

25 June 2026

Andrew Fawcett
Vineway Limited

By email only: [REDACTED]

Dear Andrew,

DELMORE FAST TRACK REVIEW – RESPONSE TO PANEL RFI

1. The Delmore Expert Panel has issued a request for further information dated 12 June 2026 (“RFI”).
2. You have asked for our comment on questions 1 and 6 of the RFI these insofar as they relate to legal matters. We respond to each question in turn.

RFI Question 1: Nature of Authorisations required under the Water Services Act

3. RFI Question 1 is as follows:

1. What are the nature of the authorisations required for water supply and waste water under the Water Services Act? Should the Panel anticipate (for the purposes of drafting conditions) that authorisations from the Water Services Authority may be required for private wastewater systems in the future?

4. The primary purpose of the Water Services Act 2021 (“WSA”) is to ensure drinking water suppliers (as defined under the WSA) provide safe drinking water to consumers.¹ It sets duties and obligations on all persons and organisations that supply drinking water, provides for regulations to be made, drinking water and design standards to be set, as well as rules which persons subject to the Act must comply with². A number of these regulations, standards and rules have been promulgated pursuant to the WSA.³
5. Any private water supply network at Delmore would be considered a ‘drinking water supply’, and the operator a ‘drinking water supplier’ on the basis water is being supplied to more than

¹ Water Services Act 2021 (“WSA”), s 3.

² See for example Part 2, Subpart 1 ‘Duties of drinking water suppliers’ and subpart 6, Water Services Act which confirms powers to make standards, rules, directions and other instruments.

³ A number of regulations, standards and rules have been promulgated pursuant to the WSA. For example: the Water Services (Fees and Charges) Regulations 2021, Water Services (Levies on Water Services) Regulations 2025, Water Services (Wastewater Environmental Performance Standards) Regulations 2025, Water Services (Drinking Water Standards for New Zealand) Regulations 2022, Drinking Water Quality Assurance Rules 2022 (Revised 2024), Aesthetic Values for Drinking Water Notice 2022, Water Services (Mixed use Rural) Drinking Water Acceptable Solution 2025, Water Services (Self supplied Buildings) Drinking Water Acceptable Solution 2025 and Water Services (Small to Medium Networks) Drinking Water Acceptable Solution 2025, Environmental Performance Measures Record-Keeping Requirements for Drinking Water and Wastewater Network Operators Notice 2025.

25 consumers.⁴ Authorisations are not required *per se* under the WSA for such activities and organisations, but the utility company which will operate the private water supply⁵ will be required to:

- (a) Register a drinking water supply;⁶ and
 - (b) Comply with duties and obligations under the WSA as well as the relevant standards and rules.⁷
 - (c) These requirements are already reflected in the proposed conditions for Delmore.⁸
6. The WSA does contain (more limited) provisions relating to wastewater networks.⁹ Wastewater networks are defined in the WSA as networks operated by councils (or their subsidiaries), government departments and the New Zealand Defence Force.¹⁰ Privately owned wastewater treatment networks are not treated as wastewater networks under the WSA, however. So, while wastewater standards for discharges from wastewater treatment plants have been promulgated pursuant to the WSA¹¹, these apply only to public networks and not to privately owned treatment networks.¹²
7. On that basis, the Panel should not anticipate that authorisations will be required from the national water services regulator, Taumata Arowai, in relation to private wastewater networks in the future. Rather, as it stands, any private on-site wastewater treatment system:
- (a) Must meet the performance requirements for construction and operation of the Building Code.¹³

⁴ WSA, ss 8 - 10.

⁵ LUC Condition 31.

⁶ WSA, s 23. Also see s 54, WSA which sets out the requirements for an application to register a drinking water supply.

⁷ Duties of drinking water suppliers are set out at ss 21 – 29 WSA. Obligations include *inter alia* a requirement to have a drinking water safety plan (s 30), to keep records (s 37), to provide information to consumers and have a complaints process (s 38) and to monitor source water quality (s 44). The relevant standards and rules include those set out in fn 3 above, such as Drinking Water Standards for New Zealand 2022 and the Drinking Water Quality Assurance Rules 2022.

⁸ LUC Condition 66 requires that all water supplied for human consumption complies with the Water Services Act 2021, Drinking Water Standards for New Zealand, and the Drinking Water Quality Assurance Rules; and LUC Condition 31 requires the constitution of the utility company (who would operate the water treatment plant) to ensure the same.

⁹ For example, the power to: make National Engineering Design Standards in relation to wastewater (s 97A) which can include national codes of practice (s97I); set wastewater environmental performance standards (s 138); specify requirements for risk wastewater network risk management plans (s 139); regulate infrastructure design solutions which specify technical performance standards, treatment processes, design requirements and operating requirements for wastewater infrastructure (s 139C). Regulations can require operators of wastewater networks to be authorised (s 68).

¹⁰ See section 2 WSA definitions of “wastewater network” and “wastewater network operator”.

¹¹ The standards (see fn 12 below), which are regulations promulgated under the Water Services Act 2021, include requirements, limits, conditions or prohibitions on activities associated with wastewater networks.

¹² Water Services (Wastewater Environmental Performance Standards) Regulations 2025, reg 40 confirms Part 3 (discharge from Wastewater Treatment plants into water only applies to publicly owned networks) and reg 86 confirms Part 4 (Discharge from wastewater treatment plants to land) only applies to publicly owned WTPs part of the publicly owned wastewater network. **NB:** the regulations also include standards that set out national consenting pathways for applying biosolids to land (Part 1) and requirements relating to overflows and bypasses which will take effect from December 2028 (Part 2).

¹³ Installation of sanitary plumbing and drainage systems in New Zealand must be in accordance with NZ Building Code clause G13 *Foul water*. If the system is designed to AS/NZS 1547:2012 *On-site domestic-wastewater management*, it is understood the requirements of the Code will be met.

- (b) Would need resource consent and to comply with any conditions imposed on that resource consent (e.g.: relating to the quality of the discharges to land).
 - (c) Would need to comply with any relevant council engineering standards (e.g.: in the event of vesting / connection to the public network).
8. Even if authorisations for private wastewater were required, they would arise under the WSA as part of a separate regulatory regime, in the same way that building consent and Building Code requirements are regulated independently from the RMA. As these matters are governed by separate legislation, we do not consider it appropriate or necessary for the RMA approvals to include conditions addressing potential future authorisations or approvals under the WSA that relate to a future resource consents.

RFI Question 6: Stage 2 Wastewater

9. The Panel has also asked:

6. While the Panel acknowledges that the disposal of Stage 2 wastewater is excluded from the current consent applications, the Panel must be satisfied that feasible disposal options could reasonably be approved prior to the issue of any section 224(c) certificate within Stage 2 (as per proposed Subdivision Condition 40):

a. How does the Applicant anticipate the Stage 2 wastewater system operating in the potential absence of a public network connection and with what potential adverse impacts?

b. To what extent does the proposed condition precedent requiring confirmation prior to the issue of s.224(c) certificates for Stage 2 meet the test of s.84A(1)?

10. We comment on three legal issues arising from that question, namely;
- (a) Issue 1 – The extent to which the Panel must be satisfied that feasible disposal options could reasonably be approved prior to the issue of any section 224(c) certificate within Stage 2 (Question 6 chapeau);
 - (b) Issue 2 - The extent to which the Panel should consider any adverse impacts potentially arising from a future Stage 2 connection (Question 6(a)); and
 - (c) Issue 3 - The extent to which proposed condition 40 meets the test of section 84A(1) FTAA (Question 6(b)).

Issues 1 - Feasible disposable options

11. We first comment on the chapeau of Question 6, which records that “the Panel must be satisfied that feasible disposal options could reasonably be approved”.
12. We address our understanding of the requirements of section 84A FTAA under Issue 3 below. Putting that to one side, we have considered:
- (a) First, whether there are feasible or non-fanciful methods for treating and disposing of wastewater that the consent holder could adopt for Stage 2 in this case. This requires consideration of whether something is capable of being achieved, rather than whether it is likely to be achieved. In that regard:

- (i) Confirmation has been provided by Apex that it is feasible to upsize the WWTP to accommodate Stage 2.¹⁴
- (ii) Several options exist for disposal of Stage 2 flows, being disposal to land off-site and disposal to land on-site. In respect of off-site disposal, Vidris Limited has confirmed that high level investigations of potential land disposal options within reasonable proximity to the Site have been undertaken, and that such investigations indicate that disposal is achievable on a number of nearby sites, subject to detailed design and assessment.¹⁵ With respect to disposal to land onsite, the information provided by APEX and Terra Studios demonstrates that treated wastewater for all or part of stage 2 could be discharged to land within the Stage 2 area. If on-site disposal was ultimately only able to accommodate part of Delmore stage 2, this could be paired with off-site disposal.¹⁶
- (iii) Onsite wastewater treatment is not novel. These are methods that have commonly been used around New Zealand¹⁷ and a consenting pathway exists for this to be approved.

As such, we consider that there are feasible and non-fanciful methods for treating and disposing of wastewater that the consent holder could adopt in this case.

- (b) Secondly, whether the effects that potentially arise from such methods well recognised and are there accepted methodologies for addressing them. The answer to this is yes.
 - (i) We note that Auckland Council has established engineering standards for wastewater networks, transmission and treatment plants. We also understand that standard consent conditions are typically imposed on on-site wastewater treatment and disposal systems (similar to those proposed by the Applicant for Stage 1).
 - (ii) Together with the non-RMA standards for on-site wastewater systems discussed above, these frameworks demonstrate that the associated effects are well understood and can be appropriately managed.
- (c) Thirdly, whether a proposal of this type commonly able to be consented. The answer to this is also yes. The examples set out above, along with the existence of engineering standards and standard consent conditions, indicate that the consenting of such systems is not novel or unique.
- (d) Finally, is there any reason why consent would not be granted for such a scheme in this case. The answer to this is *no*. As discussed above:
 - (i) The solution is feasible from a practical and engineering perspective. The solution is orthodox and there is nothing unique about the site which suggests

¹⁴ [Response to Comments Appendix 1 – Attachment 1 Infrastructure Legal Memorandum](#) (“**Ellis Gould Advice**”), FN 16.

¹⁵ Letter from Viridris Limited dated 24 June 2026. RFI Covering Memorandum Attachment 6.

¹⁶ Letter from APEX, RFI Covering Memorandum Attachment 4; Letter from Terra Studio, RFI Covering Memorandum Attachment 5.

¹⁷ For example, Karaka North Village; Jacks Point, Queenstown; Cardrona Valley Wastewater (private infrastructure subsequently vested in Council); Millbrook Resort; and Pegasus Town, North Canterbury (private infrastructure subsequently vested in Council).

it is not feasible there. Furthermore, and as outlined above, the relevant experts have confirmed or demonstrated that various feasible options exist; and

- (ii) Approval is a realistic prospect given there is a consenting pathway and it is not a novel proposition.

Issue 2 - Adverse impacts arising from a future Stage 2 connection

13. The Panel's question seeks detail on how Vineway anticipates the Stage 2 wastewater system operating in the potential absence of a public network connection and with what potential adverse impacts.
14. We leave others to comment on the mechanics of the operation of a private connection, and focus on the latter part of the Panel's question which seeks an indication of potential adverse impacts.
15. For the reasons discussed above, the adverse effects that can potentially be generated by on-site wastewater treatment and disposal are well recognised and are the in the case of the Auckland region listed and addressed in regulations and Unitary Plan provisions (demonstrated by assessment of the stage 1 wastewater proposal):
 - (a) Such potential effects include surface and ground water contamination; effects on terrestrial vegetation of disposal to vegetated area; odour and air quality; storage of hazardous substances (public health); and geotechnical engineering.
 - (b) The methodologies for avoiding or mitigating such effects are also identified in the regulations and imposed through common conditions of consent. We understand that the conditions proposed for Stage 1 generally reflect the Auckland Council standard conditions for such matters.
 - (c) There is, in that context, nothing radical about seeking approvals to dispose of highly treated wastewater to land, with associated potentially adverse effects being addressed through design and conditions of consent.
16. In any event, it is not necessary for the Panel to carry out an assessment of whether and to what extent such effects might arise in the context of future resource consent applications, and how they might be mitigated:
 - (a) This is consistent with the orthodox approach under the RMA.¹⁸ There is nothing in the FTAA to suggest a departure from that approach, particularly where doing so would impose a more restrictive assessment threshold that sits uneasily with the intent of the FTAA to prioritise speed and facilitate delivery.¹⁹
 - (b) For the reasons set out under Issue 3 below, we do not consider that the Panel's enquiry as to feasibility under section 84A FTAA requires it to go this far (i.e.: to have detail and certainty about how capacity will be provided for in practice). Nor does it require the Panel to assess or take into account potential future adverse impacts associated with future consents which may never be sought.

¹⁸ See for example *Man O'War Station Ltd v Auckland Regional Council* [2011] NZRMA 235 at [95] where the Court accepted that decision makers should not take into account the effects of resource consents that might in future be made in their s104 analysis. See also *Living Earth Ltd v Auckland Regional Council* [2006] ELHNZ 403 at [170] - [172].

¹⁹ As discussed in the earlier Ellis Gould Advice at para 10 and 11.

- (c) In our opinion, it is more than enough for the Panel to identify that non-fanciful mechanisms exist through which the consent holder could address wastewater treatment and disposal for Stage 2 in the future and that there is no reason (e.g.: related to topography, geography or ecology) why such mechanisms would be precluded in this case.

Issue 3 - Compliance with requirements of section 84A(1) FTAA

17. Paragraph 6(b) of the RFI queries the extent to which “the proposed condition precedent requiring confirmation prior to the issue of s.224(c) certificates for Stage 2 meets the test of s.84A(1)”.
18. Section 84A FTAA enables a panel to impose conditions of consent that “ensure” that infrastructure “can or will” be made adequate.
19. For context, we summarise our earlier advice that:
 - (a) This wording envisages circumstances where the applicant identifies that there are non-fanciful and feasible methods through which infrastructure can be implemented to enable the project or relevant stage to occur.²⁰ Wording from other FTAA decisions refers to upgrades being “realistically capable of being delivered” and the Panel being certain or satisfied that there is a “credible infrastructure solution available”.²¹
 - (b) The documentation in support of the FTAA Amendment Act makes clear that the policy intent of section 84A was to enable agreement to be negotiated post approval.²² That is, the statutory scheme expressly contemplates conditions that regulate the timing or staging of development until the relevant infrastructure becomes available.²³ There was explicit recognition that projects may be approved in situations where infrastructure agreements are subsequently unable to be successfully negotiated.²⁴ This suggests that the Panel's enquiry into the likelihood of future approvals or agreements is necessarily limited, except in circumstances where there is no realistic prospect of the relevant infrastructure arrangements being secured such that adequacy could never be achieved (e.g.: where the required infrastructure would depend on a prohibited activity consent being obtained).
 - (c) The Panel does not need to have certainty about how capacity will occur or be provided in practice.
20. The relevant condition sits within the subdivision conditions and reads:

40. Prior to the issue of any section 224(c) certificate within Stage 2 of the development, the Consent Holder must provide evidence that suitable provision has been made for the disposal of wastewater, or a connection can be provided to the public wastewater network in accordance with Condition 12 (general conditions).
21. That is, wastewater servicing of the site must be confirmed prior to the issue of section 224(c) certificates within Stage 2. This may be by way of a connection to the public network, or by

²⁰ Ellis Gould Advice, Paragraph 7.

²¹ Ellis Gould Advice, Paragraph 7.

²² Ellis Gould Advice, Paragraph 13(b) and (c).

²³ Ellis Gould Advice, Paragraph 13(c).

²⁴ Ellis Gould Advice, Paragraph 12(b).

providing evidence that suitable provision has been made for wastewater disposal (e.g.: through subsequent approvals for self-contained (onsite) wastewater infrastructure).

22. For clarity it is our view that the Panel does not need to be satisfied that *both* options are feasible – one would be sufficient. We also do not consider that the Panel needs to be certain that either option will be approved, for the reasons outlined at paragraphs 19(b) and 23(b).
23. Having said that, the evidence demonstrates that both options are feasible and neither is fanciful:
 - (a) With respect to the first option (connection to the public network), the issue is *when*, not *if*, connections to the public network would occur.²⁵ That reflects the FUZ zoning of the land, as a result of which the Panel can have confidence that the land will ultimately be urbanised even if the fast track consent had not been sought. With that urbanisation comes an expectation that connections will be approved, and the remaining question relates to when that might occur. Our earlier advice outlines the evolving political and legislative context which may necessitate Watercare’s position on timing to be revisited (e.g.: connections brought forward), particularly over the timeframe over which the development is to be staged and delivered.²⁶
 - (b) In our view, the Panel’s enquiry need not extend to whether agreement with Watercare is likely to be reached. That approach is consistent with the *Sunfield*²⁷ decision, where the Panel did not assess the likelihood of agreement being reached. Rather it satisfied itself that the infrastructure solution itself was feasible (i.e.: that there was sufficient capacity in the network and that feasible options existed to make the connections when required). Its conclusion that agreement could (but not would) be reached reflected its finding that Watercare’s position was a policy one which could change. [**NB:** Although the *Sunfield* decision has been appealed by Auckland Council, that appeal does not challenge the application of or reliance on section 84A FTAA. Rather it challenges the findings of the Panel that (lack of) infrastructure capacity was a developer’s risk rather than an effect on the environment or consenting issue to be taken into account in determining the application.]
 - (c) We have addressed the second option (future onsite approvals) above at paragraph 12.
24. In summary, with reference to section 84A FTAA:
 - (a) While the infrastructure may not yet be adequate to support the Application, for the reasons outlined above, it is capable of being made so (“*can be made*”); and
 - (b) The condition “*ensure[s]*” that the necessary infrastructure will be in place by preventing the issue of section 224(c) certificates for Stage 2 in the absence of evidence that one of the options has been adopted.

²⁵ Watercare’s primary opposition is based on timing issues. In that regard it differs from the *Sunfield* proposal where Watercare’s policy position that it would not service the land because it was outside of the FUZ (rather than not servicing the land now).

²⁶ Ellis Gould Advice, Paragraphs 21 - 22.

²⁷ *Sunfield* Expert Panel Decision dated 10 March 2026. See paragraph [144] where the Panel noted it had “*confidence that there is likely to be sufficient capacity in the bulk supply network to service the full site and that there are feasible options available for making the necessary connections to the water mains when required*”, paragraph [825] where it acknowledged the risk that Watercare may not agree to provide a connection and [833] where it noted the possibility of infrastructure (capacity) being made available either under the existing policy or in the event Watercare’s policy position changed.

25. On that basis, we consider that the proposed condition precedent requiring confirmation prior to the issue of s.224(c) certificates for Stage 2 meet the test of section 84A(1) FTAA.

Yours faithfully

ELLIS GOULD

A handwritten signature in blue ink, consisting of a large loop followed by a series of smaller, connected loops and a trailing line.

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