Response to Joint Witness Statement on Conditions

Ashbourne Project [FTAA-2507-1087]

Submitted under Section 70 of the Fast-track Approvals Act 2024

In response to the Joint Witness Statement: Planning – Conditions dated 1 & 2 April 2026

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Introduction

This submission is made in response to the Joint Witness Statement: Planning – Conditions ("JWS") dated 1 and 2 April 2026, which records the outcomes of expert conferencing on the draft conditions for the Ashbourne project. We have reviewed the JWS in full, including Appendices 1–4, and wish to draw the Panel's attention to four overarching concerns that, in our respectful submission, are material to the Panel's final decision on conditions.

These concerns are:

- The integrity of the JWS process itself, where a key expert was absent from substantive discussions and critical topics were left unaddressed due to time constraints.
- The frequency and breadth of expert disagreement, which demonstrates that the conditions remain far from settled and that fundamental questions about the form, content, and enforceability of conditions continue to divide the parties.
- The continuing lack of clarity in the proposed conditions as they affect neighbouring property owners and future residents.
- The cumulative effect of these unresolved matters, which transfers long-term infrastructure liability, performance risk, and exposure to adverse effects from the applicant to councils, ratepayers, neighbouring landowners, and future homeowners — parties who have had no meaningful role in shaping the conditions that will govern their interests.

The Panel's statutory responsibility in setting conditions. In setting conditions for a project of this scale, the Panel must ensure that those conditions provide reasonable certainty that the development can proceed without creating material adverse effects or transferring unresolved risks to councils, neighbouring landowners, or future residents. Section 83 of the FTAA requires conditions to be clear and enforceable and to be for a purpose connected to the management of effects. Section 84 empowers the Panel to impose conditions to avoid, remedy, or mitigate adverse effects, and section 84A confirms that the Panel may set conditions to ensure that infrastructure is, or can be made, adequate to support the project. Where the expert conferencing process itself has been unable to produce agreement on conditions — as this JWS demonstrates across multiple topics — the Panel bears the obligation of resolving those matters in a way that manages effects on the environment and the interests of affected parties, not merely the commercial interests of the applicant.

The Integrity of the Joint Witness Statement Process

Absent expert participation in substantive discussions

A joint witness statement derives its authority from the fact that the relevant experts have engaged directly with one another, tested their respective positions, and recorded the areas where they agree and disagree. The JWS before the Panel does not meet this standard on several critical topics.

The WRC's expert (Sheryl Roa) did not participate in discussions on consent notices at all. Paragraph 15 of the JWS records that "SR did not participate in discussions on consent notices" and that "all experts" in that section refers only to the remaining five witnesses. Consent notices are the primary mechanism by which ongoing obligations — including stormwater device maintenance, buffer planting, building restrictions, and reverse sensitivity protections — are attached to individual titles and enforced against future lot owners. The WRC has direct statutory responsibility for monitoring and enforcing compliance with regional consent conditions, including stormwater and groundwater conditions. Its absence from the discussion on how those obligations are secured on titles is a material gap. The Panel cannot have confidence that the agreed positions on consent notices adequately reflect the regional council's requirements.

No stormwater experts were present for the stormwater condition discussions. In Appendix 3, in relation to the stormwater conditions proposed by MPDC and supported by WRC, the applicant's experts (FM and SW) explicitly record that they "seek that the Panel uphold the stormwater/groundwater JWS that was agreed with experts" and note that "no experts on stormwater were present for the conferencing on this condition." This is a remarkable concession. The stormwater conditions are among the most consequential in the entire consent framework — governing the design, construction, and long-term performance of the system that manages flood risk, groundwater interaction, and water quality for the entire residential development. These conditions were discussed and debated between planning witnesses, not the stormwater engineers and hydrogeologists who designed the system, assessed its feasibility, and identified its risks. The positions recorded in the JWS on stormwater conditions therefore reflect the planners' interpretation of what their technical colleagues have previously agreed, not a direct engagement between the technical experts themselves.

The Ecological Restoration Management Plan was not discussed at all. Paragraph 32 records that "there was insufficient time for the experts to discuss this matter" and that ST requested experts provide comments outside the conferencing process. The ecological conditions govern the management of terrestrial ecology, indigenous biodiversity, and the greenway — matters that the Department of Conservation specifically commented on and sought amendments to. The Panel is being asked to finalise conditions on ecological restoration without the benefit of any conferenced expert agreement.

Taken together, these gaps mean that the JWS, while presented as a comprehensive record of expert conferencing on conditions, is incomplete on three of the most significant topics: stormwater system design, consent notice mechanisms, and ecological restoration. The Panel should be cautious about treating positions recorded in the JWS as settled where the relevant specialist experts were either absent or ran out of time.

The Frequency and Breadth of Expert Disagreement

The JWS records disagreement between the experts on a striking number of substantive conditions. While some disagreement is expected in any conferencing process, the pattern here is notable: the applicant's experts (FM and SW) consistently resist conditions that would impose verification requirements, hold points, or accountability mechanisms, while the council experts and the Panel's appointed expert support them. The following are illustrative:

Condition precedent ("hold") conditions (paragraphs 19–23). MPDC, WRC, and ST consider that conditions requiring the fault hazard study (Condition 24), baseline groundwater and stormwater work, and the Private Developer Agreement to be completed before development commences are necessary condition precedents — hard gates that must be passed before earthworks begin. FM and SW accept these as condition requirements but explicitly oppose making them conditions precedent. They argue the applicant should be able to pursue preparatory work "at its own risk" while the PDA is still being negotiated. This disagreement is fundamental. A condition precedent ensures that development cannot commence until a specified matter is resolved. A condition requirement without precedent status allows development to proceed in parallel, creating pressure to finalise terms under time constraints. MPDC's position — that the PDA should be a condition precedent, consistent with the applicant's own earlier position in its January 2026 memorandum of counsel — is the appropriate safeguard for ratepayers who will ultimately bear the infrastructure cost if the PDA terms are inadequate.

Management plan sequencing (paragraphs 25–26). MPDC and WRC consider it would be helpful for the consent holder to provide an anticipated timing schedule for lodging all management plans, to assist councils in managing their resourcing. FM and SW oppose this, stating it is "difficult to predict." This disagreement is telling. The councils will be required to review, assess, and certify dozens of complex management plans across multiple stages. Without advance notice of when plans will be submitted, council staff cannot plan their workload, allocate specialist reviewers, or ensure that plans receive adequate scrutiny within the certification timeframe. The practical consequence of the applicant's position is that councils will be placed under reactive pressure, increasing the risk that plans are certified without thorough review.

Stormwater conditions (Appendix 3). MPDC proposed, and WRC supported, a specific new stormwater condition. FM and SW oppose it on the basis that the earlier stormwater JWS (December 2025) should govern, and note that no stormwater experts were present to discuss this condition. The parties are therefore in disagreement on a stormwater condition that neither side's stormwater experts have jointly examined in the context of this conferencing. The Panel is left to resolve this without the benefit of a conferenced technical consensus.

Lot sizes at zone interfaces (Condition 15 / Appendix 3). FM and SW argue that lots along the development's internal western boundary (adjoining the applicant's own solar farm land) should be exempt from the 1,500m² minimum lot size, setbacks, and landscaping conditions. MR opposes this, noting the need to preserve the integrity of the underlying zone at the interface and to provide an enduring buffer against the rural zone. This is not a minor drafting point — it goes directly to the character and amenity of the development's western edge and the adequacy of reverse sensitivity mitigation.

Building height on southern boundary lots (Condition 119 / Appendix 3). The draft conditions limit dwellings on lots adjoining the southern boundary to 6m / single storey. FM and SW oppose this restriction and seek a 10m height limit (equivalent to the rural-residential zone). MR and NS support the existing 8m + 1m rule. This disagreement directly affects neighbouring rural properties to the south, whose owners submitted comments opposing the development and would face materially different amenity outcomes depending on which height limit is imposed.

Decommissioning bond for solar farms (Condition 166 / Appendix 3–4). MR and NS consider a decommissioning bond is necessary and have proposed detailed bond conditions (Appendix 4). FM and SW oppose any bond, arguing it would be "too onerous" and that solar farms are a permitted activity baseline in the district plan. The disagreement is about who bears the financial risk of decommissioning: if no bond is imposed and the operator becomes insolvent before decommissioning, the cost of removing 50,000 solar panels and remediating the site falls on the landowner or, ultimately, ratepayers.

Buffer planting width (Condition 119 / Appendix 3). MR and NS support the 4m buffer width recommended by the Panel's urban design expert (Ian Munro) and included in the draft conditions. FM and SW seek to reduce this to 3m based on their landscape consultant's opinion, while acknowledging they are "unclear on the expert landscape advice that has been provided to the Panel and/or from MPDC experts." The Panel originally specified 4m for a reason. The applicant's attempt to reduce it by 25% should be viewed in the context of its commercial interest in maximising usable lot area, not as a technical improvement.

Road connections to the southern boundary (Condition 77(l) / Appendix 3). FM and SW oppose extending Roads 10 and 17 to the southern site boundary, arguing that MPDC's own strict approach to protecting highly productive land should preclude requiring road connections to the farmland to the south. MR considers connectivity is important for the future. This disagreement has direct implications for Highgrove and the surrounding rural-residential area — if future road connections are formed southward, the traffic and amenity effects on existing properties will be materially different from what the current application contemplates.

The cumulative picture is one of an applicant whose experts systematically resist conditions that would impose verification obligations, financial assurance, or constraints on development flexibility. In each case, the effect of the applicant's preferred position is to reduce the developer's

obligations and transfer long-term performance risk to councils, future residents, or neighbouring property owners.

Continuing Lack of Clarity for Affected Parties

For neighbouring property owners, the JWS should provide greater certainty about what the conditions will actually require. Instead, it introduces further complexity and ambiguity.

Consent notices remain unresolved. ST (the Panel's expert) and the other experts disagree on whether a single overarching consent notice or multiple topic-specific notices is appropriate (paragraphs 16–17). For affected parties, this matters because consent notices are the legal instruments that bind future lot owners. The form, content, and enforceability of these notices determines whether obligations such as buffer planting maintenance, stormwater device upkeep, building height limits, and reverse sensitivity protections will actually be complied with over time. The JWS records the disagreement but does not resolve it — leaving affected parties uncertain about the enforceability of the protections they were promised.

The stormwater conditions are contested between planners, not engineers. Affected parties — particularly those downstream of the development and those with high groundwater on their own properties — need to understand what the stormwater system will do and how it will be verified. The JWS records a disagreement between MPDC/WRC and the applicant on the stormwater conditions, but the dispute was conducted by planning experts, not the stormwater and hydrogeological specialists who understand the system's technical parameters. Affected parties have no way of assessing whether the contested conditions are adequate because the technical experts were not in the room.

Development controls remain in flux. Building heights, setbacks, lot sizes, buffer widths, garage positioning, fencing, on-site manoeuvring, and JOAL lighting standards are all subjects of disagreement in Appendix 3. These controls define the built character of the development — the things that neighbouring property owners will see, hear, and live alongside for decades. The fact that these matters are still being negotiated between the applicant and councils at this stage of the process, after more than six months of expert engagement, indicates that the conditions are not close to being settled. Affected parties are being asked to accept outcomes that have not yet been determined.

The Private Developer Agreement is still unsigned. The PDA governs how the infrastructure costs of the development are shared between the developer and MPDC (and therefore ratepayers). The experts disagree on whether the PDA should be a condition precedent. For affected parties, the absence of a signed PDA means there is no certainty about how wastewater upgrades, roading improvements, and stormwater infrastructure will be funded, or what happens if the developer defaults on its obligations. If the PDA is not finalised before consent is granted, the risk of cost overruns or developer default transfers directly to ratepayers.

Ecological conditions were not discussed. The JWS records that there was insufficient time to address the Ecological Restoration Management Plan. For affected parties who value the ecological integrity of the Waitoa River corridor and the greenway — and for the Department of Conservation, which specifically sought condition amendments — this is a significant gap. The Panel is being asked to finalise ecological conditions without the benefit of expert conferencing.

The Cumulative Effect: Risk Transfer and Potential Liability

The JWS, read as a whole, reveals a consistent pattern: where a condition would require the applicant to demonstrate performance before proceeding, to provide financial assurance, or to accept a constraint on development flexibility, the applicant's experts oppose it. Where a condition would defer verification to a post-consent management plan, limit council oversight, or preserve the applicant's discretion, the applicant's experts support it. The effect of this pattern, if the applicant's preferred positions are adopted, is to transfer the long-term infrastructure liability, performance risk, and adverse-effect exposure from the developer to three groups of parties who have had no seat at the conferencing table:

Matamata-Piako District Council and its ratepayers. If the PDA is not a condition precedent, if no decommissioning bond is required for the solar farms, if management plan timing is not

scheduled in advance, and if deemed certification is not excluded for the most complex plans, MPDC will inherit infrastructure and obligations whose terms were set by the developer's consultants and certified under time pressure. The long-term cost of maintaining, remediating, or replacing that infrastructure — stormwater systems, subsoil drains, roading, reserves, and eventually decommissioned solar farms — will be borne by the district's ratepayers, the overwhelming majority of whom opposed this development.

Waikato Regional Council. WRC's expert was absent from the consent notice discussions. The stormwater conditions were debated without stormwater engineers present. WRC has statutory responsibility for monitoring and enforcing regional consent conditions, including stormwater discharge, groundwater effects, and water quality. If conditions are set that are unclear, unenforceable, or technically inadequate, WRC bears the regulatory burden of managing the consequences — including responding to complaints from downstream landowners, investigating flooding events, and enforcing remedial action against a developer who may by then have exited the project.

Neighbouring property owners and future Ashbourne residents. These are the parties who will live with the consequences of conditions that are currently uncertain: uncertain buffer widths (3m or 4m?), uncertain height limits (6m, 8m, or 10m?), uncertain stormwater performance (soakage or piped?), uncertain ecological outcomes (conditions not yet discussed), and uncertain financial backstops (bonds or no bonds?). They have had no direct participation in the expert conferencing, no opportunity to test the applicant's positions, and no mechanism to hold the developer accountable once titles are issued and the developer exits.

In the event that the conditions as adopted prove inadequate — if stormwater systems fail, if groundwater mounding affects neighbouring properties, if buffer planting is not maintained, if solar farms are not decommissioned, or if wastewater infrastructure is not funded — the parties who bear the consequences will look to those who authorised the development and set its conditions. MDL as the applicant and consent holder, WRC as the regional consent authority, and MPDC as the territorial authority each carry potential liability for the foreseeable adverse effects of a development consented on conditions that the expert conferencing process itself has been unable to resolve.

We do not raise this point to be adversarial. We raise it because the JWS demonstrates, in the experts' own words, that the conditions are not agreed. Where conditions that manage significant environmental effects remain in dispute between the applicant and the regulatory authorities at this late stage of the process, the Panel has both the authority and the obligation to err on the side of protecting the environment, the community, and the public interest — not the commercial flexibility of the developer.

Specific Requests Arising from the JWS

In light of the above, we respectfully request the Panel to:

- Treat the JWS with appropriate caution where expert participation was incomplete. In particular, the Panel should not treat the positions on consent notices, stormwater conditions, or ecological restoration as conferenced agreements, because the relevant specialist experts were either absent or did not have time to address them.
- Adopt the position of the council experts and the Panel's own expert (ST) on condition precedents. The fault hazard study, baseline groundwater and stormwater investigation, and the Private Developer Agreement should all be conditions precedent — hard gates that must be passed before earthworks commence. This is consistent with the applicant's own earlier position in its January 2026 memorandum and represents the appropriate allocation of risk.
- Require the stormwater conditions to be the subject of further conferencing between the actual stormwater and hydrogeological experts, not planners. The JWS records that the stormwater conditions were debated without the relevant technical experts present. Given that stormwater performance is the single most contentious and consequential issue in this application, the Panel should not finalise these conditions based on a planning-level discussion.

- Retain the 4m buffer width as specified in the draft conditions. The Panel included this width on the basis of expert urban design advice. The applicant's attempt to reduce it to 3m is a commercial optimisation, not a technical improvement, and should be rejected.
- Retain the 6m / single storey height limit on lots adjoining the southern boundary, as included in the draft conditions. The southern boundary adjoins rural land whose owners opposed the development. The height limit is a key amenity protection and should not be relaxed.
- Require a decommissioning bond for the solar farms in the form proposed by MPDC (Appendix 4 of the JWS). The risk of an operator becoming insolvent before decommissioning is not hypothetical — it has occurred in renewable energy projects internationally. Without a bond, the residual liability falls on the landowner or ratepayers.
- Require the consent holder to provide an anticipated timing schedule for lodgement of all management plans, as sought by MPDC and WRC. This is a basic resourcing and accountability measure that imposes no material cost on the applicant.
- Require the ecological conditions to be the subject of further expert conferencing before being finalised, given that the JWS records insufficient time to address the Ecological Restoration Management Plan.
- Ensure that the conditions include explicit protections for the Highgrove development, including a prohibition on road or pathway connections, as raised in our earlier comment on the draft conditions.
- Ensure that buffer planting conditions specify minimum plant sizes, planting densities, and a minimum developer maintenance period before transfer to lot owners, as raised in our earlier comment.

Conclusion

The JWS dated 1 and 2 April 2026 confirms what has been apparent throughout this process: the conditions for the Ashbourne development are not settled. Key experts were absent from key discussions. The applicant's experts systematically resist verification requirements, financial assurance, and constraints that would protect the environment and affected parties. The conditions that will govern the largest greenfield development in Matamata's history remain, in the experts' own words, the subject of unresolved disagreement.

The Panel now carries the responsibility of resolving those disagreements. We respectfully submit that it should do so in a way that prioritises the long-term interests of the community, the environment, and the parties who will live with this development for generations — not the short-term commercial interests of a developer who will, by design, exit once the lots are sold.

Where conditions remain contested, the Panel should adopt those that provide the greatest certainty, the strongest accountability, and the clearest allocation of risk to the party that profits from the development and is best placed to manage it: the applicant.

We respectfully ask the Panel to give careful consideration to the matters raised above in reaching its final decision on conditions.

Andrew Bonner

On behalf of station 143 and Highgrove