
MINUTE 9 OF THE EXPERT PANEL

Conferencing Arrangements

Ayrburn Screen Hub

FTAA-2508-1093

(28 January 2026)

[1] The purpose of this Minute is to make further directions regarding the conference scheduled for this coming Friday 30 January. It also addresses a memorandum the Panel has received from counsel for the applicant dated 27 January.

[2] In Minute 8, the Panel recorded that the principal topic for discussion at the forthcoming conference would be the two Joint Witness Statements that have been received. We have now been advised that Mr Tony Milne is not available on Friday morning. He is obviously an essential contributor to discussion of landscape issues. Accordingly, the landscape component of the proposed Friday conference will be deferred to a further conference at 11-30am on Tuesday 3 February. Mr Milne and Ms Gilbert are required attendees of the latter and (again) Ms Hadley has the option of attending if she wishes.

[3] In counsel for the applicant's memorandum, they expressed concern about our direction that Ms Hadley and Mr Dougherty be invited to attend at their option. Counsel seeks clarification that that invitation is solely so that they might observe the conference, and that they will not be invited to participate.

[4] We note that counsel for Mr Kidd, Ms MacDonald, approached the EPA earlier this week seeking leave that Mr Kidd be permitted to join the conference. We have asked the EPA to invite him on the same basis as Ms Hadley and Mr Dougherty and we would expect that counsel for the applicant would have the

same issues with his participation.

[5] As counsel for the applicant notes, a conference is not a hearing. Conference participants have no 'right' to address the Panel on any topic unless asked to do so by the Panel.

[6] And as the passage from the Procedural Guidance issued by the FTAA Convenors quoted by counsel records, the purpose of a conference is (among other things) to allow the Panel to ask questions of participants and for participants to provide answers more efficiently than would be possible in writing.

[7] Section 67 of the FTAA gives the Panel the discretion to seek further information from any party invited to provide comments at any time prior to release of its decision. It follows that we have the discretion during the conference, or subsequently, to ask Mr Dougherty or Ms Hadley any question, the answer to which we believe would assist us. Accordingly, we decline to provide the clarification counsel for the applicant seeks.

[8] We note that are alive to the implications from a natural justice perspective if the Panel obtains information from interested parties to which the applicant has no ability to reply. While we cannot commit to allowing the applicant the final right of reply on every piece of information we receive - the exigencies of the decision-making deadline we are working to preclude that - we will endeavour to ensure that the process is 'fair' to all participants, including the applicant.

[9] To assist a more productive discussion of issues we have identified arising from the Memorandum Mr Goldsmith provided supporting the applicant's response to comments, we note the following matters that we wish to discuss further at Friday's conference:

- (a) The nature of the application the applicant has made for subdivision, and its inter-relationship with the application to vary the conditions of the existing subdivision consent;

- (b) The scope to add application for the proposed acoustic and glare barrier at this point;
- (c) The scope to add application for replacement of screening trees on the southern boundary at this point and the nature of the application (is it an application for a land use consent, a variation to the conditions of the existing subdivision consent, a new subdivision consent, or all of the above?);
- (d) As regards consideration of alternatives canvassed at pages 10-12, has counsel considered the implications of the decision of the Supreme Court in *EDS v The New Zealand King Salmon Co Ltd* [2014] NZSC38 at [170] and cases following it such as *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] 3 NZLR 882 (HC) and *Waimea Plains Landscape Preservation Society Inc v Gore District Council* [2022] NZEnvC 29 for the argument advanced?
- (e): Mr Goldsmith's memorandum notes the potential relevance of new section 81(2)(aaa), raising the question of whether that subsection, and any of the other amendments to the FTAA made since the Panel was appointed, apply to the Panel's decision. Can counsel please be in a position to advise more generally how the transitional provisions of the recent amendment impact our decision-making process;
- (f) While it is not relevant to the Panel's decision-making process, has the applicant considered the implications of the Planning Bill that was recently introduced to Parliament (specifically the foreshadowed further extension of consent expiry dates in clause 17 of Schedule 1) for the observation in the final sentence of para 59?
- (g) Previous FTAA decisions have found that the Panel is obliged to make its own assessment of the extent of the benefits a project may have, i.e. not to treat the Minister's assessment as determinative. Does the applicant consider section 81(2)(aaa) alters that position,

and if so, to what extent?

- (h) As regards counsel's reliance on the decisions noted at para 136, has counsel considered the qualification of the principles set out therein in cases such as *Remediation (NZ) Ltd v Taranaki RC* [2024] NZEnv 213?
- (i) As regards the argument developed at paras 107-118 of counsel's memorandum apparently resiling (in part at least) from the confirmation in the applicant's response to Minute 2 dated 18 November 2025 that there is no relevant Permitted Baseline, do the rules of natural justice/ fairness require that interested parties have the opportunity to comment on that revised position?

[10] It may be that the Panel will have additional questions of counsel, but these are the matters that come to mind at this point. Counsel is requested not to put any preliminary responses on paper before the conference. If necessary, we will ask that she follow up with written confirmation after the conference. We note that if the time available on Friday proves insufficient, any matters not fully addressed can be discussed at the conference the following Tuesday.

[11] Lastly, we appreciate that it is late notice, but can the applicant please ascertain if Mr Gibson is available to join the conference on Friday (or failing that, the conference the following Tuesday). He would only be required for a brief discussion, but there is one aspect of the addendum dated 18 January that the Panel wishes to discuss with him.



Trevor Robinson
Expert Panel Chair