquiry given authority to conduct a hearing under section 149J of the RMA.

26.2 If the panel is dealing with an approval under the RMA and is satisfied that it is necessary to direct that information should be withheld to:

- (a) avoid serious offence to tikanga Māori or to avoid the disclosure of the location of waahi tapu; or
- (b) avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information;

and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available, then the panel will need to make a direction in the form of a minute.

26.3 Pending a determination, the panel should consider directing that the information be withheld and not published on the Fast-track website.

26.4 If a final decision as to the non-disclosure is not to make a final non-publication decision, the provider of the information should be advised and given the opportunity to withdraw the information.

26.5 If the panel is dealing with an approval that is not under the RMA and has been asked to withhold information under the OIA then the provisions of the OIA apply. If the panel is satisfied that the reasons for withholding the information set out in the OIA apply²⁸ the panel will need to make a direction in the form of a minute.

27. COST-RECOVERY AND COST MANAGEMENT

27.1 The FTAA regime is a user-pays system. Sections 103 to 112, together with the Fast-track Approvals (Cost Recovery) Regulations 2025, set out the framework of the cost recovery system.

27.2 Cost recovery for participation in fast-track processes is determined by the FTAA and the Fast-track Approvals (Cost Recovery) Regulations 2025. For more detail refer to the EPA Cost Recovery Policy ([link here](#)).

27.3 Applicants are required to pay both a fee and a levy when lodging applications, and to maintain a positive balance in their EPA account as the costs associated with processing, assessing and determining the application are deducted from that account over time.

27.4 In the event that a positive balance is not maintained, thereby preventing cost recovery, section 61 allows the EPA to suspend the processing of the application.

²⁶ Section 58(5).

²⁷ Sensitive information, for example, can include oral histories, whakapapa, or customary rights.

²⁸ See OIA sections 6 and 9. Note also Schedule 12, cl 26 limits disclosure of information relating to a mining application.

27.5 The Panel Conveners encourage panel chairs to have regard to the procedural principles set out in section 10 and to remain aware at all times of the cost implications of any decisions they may make to:

- (a) commission technical advisers and/or expert reports and peer reviews;
- (b) commission legal advice; and
- (c) commission special advisers.

The Panel Conveners also recommend that panel chairs check in regularly with their allocated EPA administrator as to the level of costs being incurred and the estimate of cost likely to be incurred prior to the release of the decision.

28. RECORD OF PROCEEDINGS

28.1 A panel must keep a full record of its proceedings (FTAA, Sch 3, cl 10(5)).

28.2 Documents to which this obligation applies:

- (a) include:
 - (i) documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form.
 - (ii) a decision, an order, or a minute of the panel, including any record of the reasons given by the chairperson of a panel.
- (b) excludes:
 - (i) notes made by or for a panel member for their use considering or deliberating any matter that they are empowered to consider or determine under the FTAA; and
 - (ii) the deliberations of the panel.

APPENDIX A - COMMUNICATIONS

Panel convener

29. COMMUNICATION WITH THE RELEVANT PANEL CONVENER MUST BE:

- 29.1 In relation to a substantive application in respect of which all applicable fees, charges, or levies have been paid; and
- 29.2 In writing, addressed to the Panel Convener and sent by email to info@fasttrack.govt.nz.
- 29.3 All other participants to the substantive application, where known, must be copied into the communication at the same time as it is sent to the panel convener.
- 29.4 All communication sent to each Panel Convener will form part of the record held by the EPA in relation to the application and may be subject to disclosure if requested under the Official Information Act 1982 (OIA).
- 29.5 Communication from the Panel Convener on an application for approval will be issued by way of a minute circulated by the EPA and uploaded to the Fast-track website.

Panel members

- 29.6 After a panel is appointed by the Panel Convener, unless the panel directs otherwise all communication in respect of the substantive application must be directed to the panel and sent by email to info@fasttrack.govt.nz.
- 29.7 Any such communication must be copied to the other participants to the substantive application at the same time as it is sent to the panel.
- 29.8 All communications from the panel will be issued by way of a minute circulated by the EPA and uploaded to the Fast-track website.