
MINUTE 3 OF THE EXPERT PANEL

Section 53 Matters

Bledisloe North Wharf and Fergusson North Berth Extension
[FTAA-2503-1028]

(26 May 2025)

Introduction

[1] Third parties have a very limited ability to provide comments to a Panel on any substantive application made under the Fast-track Approvals Act 2024 (FTAA). The ability to do so arises from an invitation to comment issued by a Panel under s 53 of the FTAA.

[2] Section 53(2) of the FTAA identifies those from whom comments must be sought, while s 53(3) provides the Panel with a general discretion to seek comments from any other person the Panel considers appropriate.

[3] To apply s 53 in respect of this application, we are required:

- a. To identify the specific entities identified in s 53(2)(a)-(e), (g), (j)-(k) and (m) from whom comment must be sought?¹
- b. To identify “the land to which the substantive application relates” and “the land adjacent to that land” for the purposes of s 53(2)(h), (i) and (l)?
- c. Having regard to that finding in (b) above, to identify the owners or

¹ Section 53(2)(f) does not apply because the substantive application does not affect ngā rohe moana o ngā hapu o Ngāti Porou.

occupiers of, or requiring authorities with a designation on, that land and adjacent land from whom comment must be sought under s 53(2)(h), (i) and (l)?

- d. To decide to whether comments should be sought from any other person under s 53(3)?

[4] We have set out below our findings on each of those steps.

Who are the specified entities?

[5] We have been provided with a memorandum from the EPA dated 23 May 2025 which identifies the entities falling within s 53(2)(a)-(e), (g), (j)-(k) and (m). We have carefully considered that memorandum and accept the EPA's advice in that regard. Invitations to comment will accordingly be sought from those parties.

What is the “land to which the application relates” and what is the “adjacent land”?

[6] The Bledisloe North Wharf and Fergusson North Berth Extension project (Project) involves 3 discrete areas of works – namely at the northern end of Fergusson Container Terminal, the northern end of Bledisloe Wharf, and within the ground floor of an existing vehicle-handling facility at the southern end of Bledisloe Wharf near Quay Street.

[7] The FTAA does not provide any specific direction as to how “the land to which the substantive application relates” or “adjacent land” should be defined by a Panel. We find that those phrases need to be applied in a manner that reflects the specific nature and context of any substantive application, and that an interpretation is taken which is consistent with the purpose of the FTAA.

[8] Upon consideration of the Project and its context, together with the purpose of the FTAA (refer paragraph 17 below), we have determined that “the land to which the substantive application relates” comprises:

- a. For the Bledisloe Wharf works, the area of Bledisloe Wharf from Quay Street to a point some 6m to the north of Bledisloe Wharf – shown in red on **Diagram 1** attached to this Minute.
- b. For the Fergusson North Berth Extension works, the area of the Fergusson Container Terminal from Tamaki Drive to the seaward edge of the Fergusson North Berth and including an area of coastal marine area to the west of Fergusson North berth up to and including the existing mooring dolphin — shown in orange on **Diagram 1** attached to this Minute.

[9] For completeness, we record that we considered an approach of defining the “land to which the substantive application relates” as being the extent of the Applicant’s landholding and the full extent of its coastal occupation permits. We have decided against that approach in this case because it would have had anomalous outcomes at odds with the purpose of the FTAA discussed below at paragraph 17. For example, it would have had the effect of deeming “adjacent land” to include land in the Viaduct Harbour – over 1 kilometre away from the site of the works themselves, and well beyond any potential ambit of any possible effect.

Who are the owners and occupiers or requiring authorities with interests in the land to which the substantive application relates or the adjacent land?

[10] In defining “adjacent land” we have adopted an interpretation that includes abutting land and part of the abutting coastal marine area (discussed below), and which, depending on context, could also extend to land that is only separated from the land to which the substantive application relates by a “road, railway line, or watercourse”.

[11] Having regard to the context in this case, we have decided that the adjacent land should include that land separated by Tinley Street but should not include the land on the south side of either Quay Street (in respect of the Bledisloe North

Wharf works) or Tamaki Drive (in respect of the Fergusson North Berth Extension works). Our reasons for making that finding are that:

- (a) Both Quay Street and Tamaki Drive are very busy arterial roads, with 4 or more lanes of traffic, and a correspondingly very wide road reserve. By contrast, Tinley Street is a narrow, two-way road, and it will provide vehicle access from Quay Street to the new passenger reception facility.
- (b) Most of the Bledisloe North Wharf works are occurring well distant from Quay Street, with the only works occurring proximate to Quay being the development of the passenger reception area within an existing building (ie the vehicle-handling facility). The operation of this development may have some adverse effects on the owners and occupiers of land on eastern side of Tinley Street but would not materially affect the owners and occupiers of land to the south of Quay Street (and in any event that land appears occupied by a supermarket, other commercial activities, and a carpark building).
- (c) All works associated with the Fergusson North Berth Extension are occurring well distant from Tamaki Drive and therefore could not conceivably affect land to the south of Tamaki Drive (and in any event this land is occupied by a railway shunting area).

[12] In respect of the seaward boundary of the “adjacent land”, we have defined that area as being an area that is approximately 100m from the edge of the Project land (ie 100m the land to which the substantive application relates). (For reasons of practicality, this 100m has been adjusted to extend around any land parcel boundaries and wharf structures.) We acknowledge that this choice of 100m is somewhat arbitrary, however we consider that in the context of this Project that distance is appropriate and is consistent with the purpose of the FTAA. This distance will ensure that all those owners, occupiers or requiring authorities with

interests in that adjacent land will be invited to comment about any aspects of the Project that concerns them.

[13] The “adjacent land” is shown in **Diagram 2**

[14] Based on our finding in paragraphs 8 - 13 above, and with reference to the information provided in the EPA memorandum of 23 May 2025, each of the entities within those areas are to be invited to provide comment on the substantive application.

[15] For completeness, we considered what meaning we should give to “occupiers” in respect of the coastal marine area, and we have elected to limit this definition to the holders of coastal occupation permits. We do not consider that extending the definition to those who might temporarily transit through the coastal marine area (eg, ferry operators, recreational boaties etc) would either be consistent with then common understanding of the phrase “occupier” or with the purpose of the FTAA.

Should comment be sought from any other party?

[16] Section 53(3) states that comments “may be invited from any other person the panel considers appropriate”. The FTAA provides no further guidance as how this discretion should be exercised.

[17] In exercising our discretion in this case:

- a. We acknowledge that, despite s 53(3) conferring an apparently unfettered discretion on a Panel, any exercise of a statutory discretion must be undertaken in a principled manner consistent with the purpose of the legislation conferring that discretion:²

² *Royal Forest and Bird Protection Society of New Zealand Incorporated v Minister of Conservation* [2016] NZCA 411, at [53] per Harrison J for the majority.

[53] ... As *Unison Networks Ltd* confirms, a discretionary power, even if conferred in unqualified terms, must be exercised consistently with and to promote the relevant statutory purpose and policies. The pursuit of another purpose or policy is not prohibited providing it does not compromise or thwart that primary legislative purpose and policy. (footnotes omitted)

- b. In assessing the purpose of the FTAA, we have had regard to s 10, Legislation Act 2019, and in particular s 10(1) “The meaning of an enactment must be ascertained from its text and in light of its purpose”, and s 10(3) “The text of the legislation includes the indications provided in the legislation”. Examples of such indications are provided in s 10(4), Legislation Act 2019.
- c. In respect of those matters:
 - i. The purpose of the FTAA³ is “... to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”
 - ii. The indications present in the FTAA include the procedural principles of the Act, in s 10, which includes the requirement that “Every person performing functions and duties and exercising powers under this Act must take all practicable steps to use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions, duties, or powers being performed or exercised.” They also include the requirement in cl 10(1), Schedule 3, for a Panel to “... regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just and timely determination of the approvals sought in a substantive application.”
 - iii. Other indications include the lack of any requirement to publicly

³ s 3 FTAA

notify an application, that a hearing is not required to be held⁴, that no person has a right to be heard by a panel⁵, that decisions must be issued within very tight timeframes⁶, and that there are very limited rights of appeal⁷.

- d. We considered whether we might be assisted by the jurisprudence on “special circumstances” under the notification provisions of the Resource Management Act 1991 (RMA). We decided that we would not be assisted by that jurisprudence to any meaningful extent because:
 - i. The FTAA has a fundamentally different purpose to that of the RMA.
 - ii. Whereas there is a much stronger presumption of public participation under the RMA, the starting presumption under the FTAA is that comments are only received from certain identified parties, there is no right to a hearing, and rights of appeal are limited.
 - iii. A contextual examination of the FTAA illustrates the statutory intention for all decision making to be focussed and timely. This is evident from the directives to the Panel under cl 10, Schedule 3, and by other provisions of the Act.
 - iv. While the RMA jurisprudence on special circumstances has identified public interest as being a relevant factor (although not determinative) in whether special circumstances apply, we do not agree that such a principle should be imported into the FTAA.

⁴ s 56 FTAA

⁵ Ibid

⁶ s 79 FTAA

⁷ s 99 FTAA

Almost by definition, those projects that meet the threshold to be a listed project under the FTAA (or which are subsequently accepted as a referred project) are likely to be the subject of high levels of public interest. It would be difficult for a panel to decide which of those interested parties should be invited to comment and which should not, with the result likely being that comments might ultimately need to be sought from a very large number of parties. This, in turn, will place significant pressure on meeting the statutory deadlines for considering the application and issuing a decision.

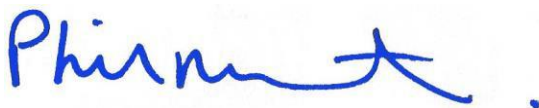
- v. The RMA jurisprudence on special circumstances directs that any assessment of special circumstances needs to be undertaken within the context of relevant adverse effects from the relevant project. That principle reflects the underlying premise of the RMA that those potentially subject to adverse effects from a proposal should be given a chance to participate in a hearing about whether to allow such a proposal. Section 53 of the FTAA is not, however, structured in that way. The list of those from whom comment must be sought is not linked to any degree of adverse effect – rather, the opportunity to comment is because of an entity's status as regulator (eg Auckland Council), identified iwi and tangata whenua entities (eg iwi authorities, Treaty settlement entities, customary rights holders, etc), geographic proximity (eg owners and occupiers of the affected land or adjacent land), Ministers of the Crown (eg Minister for the Environment) and other relevant administering agencies, and specific entities depending on the types of approvals sought (eg New Zealand Fish and Game Council). It would therefore seem contrary to the structure of s 53 if the outcome of any exercise of discretion under s 53(3) was determined by the degree of adverse effect on any entity. (We accept that, in some factual

circumstances the degree of adverse effect might be relevant to the exercise of that discretion, however for the reasons set out below we do not consider it relevant in this case.)

- e. Rather than relying on the RMA jurisprudence, we have exercised our discretion by reference to the following principles:
 - i. The purpose of the FTAA.
 - ii. The statutory requirement that we issue a decision within a very short timeframe.
 - iii. The nature of the proposed development in its factual context (i.e. the development of port facilities within an operating commercial port).
 - iv. Whether the proposed activity involves novel or contentious legal matters or disputed factual matters, beyond that which might be expected as part of regionally or nationally significant project processed under the FTAA.
 - v. Whether the Project would otherwise be prohibited under the relevant legislation.
 - vi. The comprehensiveness and quality of the applicant's technical information and how the applicant has addressed the issue of consultation.
 - vii. Whether the wide range of entities from whom comment must be sought under s 53(2) will ensure that all relevant information is before us to enable us to make a robust decision.
 - viii. Whether there any exceptional factors that would warrant the

exercise of a discretion to invite comment from any further person that go well beyond mere public interest – for example, are there any persons affected to such a significant extent that considerations of natural justice might warrant their comments being sought, or is there an absence of information on certain issues that might be filled through seeking comments from any other person?

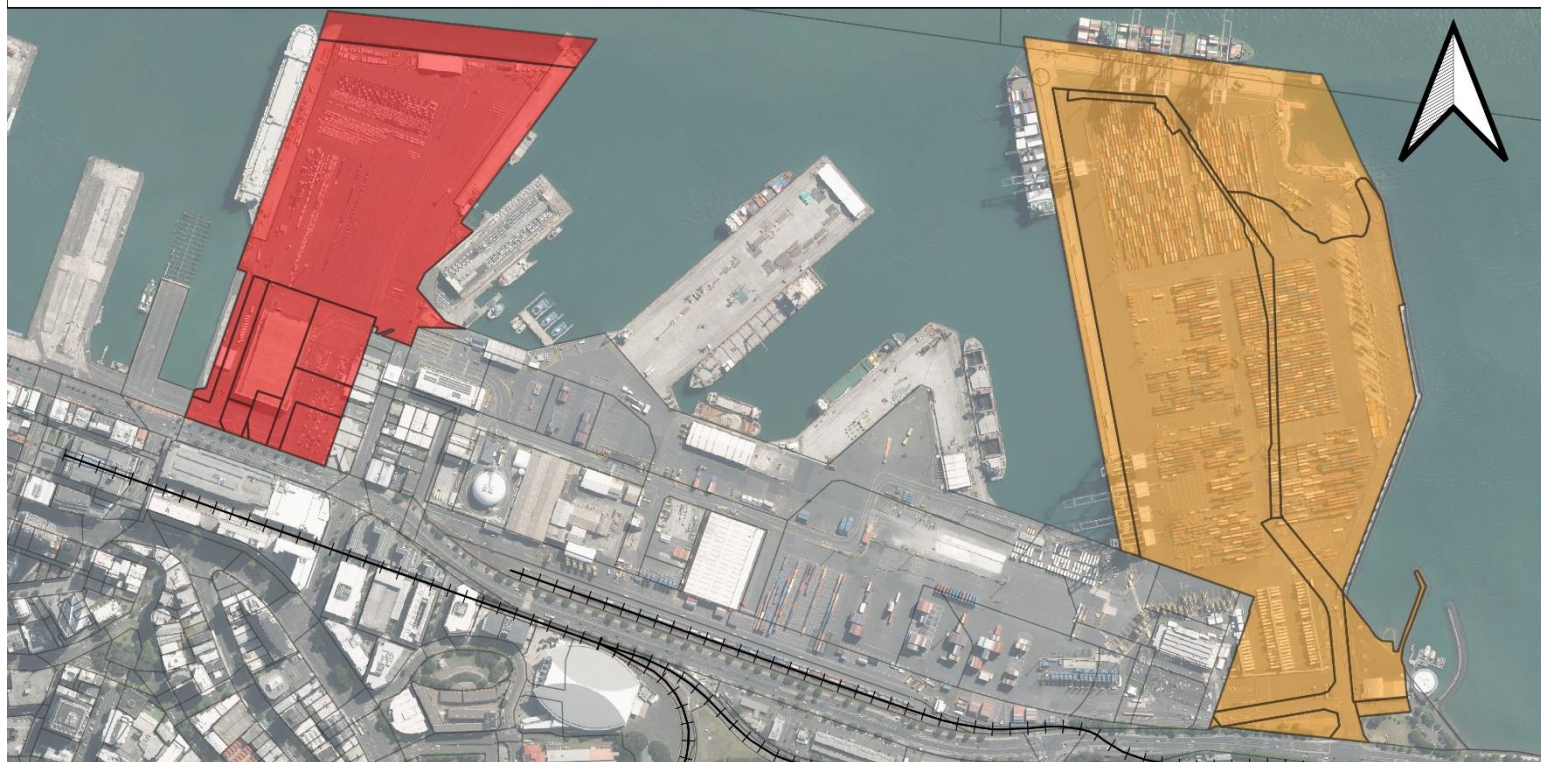
[18] Having regard to those matters in paragraph 17(e) above, the Panel has decided not to exercise its discretion to invite comment from any other entity under s 53(3) of the FTAA. In particular, we find that the application material together with the wide range of entities from whom comment must be invited will ensure that we can make a robust, fully informed decision within the timeframe required by the FTAA. While there may be public interest in the Project, that is not, in this case, sufficient to warrant the exercise of discretion under s 53(3). There is not likely to arise any particularly contentious legal or factual disputes, and the application does not on its face raise any novel legal issues. The works for the Project are not otherwise prohibited under the relevant legislation, and, to the contrary, are the types of activities anticipated within a nationally significant commercial port. We also find that there are no other exceptional factors in respect of this application that would weigh in favour of seeking comment from any other entity.



Phil Mitchell
Chair

For and on behalf of the Expert Panel

Diagram 1 - Bledisloe North Wharf and Fergusson North Berth Extension works



Legend

- [8]a Bledisloe Wharf works
- [8]b Fergusson North Berth Extension works


0 100 200 m


Diagram 2 - Bledisloe North Wharf and Fergusson North Berth Extension adjacent land



Legend

[12] Adjacent land

0 100 200 m