

Before the Expert Consenting Panel

In the matter of an application for approvals under section 42 of of the
Fast-track Approvals Act 2024 (“Act” or “FTAA”)

and

In the matter of Ashbourne

FTAA-2507-1087, a referred project under section 21 of
the FTAA

**MEMORANDUM OF COUNSEL ON BEHALF OF MATAMATA DEVELOPMENT
LIMITED**

18 March 2026



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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Matamata Development Limited (**MDL**), in relation to Minute 25 of the Expert Consenting Panel (**Panel**) and the subsequent memorandum of counsel filed on behalf of the Matamata-Piako District Council (**MPDC**) and Waikato Regional Council (**WRC**).

Request to suspend the processing of the application

2. As the Panel will be aware, MDL is required to provide its response to the draft decision under section 69(2)(b), and its comments on the conditions of consent proposed under section 70(1), by 5pm today.¹
3. Given that the Panel is still considering whether expert conferencing on highly productive land (**HPL**) issues is appropriate and the scope of any expert conferencing, and to make best use of the remaining working days available to the Panel before issuing a decision,² the Applicant requests that processing of the substantive application is suspended until 5pm on 23 March 2026.
4. Naturally, if the Panel grants the suspension, MDL agrees:
 - (a) the Panel can continue to incur costs in relation to the application while the application is suspended; and
 - (b) if expert conferencing is directed, MPDC and WRC can continue to incur costs in relation to expert conferencing.
5. If the suspension is granted, MDL will provide its response to the draft decision under section 69(2)(b), and comments on the conditions of consent proposed under section 70(1), by 5pm on 23 March 2026. The

1 Minute 23 at [5] and [8].

2 Refer to Minute 25.

other parties making comments under section 70(1) will also have until 5pm on 23 March 2026 to provide their comments.

Proposed expert conferencing

6. In their memorandum of 18 March 2026, MPDC and WRC suggest that expert conferencing is not appropriate by reference to paragraph 15.1 of guidance issued by the panel convenors (**Guidance**). That paragraph states:

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

7. With respect, and noting that “formal deliberations” is not a term that is defined in the Guidance, MDL does not consider that it is appropriate to treat the issue of a draft decision as the commencement of the Panel’s “formal deliberations”. This is because:

- (a) interpreting the Guidance in the way proposed by MPDC and WRC would be inconsistent with section 67 of the Act;
- (b) the draft decision and conditions reflect the Panel’s preliminary views on the application. Consistent with the decision-making process under the Act being an iterative one, the ability to provide comments or make amendments to the application under sections 69 and 70, illustrate that the Act intends for the parties to be able to provide input on the Panel’s proposed approach before any final decision is prepared. Accordingly, the Panel must remain open to amending or refining its preliminary findings, as expressed in the draft decision, where it has received further feedback, information or evidence; and
- (c) if the Panel’s deliberations were to invariably commence when a draft decision is being developed, that would preclude a panel from ever having the benefit of conferencing as a result of issues emerging during that draft decision preparation. Formal deliberations should be considered to commence when a decision

has been made to gather no further information that may assist the making of a final decision.

8. In any event, the Guidance is not binding on the Panel. As the Guidance explains, it is intended merely to “offer guidance on a range of matters that are expressed in terms of recommendation or encouragement”.³
9. MDL therefore continues to consider that expert conferencing regarding the HPL issues is appropriate, and therefore repeats the request in paragraph 9 of its memorandum of counsel dated 16 March 2026.
10. In terms of the request in paragraph 7 of Minute 25 that MPDC and WRC comment on “the parameters of the discussion, bearing in mind the restraints in section 69(2)”, MDL considers that expert conferencing on HPL issues should involve discussion as to whether:
 - (a) the HPL that would be occupied by the proposed retirement village and residential development is subject to long-term constraints, extant and nature of those constraints, on the basis of the proposal proceeding in-part in accordance with the draft decision;
 - (b) what (if any) are the predicted adverse impacts of the loss of productive capacity of HPL if the proposal proceeds in full, including as compared to if the proposal was to proceed in-part in accordance with the draft decision; and
 - (c) the appropriate methodology to be applied when completing a suitable economic viability assessment for the purposes of clause 3.10 of the National Policy Statement for Highly Productive Land 2022 that considers real world, reasonably practicable

3 *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance* <https://www.fasttrack.govt.nz/__data/assets/pdf_file/0022/8680/Panel-conveners-practice-and-procedure-guidance.pdf> at [1.2].

options for the HPL proposed to be occupied by the retirement village and residential development.

DATED at Auckland this 18th day of March 2026



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