

18 March 2026

Environmental Protection Authority
Attention: Chair, Ashbourne Fast-track Panel, Sue Simons
BY EMAIL: substantive@fasttrack.govt.nz

ASHBOURNE PROJECT - FTAA-2507-1087 (“PROPOSAL”) – COMMENTS ON BEHALF OF OWNERS OF 247A, 247B AND 173 STATION ROAD – R.A. HEMMINGS LIMITED

Introduction

1. I have been engaged by the shareholders of R.A. Hemmings Limited, the owner of [REDACTED] Station Road, Matamata¹ (**Property**). The Property forms part of the proposed development site, and my clients were invited by the Expert Panel to comment on the Application in their capacity as “*owners of the land to which the substantive application relates*”.²
2. My clients provided comments on the Application pursuant to section 53 of the Fast-track Approvals Act 2024 (**FTAA**).³ They also provided their written approval to the Application pursuant to the Resource Management Act 1991 (**RMA**).
3. My clients therefore have standing pursuant to section 70 FTAA to provide comments on the draft conditions submitted with the Panel’s draft decision dated 11 March 2026. The draft decision proposes to grant approvals for the solar farm and greenway aspects of the Proposal, but decline approvals for the retirement village and those parts of the residential subdivision located on highly productive land (**HPL**).
4. My clients strongly support the grant of approvals for all aspects of the Proposal, including the aspects that the Panel proposes to decline. They have engaged me to assist in expressing their significant concerns about the draft decision and decision-making process. Those concerns are explained below.

Preliminary issue – scope of comments

5. In the Panel’s Minute 23, inviting comments on the draft decision and conditions, the Panel expresses that view that “*Section 70 enables comments to be received only in respect of the proposed conditions and not the draft decision itself.*”

¹ Lot 1 DP21055, Record of Title SA658/159; Lot 3 DP14362, Record of Title SA12C/1064; and Lot 2, DPS 567678 and Lot 2 DPS 21055, Record of Title 1018185.

² Refer Appendix 3, Minute 1 of the Expert Panel dated 13 October 2025.

³ Comments by Grant and Craig Hemmings dated 7 October 2025; Gareth Hemmings dated 10 November 2025; Jessica Crowe (undated); and Meghann Brown dated 8 November 2025.

6. While section 70 provides an opportunity for parties to comment on the draft conditions where a Panel proposes to grant consent subject to conditions, section 70 does not clearly preclude comments being provided on the draft decision itself. It is submitted that this opportunity is inherent in the requirement in section 70(2)(b) to provide a copy of the draft decision to the parties together with the conditions. Without the ability to comment on aspects of the draft decision which provide the legal and evidentiary basis for the proposed conditions, it is not possible for parties to meaningfully comment on the conditions. It is therefore submitted that seeking to restrict parties from providing comments on the draft decision is inconsistent with the FTAA (which does not restrict such comments from being provided, it is merely silent) and with the principles of natural justice and procedural fairness by which the Panel is bound as a matter of administrative law.
7. It is not uncommon for fast-track panels to consider commentary on legal issues or factual findings contained in draft decisions, alongside comments on draft conditions, including in the form of legal submissions or supplementary evidence provided by applicants, relevant administering agencies, tangata whenua, or other parties invited to comment. In short, other panels have taken broader interpretation which seeks to ensure a robust and fair decision-making process, and a final decision which is factually and legally accurate, thereby reducing the prospect of appeals or judicial review.
8. Even if the Panel prefers a restrictive interpretation of section 70, that does not preclude the Panel from receiving comments on the draft decision by way of further information from any party who provided comments on the Application pursuant to section 53, pursuant to its powers under section 67 to request further information. Further information requests may be made at any time before the Panel issues its decisions under section 81. The decisions under section 81 are the Panel's final decisions on whether to accept or decline any of the approvals sought (not its draft decision).
9. The ability of the Panel to receive further information (including evidence) before making its final decisions supports an approach which recognises that the purpose of circulating a draft decision and conditions to affected parties for comment before a final decision is made ensures that the final decision is robust and reduces procedural challenges. Put another way, the draft decision and conditions reflect the Panel's preliminary views on the application, but it must remain open to amending or refining those preliminary findings following a further process of feedback and (if useful) the provision of further information or evidence.
10. In this case, an interpretation which restricts the ability of my clients to comment on the draft decision would give rise to substantial procedural unfairness, given the nature of the Panel's draft decision, which is to decline those aspects of the Proposal on HPL. My clients' support for the Proposal, as explained further below, relates to the benefits to be obtained by enabling unproductive HPL to be used for a more beneficial purpose, thereby enabling them to sell an unproductive and underperforming dairy operation. Their earlier comments, which provided evidence on this issue, appear to have been overlooked or ignored by the Panel in its draft decision.
11. Finally, it is clear that the Applicant has the right to submit additional information together with any amended proposal which responds to a draft decision to decline. This could

include information in support of its position, including from other parties directly affected by any amended proposal such as my clients.

12. In summary on this preliminary issue, it is submitted that the Panel is entitled to, and should, consider the following comments on behalf of my clients who are affected by the Panel's draft decision to decline the Proposal in part and grant the Proposal in part. The Panel is entitled to receive the comments on each or all of the following bases:

- (a) By finding that section 70 does not preclude the receipt of comments on the draft decision itself, as matters incidental to the proposed conditions;
- (b) By accepting the comments as further information to assist its decision-making pursuant to section 67; and / or
- (c) As information provided by the Applicant in support of its comments on the conditions and draft decision to decline.⁴

13. Further, the concerns raised below are largely procedural, and any party should be entitled to draw procedural concerns to a tribunal's attention at any stage of the process.

Procedural concerns

Failure to consider relevant evidence

14. The Property owned by my clients is located on the western part of the development site, in the area proposed to be developed for a retirement village (**RV**). The process which has led to the draft decision to decline the Proposal in relation to my clients' land, on the basis that there is no clear pathway under the National Policy Statement on Highly Productive Land (**NPS-HPL**), has a direct impact on my clients' livelihood, as explained in their earlier comments. It follows that they have clear standing to raise the procedural concerns summarised below.

15. One of their concerns is that there has been no opportunity for expert conferencing on the HPL issues, nor has the Panel exercised its discretion to hold a hearing on these issues, despite its recognition that these issues are "highly contentious and remain largely unresolved" (draft decision para 165 and 631). It is clear that the Panel's finding on this (acknowledged controversial) issue has been highly persuasive in the Panel's preliminary decision to decline the HPL aspects of the Proposal.

16. The unfairness is compounded by the failure of the draft decision to squarely confront the evidence contained in the comments provided by my clients. Other than referring to my clients as providing comments in support of the Application, and noting that they have sold all or part of their land to the Applicant, the draft decision does not engage in any way with their substantive comments. It deals only with comments by adjacent landowners and

⁴ The Applicant has confirmed its willingness to provide my clients' comments in support of its position if the Panel is not prepared to receive them under the other approaches proposed above.

occupiers raising concerns about the impacts of the development on highly productive land.

17. My clients' evidence⁵ is that they are not in a position to continue farming their land (which is in two blocks separated by a road), due to the small size of the effective milking unit,⁶ mix of soil types (ranging from average to poor), and restrictions on the ability to transport stock between the two blocks for milking resulting in the loss of milking land. These factors have made it extremely difficult to run a profitable dairy unit particularly when the milk payout is low. Encroaching residential development is giving rise to reverse sensitivity effects and makes expansion of the farm through acquisition unrealistic. The option of selling their land to enable the retirement village proposal enables them to avoid the increasing hardship of endeavouring to run a farming unit in the face of increased costs and reduced profitability.
18. My clients are well placed to provide evidence on these issues, given their family have lived on and farmed the affected land for many generations. Their evidence is entirely consistent with the expert evidence provided by the Applicant, and ought to have been given weight or at least tested through a focussed hearing on this important issue.
19. The expert evidence provided on behalf of the Applicant (Jeremy Hunt) is consistent with my clients' first-hand experience of the constraints which render their land economically unviable over a 30 year term, supporting the view that there is a clear pathway pursuant to the exemption under clause 3.10 of the NPS-HPL.⁷ The Applicant's planning evidence supports my clients' concerns around the unavoidable conflicts of a continued rural use of the site due to urban expansion surrounding the site. The evidence⁸ highlights the anticipated reverse sensitivity concerns such as noise and odour that my clients would suffer if they were forced to retain their land for rural use rather than sell it for a development which the Expert Panel has recognised would offer a range of economic benefits.⁹
20. Given the diametrically opposed economic evidence (acknowledged as "evidentiary shortcomings" in the draft decision) and the apparent positional approaches taken by the experts, the Panel might fairly have considered the option of a limited hearing (as occurred in *Sunfield*) given the importance of the economic analysis to the Panel's overall assessment.

Pre-emption of final decision

21. As noted by the Panel's legal advisor Jeremy Brabant, the FTAA provides a mandatory opportunity for an applicant to modify a proposal if there is a draft determination to decline. The suggestion at paragraph 106 of the draft decision that there can be no opportunity to amend or modify conditions, only withdraw the parts located on HPL, is pre-

⁵ Contained in their initial comments on the Application referred to in footnote 3.

⁶ At 73 ha this is approximately half the size of an average dairy farm.

⁷ Memorandum to the Expert Panel from Jeremy Hunt dated 13 February 2026.

⁸ Memorandum to the Expert Panel from Barker & Associated dated 18 November 2025.

⁹ Draft decision para 728.

emptive and arguably undermines the Applicant's ability (and other stakeholders such as my clients and the local authorities) to meaningfully engage with a modified proposal. The sense of procedural unfairness has been compounded by the Panel's refusal (prior to issuing its draft decision) to accept the Applicant's request for a conference to understand the Panel's thinking on this issue and to assist the Applicant in developing a modified proposal. This has left the Applicant flying blind and has caused great distress and uncertainty for my clients, who have an agreement to sell their land to the Applicant.

22. These concerns have been reinforced by the Panel's recent Minute 24 dated 17 March, which suggests that there is no ability to arrange further conferencing of experts on the HPL issues following issue of a draft decision to decline. As explained above, the Panel has the ability under section 67 to seek further information from the applicant, local authorities or any party who provided comments, at any time before issuing its final decisions under section 81. This could include the provision of further evidence. It is also notable that the FTAA does not expressly provide for expert conferencing, but that is an option which has been adopted by many fast-track panels including this one. It is therefore unclear why the Panel considers itself so procedurally constrained in this case.

Panel's Minute 25

23. My clients have been provided with a copy of the Panel's Minute 25, which seeks the Councils' comments on the Applicant's request that the Panel arrange expert conferencing on issues associated with the NPS-HPL, together with the Councils' joint response. The Councils propose that the Panel should decline the request for expert conferencing in reliance on the Panel Conveners' Practice and Procedure Guidance (**Guidance**), specifically para 15.1, which provides that:

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

24. In response, it is (respectfully) submitted that the Councils' interpretation of that provision is misconceived, when viewed in the context of the iterative decision-making process provided for under the FTAA. That process requires the provision of a draft decision and conditions for further comment by Ministers and participants prior to final deliberations being made (which must take account of those comments) and a final decision being issued. It is entirely conceivable that (as in this case) comments on the draft decision and conditions might raise issues which the Panel considers could usefully be the subject of expert conferencing or even an opportunity for the parties to be heard.
25. Regardless of how the Guidance is interpreted, the Panel has a broad discretion 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.¹⁰ [emphasis added]
26. In this case, my clients wish to emphasise the importance of the procedures followed by the Panel being just. The issue of timeliness can be managed by the Applicant agreeing

¹⁰ FTAA, Schedule 3, clause 10.

to suspend processing to allow for the conferencing. The purpose of the conferencing, as explained by the Applicant, is to explore whether the experts are able to find a pathway through the NPS-HPL exemption. My clients' strongly support that approach, which is consistent with the purpose of the FTAA which seeks to *facilitate* development proposals. It would also ensure procedural fairness, given the evidence provided by my clients has not been addressed in the draft decision.

27. My clients would be willing to provide additional information about the profitability of their farm if that would assist the expert conferencing or the Panel in making its final decision. Such evidence could be requested and received pursuant to section 67 FTAA.

Conclusion

28. Given the opportunity for a hearing has not been provided by the Panel, the parties have been deprived of the ability to make submissions on the legal approach taken by the Panel in its draft decision, including the draft decision to decline the HPL aspects, which will significantly affect my clients' rights.
29. The approach which has been taken, based on the Panel's "disquiet" about a proposal being undertaken on HPL, has a strong RMA flavour. It is not evident that the Panel has given the greatest weight to the purpose of the FTAA.
30. The Panel is invited to reconsider its interim finding that the RV aspects of the Proposal should be declined or at least ensure that the exercise of its discretion clearly takes account of the evidence provided by my clients and the effects of the Project on their livelihood, including the continued reasonable use of their land if only part of the Proposal is approved.
31. Expert conferencing could usefully inform the Panel's final deliberations.

Yours sincerely



Mary Hill
Barrister