

**BEFORE AN EXPERT PANEL**

**IN THE MATTER** of the Fast-track Approvals Act 2024 (the **FTAA**)

**AND**

**IN THE MATTER** of Ashbourne (FTAA-2507-1087)

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**MEMORANDUM OF COUNSEL FOR MATAMATA-PIAKO DISTRICT COUNCIL**  
**Dated: 11 November 2025**

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## **MAY IT PLEASE THE PANEL**

### **1. INTRODUCTION**

1.1 This memorandum is filed on behalf of the Matamata-Piako District Council (the **Council**) in response to the Expert Panel's invitation in [Minute 1](#) issued under section 53 of the Fast-track Approvals Act 2024 (**FTAA**) to comment on the substantive application submitted by Matamata Development Limited (the **Applicant**) for the Ashbourne project (the **Substantive Application**).

1.2 The structure of this memorandum is as follows:

- (a) **Section 2:** Executive Summary;
- (b) **Section 3:** The legal framework, including an explanation of the framework for decision-making under the FTAA;
- (c) **Section 4:** Other legal considerations;
- (d) **Section 5:** The outcome of the Council's assessment of the Substantive Application to date; and
- (e) **Section 6:** Conclusions and recommendations arising from that assessment.

### **2. EXECUTIVE SUMMARY**

#### **Process matters**

2.1 Throughout the process, the Applicant's team has engaged extensively with Council staff.

2.2 The Council's comments on the referral application raised several concerns, including site constraints; inconsistency with planning documents; impact on highly productive land; infrastructure and servicing concerns; housing supply justification; and process.

2.3 The Council's ongoing engagement with the Applicant's team on the Substantive Application has involved:

- (a) Meetings and a site visit.
- (b) Providing the Applicant with technical memoranda from its experts, setting out matters relating to the application that, in the Council's view, require further clarification. This was intended to give early

indications of the Council's areas of focus and concern, and to highlight information gaps.

- (c) Ongoing discussions regarding the requirement for Private Development Agreements.
- (d) The Council has also advised the Applicant that it continues to receive correspondence from parties expressing concern or seeking clarification about the project and has encouraged those parties to contact the Applicant directly.

2.4 While recognising the fast-track context, the Council nonetheless records at the outset that its ability to provide comprehensive commentary has been limited by information gaps and errors in the Applicant's proposal.<sup>1</sup>

### **Summary of the Council's Assessment**

2.5 The full details of the Council's assessment are set out in the Planning Memoranda and the referenced technical specialist reports. A summary of the outcome of this assessment is provided below (also see **Section 5** of this legal memorandum for further details).

2.6 Under the FTAA, the Panel must apply a specific decision-making framework that:

- (a) Gives the greatest weight to the FTAA's purpose of facilitating infrastructure and development projects with significant regional or national benefits;
- (b) Incorporates the provisions of Part 2, 3, 6 (excluding section 104D), as well as Parts 8 to 10 of the Resource Management Act 1991 (**RMA**);
- (c) Requires evidence-based assessment of the claimed benefits. The Minister's decision on a referral application does not pre-determine the extent of regional or national benefits, and the Panel must

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<sup>1</sup> For example, the Substantive Application has omitted to assess two relevant planning assessments namely: Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 that has the status of a national policy statement under the RMA and "Te Rautaki Taiao a Raukawa – Raukawa Environmental Management Plan, a relevant iwi planning document. See Planning Memorandum 2 dated 11 November 2025 provided by Marius Rademeyer. The geotechnical evidence dated 11 November 2025 provided by Mr Cowbourne also highlights gaps in the assessment of ground conditions and associated risks.

independently assess whether the project in fact delivers the claimed benefits.

- 2.7 Under section 85 of the FTAA, the Panel may decline an approval sought in the Substantive Application where the ‘real-world’ adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits (after taking into account potential conditions and modifications to the proposal). We address this ‘proportionality test’ in greater detail in **Section 3** below when discussing the legal framework.
- 2.8 The Council has reviewed the Substantive Application material and the additional information provided by the Applicant in response to [Minute 2](#). Following this review, the Council’s assessment is that the Substantive Application in its current form should be **declined** for the reasons outlined in this memorandum.
- 2.9 The adverse impacts identified by the Council encompass economic and infrastructure concerns, ‘real world’ impacts arising from inconsistencies with planning instruments; environmental risks; growth displacement and cumulative impacts.

### **3. THE LEGAL FRAMEWORK**

- 3.1 This section of our memorandum examines the FTAA decision-making framework in detail.

#### **Overview of the Legal Framework**

- 3.2 The key features of the legal framework under the FTAA are:

#### ***Purpose of the FTAA***

- 3.3 The purpose of the FTAA “is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”<sup>2</sup> This purpose is supported by section 10 of the FTAA, which requires every person performing functions and duties and exercising powers under this Act to 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.<sup>3</sup>

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<sup>2</sup> FTAA, s 3.

<sup>3</sup> FTAA, s 10.

### ***Two-stage process***

- 3.4 The FTAA establishes a two-stage process: preliminary gateway decisions to determine whether a project qualifies for the fast-track approvals process, followed by an assessment of a substantive application and a decision to grant or decline the approvals sought.

#### ***Stage one – preliminary gateway decisions***

- 3.5 A decision on a referral application is a preliminary gateway decision. The Ministry for the Environment’s advice in relation to the referral application for the Ashbourne project concluded that the criteria for referral applications in section 22 of the FTAA had been met and that the referral application could be accepted. Notably, the briefing from the Ministry for the Environment anticipated that an expert panel would assess the project through the full substantive application process. The Ministry stated:<sup>4</sup>

We agree that the project is not consistent with planning documents, particularly the NPS-HPL, which direct that the residential development of rurally zoned highly productive land is avoided and may be subject to flood hazards. However, we consider this is a matter which could be considered by an expert panel with the benefit of a full resource consent application including an assessment of environmental effects, a flood hazard assessment and a land productivity assessment. An expert panel could decline the application if it considered adverse effects such as the effects of flooding, or the effects on highly productive land, outweighed the significant regional or national benefits of the project and could not be managed by appropriate conditions.

- 3.6 The expert panel appointed to assess and decide the Substantive Application is not explicitly bound by the Minister’s initial finding in the referral gateway decision that a project has significant regional or national benefits. The gateway decision is based on a limited review of the initial material provided by the Applicant. The expert panel must independently assess the Substantive Application and make its own decision. Section 81(4) of the FTAA requires the panel to consider the extent of the project’s regional or national benefits when taking the purpose of the FTAA into account under any of the clauses referred to in subsection 81(3). As addressed further below under the heading “**Power to Decline Consent**”, the project’s regional or national benefits are also relevant to any decision by a panel to decline an approval under section 85(3).

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<sup>4</sup> Ministry for the Environment [briefing](#) to the Minister for Infrastructure on the stage 2 analysis for the referral application for the Ashbourne project, Table A: Stage 2 analysis.

- 3.7 Some analogy can be drawn with the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTCA**), where several expert consenting panels appointed under that legislation found that they were not bound by Ministerial determinations that projects would help to achieve the purpose of the FTCA, and were required to make their own independent assessments of applications against the statutory purpose (section 4, FTCA).<sup>5</sup>
- 3.8 The completeness decision required under section 46 of the FTAA is also a preliminary gateway decision. The preliminary gateway decisions are limited to confirming whether a project qualifies for assessment by an expert panel under the fast-track approvals process. At this first stage in the process, there is no decision to grant or decline a substantive application.

***Stage two – assessment and decision by the expert panel***

- 3.9 For projects that pass the first stage, expert panels are appointed to carry out a detailed assessment of the substantive application and to make a decision to either grant or decline the approvals sought. The provisions in the main body of the FTAA concerned with “panel decisions” and “decision documents” are located in sections 79 to 89.
- 3.10 Section 81(1) of the FTAA requires the panel to decide whether, for each approval sought in the substantive application, to:
- (a) grant the approval and set any conditions to be imposed on the approval; or
  - (b) decline the approval.
- 3.11 For the purpose of making the decision, the panel:
- (a) Must consider the substantive application and any advice, report, comment, or other information received by the Panel under sections 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90;<sup>6</sup>
  - (b) Must apply such of the clauses set out in section 81(3) as are applicable to the relevant authorisations sought, which in the case of the Substantive Application for the Ashbourne project is section 81(3)(a) (resource consents). We address the provisions relevant to

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<sup>5</sup> E.g. the FTCA decisions on the following projects: [Tasman Aquaculture Trials](#), at [45], [Kohimarama Retirement Village](#), at [32], [Hananui Aquaculture Project](#), at [53].

<sup>6</sup> FTAA, s 81(2)(a).

resource consents below under the heading “**Assessment of Resource Consent Application**”;

- (c) Must comply with section 82 (relating to treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019) if applicable;<sup>7</sup>
- (d) In terms of conditions:
  - (i) Must comply with section 83 in setting conditions;<sup>8</sup>
  - (ii) May impose conditions under section 84 if applicable, to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.<sup>9</sup>

We address the FTAA provisions applicable to conditions further below under the heading “**Conditions of Consent**”.

- (e) May decline the approval only in accordance with section 85 of the FTAA. We address the Panel’s power to decline consent further below under the heading “**Power to Decline Consent**”.

### ***Assessment of Resource Consent Application***

- 3.12 When considering an application for resource consent under section 42(4)(a) of the FTAA, the Panel is required by sections 81(2)(b) and 81(3)(a) to apply clauses 17 to 22 of Schedule 5 of the FTAA.

#### ***Clause 17 – Criteria and other matters for assessment of consent application***

- 3.13 Clause 17(1) of Schedule 5 requires the Panel, for the purposes of section 81, when considering the resource consent application and setting any conditions in accordance with clauses 18 and 19, to “**take into account**” the following, giving the greatest weight to (a):

- (a) the purpose of the FTAA; and

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<sup>7</sup> FTAA, s 81(2)(c).

<sup>8</sup> FTAA, s 81(2)(d).

<sup>9</sup> FTAA, s 81(2)(e).

- (b) the provisions of Parts 2, 3, 6 and 8 to 10 of the RMA that direct decision making on an application for a resource consent – this includes sections 104 and 104B of the RMA, but section 104D of the RMA (i.e. the ‘gateway test’ for non-complying activities) is specifically excluded; and
- (c) the relevant provisions of any other legislation that directs decision-making under the RMA.

3.14 Accordingly, under clause 17(1), while the fast-track approvals process prescribed in the FTAA applies instead of the usual RMA consenting process, the FTAA expressly incorporates (or imports) most RMA provisions relevant to the assessment of resource consent applications, with all necessary modifications.<sup>10</sup>

***Meaning of “take into account”***

3.15 In *Bleakley v Environmental Risk Management Authority* the High Court held that a statutory obligation in the Hazardous Substances and New Organisms Act 1996 to “take into account” a relevant matter indicated an obligation to:<sup>11</sup>

... consider the factor concerned in the course of making a decision - to weigh it up along with other factors - with the ability to give it, considerable, moderate, little, or no weight at all as in the end in all the circumstances seemed appropriate

3.16 In an RMA context, *New Zealand Transport Agency v Architectural Centre Inc*, the High Court discussed earlier cases and expressed the view that the phrases “shall have regard to” and “take into account” could be regarded as synonymous.<sup>12</sup> The Court said:<sup>13</sup>

In my view, the expression ‘to take into account’ is susceptible of different shades of meaning. I consider that the two phrases can be viewed as synonymous if the phrase ‘to take into account’ is used in the sense referred to by Lord Hewart CJ in *Metropolitan Water Board v Assessment Committee of the Metropolitan Borough of St Marylebone* of paying attention to a matter in the course of an intellectual process’. The key point is that the decision-maker is free to attribute such weight as it thinks fit to the specified matter but can ultimately choose to reject the matter.

<sup>10</sup> FTAA, Clause 17(6) of Schedule 5.

<sup>11</sup> *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [72].

<sup>12</sup> *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, [2015] NZRMA 375.

<sup>13</sup> At [63], citations omitted.

- 3.17 This reasoning was accepted and adopted by the High Court in *Taranaki-Whanganui Conservation Board v Environmental Protection Authority*.<sup>14</sup>
- 3.18 Based on the above case law, the statutory obligation to "take into account" requires the Panel to consider and weigh the specified matter alongside other relevant factors during the decision-making process, while retaining discretion to assign it considerable, moderate, little, or no weight as circumstances warrant.
- 3.19 In the case of the FTAA, this case law is of course subject to the statutory direction that the most weight be given to the FTAA's purpose, which is discussed further below.

***Relevant purpose provisions – FTAA and RMA purposes***

- 3.20 Two statutory purpose provisions apply to resource consent decision-making under the FTAA:
- (a) As already noted, the purpose of the FTAA "*is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.*"<sup>15</sup>
  - (b) The Panel will be familiar with the sustainable management purpose of the RMA, which also applies in light of clause 17(1)(b), albeit with the 'greatest weight' given to the FTAA's purpose.
- 3.21 We observe that clause 17(2) clarifies how the RMA provisions in clause 17(1) should be applied, specifying that references to "Part 2" of the RMA mean only sections 5, 6, and 7 (i.e. not section 8).<sup>16</sup> Accordingly, the sustainable management purpose in section 5 of the RMA remains a relevant consideration that must be taken into account.

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<sup>14</sup> *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, at [159].

<sup>15</sup> FTAA, s 3.

<sup>16</sup> Clause 17(2) also ensures that effects on Māori land and interests are treated as matters of national importance under section 6(e) where the activity has been determined under section 23, and confirms that relevant Mana Whakahono ā Rohe and joint management agreements must be considered as relevant matters under section 104(1)(c) of the RMA.

***Interpretation of requirement to give “greatest weight” to purpose of FTAA***

3.22 Clause 17(1) of Schedule 5 of the FTAA expressly requires that the greatest weight be given to the purpose of the FTAA.

3.23 Some guidance as to the application of a decision-making provision that expressly requires greater weight to be given to certain matters can be gleaned from case law concerning section 34(1) of the now-repealed Housing Accords and Special Housing Areas Act 2013 (**HASHAA**).

3.24 Section 34(1) of HASHAA framed the hierarchy of matters as follows:

An authorised agency, when considering an application for resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater or lesser) in the order listed:

- (a) the purpose of this Act:
- (b) the matters in Part 2 of the Resource Management Act 1991:
- (c) any relevant proposed plan:
- (d) the other matters that would arise for consideration under –
  - (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
  - (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
- (e) the key urban design qualities expressed in the Ministry for the Environment’s *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document.

3.25 In *Enterprise Miramar Peninsula Incorporated v Wellington City Council*,<sup>17</sup> the Court of Appeal examined the interaction between the consenting frameworks under the HASHAA and the RMA. The *Enterprise Miramar* case arose from Enterprise Miramar Peninsula Incorporated’s application for judicial review of Wellington City Council’s decision under the HASHAA to grant consent for a significant development in Shelly Bay, Wellington.

3.26 The Court of Appeal held that the plain wording of section 34(1) indicated “*that greatest weight is to be placed on the purpose of HASHAA...*”. The Court of Appeal also found that the inclusion of additional considerations in

<sup>17</sup> *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541.

subsections (b)-(e) reflected a deliberate intention by Parliament for decision-makers “*not to rely solely on the purpose of the HASHAA at the expense of due consideration of the matters listed in (b)-(e).*”<sup>18</sup>

3.27 The Court of Appeal said:<sup>19</sup>

The scheme and plain text of s 34(1) requires individual assessment of the listed matters prior to the exercise of weighing them in accordance with the prescribed hierarchy. The matters listed in subs 1(b)-(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)-(e).

3.28 The principles established in *Enterprise Miramar* should inform the interpretation of clause 17(1) of Schedule 5 of the FTAA, mandating separate consideration of each factor before weighing them in accordance with the prescribed hierarchy. Moreover, weight to be afforded to the purpose of the FTAA should not be such as to neutralise or minimise the other relevant decision-making criteria which stem from the RMA. Specifically, the Court of Appeal commented:<sup>20</sup>

The Council’s adoption of this conclusion and its reference to “housing stock”, and its cursory analysis of the matters arising under pt 2 of the RMA, are a further example of the Council having allowed the purpose of HASHAA to neutralise or minimise the other matters that arise for consideration under s 34(1)(b)–(e). As in relation to s 34(1)(d)(i) discussed above, the consequence is that the matters arising under s 34(1)(b) were not given due consideration and weight. Rather than just treating the purpose of HASHAA as the most important and influential matter to be weighed, the Council used the purpose of HASHAA to eliminate or greatly reduce its consideration and weighing of the other s 34(1) factors. For the reasons we have set out, this was a significant error of law resulting in a failure to take into account relevant considerations. We allow the appeal on that basis.

***Extent of project’s regional or national benefits***

3.29 Section 81(4) of the FTAA requires the Panel to consider the extent of the project’s regional or national benefits when taking the purpose of the FTAA into account under clause 17(1)(a) of Schedule 5. As addressed further below under the heading “**Power to Decline Consent**”, the project’s regional or national benefits are also relevant to any decision by a panel to decline an approval under section 85(3).

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<sup>18</sup> Ibid at [41].

<sup>19</sup> Ibid at [53].

<sup>20</sup> Ibid at [59].

3.30 The Applicant’s Evaluation and Overview Report states that the “*proposal is a Listed Project under the FTAA*” and contends that this “means that the project has already been identified as having significant regional or national benefits.”<sup>21</sup> This is incorrect. The Ashbourne project is not listed in Schedule 2 of the FTAA; it is a referral project. As explained above, the expert panel must make its own independent decision on the Substantive Application and is not bound by the Minister’s preliminary gateway decision. Under section 81(4) of the FTAA, the panel must assess the project’s regional or national benefits as part of its evaluation.

3.31 The referral decision records that the Minister was satisfied that the project is an infrastructure or development project that would have significant regional benefits as:<sup>22</sup>

- (a) It is an infrastructure or development project because it involves land development for the construction of residential units and solar farms
- (b) It would have significant regional benefits because it would
  - (i) Increase housing supply by providing approximately 700 new residential units (including retirement units)
  - (ii) include solar generation which could power up to 8000 homes, and
  - (iii) provide economic benefits including generating 2175 full-time equivalent (FTE) jobs during construction.

3.32 As addressed further below and in the Planning Memoranda, the Council’s assessment is that, on balance, the Ashbourne project will not deliver such regional benefits to a degree that would outweigh its adverse economic impacts. Specifically:<sup>23</sup>

- (a) The Ashbourne development is unlikely to stimulate new residential demand in Matamata. Instead, it would redistribute growth that is already planned for, rather than unlocking latent or unmet demand.
- (b) There is already sufficient zoned residential and retirement village land to meet projected demand in the district, meaning the project is not required to meet statutory housing capacity obligations under the National Policy Statement on Urban Development (**NPS-UD**).

<sup>21</sup> [Volume 1: Ashbourne Evaluation & Overview Report, Station Road, Matamata, Fast-track Approvals Act 2024 Substantive Application, 14 July 2025](#) at page 36.

<sup>22</sup> [Notice of Decisions on application for referral of the Ashbourne project](#) under the Fast-track Approvals Act 2024 dated 13 May 2025.

<sup>23</sup> Statement of Evidence of Tim Heath (economics) dated 11 November 2025.

- (c) The proposal involves the conversion of Highly Productive Land, which is economically inefficient unless the land is proven to be permanently constrained for productive use.
  - (d) The infrastructure costs associated with servicing the development pose a risk to the wider community, especially if growth is diverted from already planned areas, potentially leading to duplicated and inefficient infrastructure investment.
- 3.33 It is essential that the Panel interrogates and tests the alleged benefits of this project, consistent with its duties under sections 81(4) and 85(3) of the FTAA.
- 3.34 In practice, the Panel's testing should be evidence-based. For some types of claimed benefits – for example, the suggestion that the project will have regional economic benefits – the Panel can and should rely on objective economic expert assessment and evidence to test whether contended benefits will be delivered, in what form, and to what extent – and ultimately whether they are indeed 'regional' in nature.

***Clause 17(1)(b) – RMA provisions***

- 3.35 As noted, clause 17(1)(b) of Schedule 5 requires the Panel to take into account the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D of the RMA).
- 3.36 We draw the Panel's attention to clause 17(3) and (4) of Schedule 5 to the FTAA, which applies to any RMA provisions which would **require** the refusal of consent. In relation to such provisions, the Panel must take into account that the provision would normally require an application to be declined, but must not treat the provision as requiring the Panel to decline the application the Panel is considering. Section 107(1) of the RMA would appear to be an example of such a provision. By contrast, section 106(1) of the RMA would not (as it uses the language "may refuse" rather than "must refuse").
- 3.37 The provisions in Parts 2, 6 and 10 of the RMA relevant to this Application encompass:

**Part 2, RMA provisions**

- (a) The provisions of Part 2 of the RMA. As noted above, applying clause 17(2)(a), sections 5, 6 and 7 (but not section 8) are applicable.

### Part 6, RMA provisions

- (b) A number of provisions in Part 6 of the RMA relating to resource consents apply, as outlined briefly below.
- (i) First, the usual decision-making considerations under **section 104(1)(a) to (c)** of the RMA, namely:
- (A) 104(1)(a):** Any actual and potential effects on the environment of allowing the activity.
- (B) 104(1)(ab):** Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.
- (C) 104(1)(b):** Any relevant provisions of—
- (1)** a national environmental standard:
  - (2)** other regulations:
  - (3)** a national policy statement:
  - (4)** a New Zealand coastal policy statement:
  - (5)** a regional policy statement or proposed regional policy statement:
  - (6)** a plan or proposed plan; and
- (D) 104(1)(c):** Any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (ii) **Section 104B**, which relates to decision-making for discretionary and non-complying activity consent applications.
- (iii) Under **section 106**, the Panel may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that there is a significant risk from natural hazards (section 106(1)(a)).

- (iv) **Sections 108, 108AA, 108A and 109** relating to conditions and bonds / covenants. We address conditions below under the heading “**Conditions of Consent**”.
- (v) The provisions of Part 10 of the RMA relating to subdivisions also apply.
- (vi) Of relevance to this Application, we highlight section 220, which identifies specific conditions that may be imposed on subdivision consents (without limiting section 108), as well as section 221 (consent notices) and section 224 (restrictions upon deposit of survey plan), which are likely to be relevant in the event that the Panel decides to approve the Application.

### **Conditions of Consent**

- 3.38 As noted, clause 17(1) requires the Panel, when considering setting any conditions in accordance with clause 18, to take into account the provisions listed at subclause (1)(a) to (c), giving the greatest weight to (a).
- 3.39 Clause 17(1) of Schedule 5 of the FTAA imports Part 6 (Resource Consents) and Part 10 (Subdivision and reclamations) of the RMA. This includes sections 108, 108AA, 108A, 109 and 220 of the RMA.
- 3.40 In *Waitakere City Council v Estate Homes Ltd*,<sup>24</sup> the Supreme Court held that the power to impose conditions on resource consents under section 108(2) of the RMA was a broadly expressed power, which included, in that case, the requirement to build an arterial road.
- 3.41 Section 108AA(1) of the RMA codifies, in part, the common law requirements for conditions to be valid.<sup>25</sup> Section 108AA(1) states:

#### **108AA Requirements for conditions of resource consents**

- (1) A consent authority must not include a condition in a resource consent for an activity unless—
  - (a) the applicant for the resource consent agrees to the condition; or
  - (b) the condition is directly connected to 1 or more of the following:

<sup>24</sup> *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112.

<sup>25</sup> *Ibid* at [54].

- (i) an adverse effect of the activity on the environment;
  - (ii) an applicable district or regional rule, or a national environmental standard;
  - (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021;
  - (iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021; or
- (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

3.42 In addition, conditions must also meet the established common law principles from the *Newbury* test. The *Newbury* requirements, which will be familiar to the Panel, are:<sup>26</sup>

- (a) Conditions must be for a planning purpose and not for any ulterior one.
- (b) They must fairly and reasonably relate to the development permitted, though this relationship test has been strengthened under section 108AA(1)(b) of the RMA, which requires conditions to be “directly connected” rather than merely “fairly and reasonably” related.
- (c) They must not be so unreasonable that no reasonable planning authority could have imposed them.

3.43 For completeness, section 83 of the FTAA states an overarching obligation on the Panel when setting conditions, namely that:

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

3.44 In reality, we submit that the direction in section 83 that conditions should be no more onerous than necessary does not alter the existing position – the same proportionate approach is expected under standard RMA decision-making.

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<sup>26</sup> *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731, as applied in New Zealand by *Waitakere City Council v Estate Homes Ltd* [2007] 2 NZLR 149, at para [66].

### Power to Decline Consent

- 3.45 Section 85 prescribes circumstances where the Panel “must” (section 85(1)) and “may” (section 85(3)) decline approval.
- 3.46 The Council’s assessment has not identified any reasons why the Application **must** be declined in terms of section 85(1) of the FTAA.
- 3.47 Under section 85(3) of the FTAA, the Panel **may** decline an approval where adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits.
- 3.48 Specifically, subsection (3) provides that the Panel may decline an approval if, in complying with section 81(2), the Panel forms the view that:
- (a) There are 1 or more adverse impacts in relation to the approval sought; and
  - (b) Those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered under section 81(4), even after taking into account –
    - (i) any conditions that the panel may set in relation to those adverse impacts; and
    - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- 3.49 Broadly, this ‘proportionality test’ requires the Panel to consider:
- (a) The nature and significance of adverse impacts identified through the section 81(2) process;
  - (b) The project’s regional benefits as assessed under section 81(4);
  - (c) Whether proposed conditions or the applicant’s modifications could adequately address adverse impacts;
  - (d) Whether the proportionality threshold is met even after accounting for mitigation measures, compensation etc.
- 3.50 Should the Panel assess the adverse impacts as being sufficiently significant to be out of proportion to the project’s regional benefits, having considered the above matters, the Panel may in its discretion decline the Substantive Application.

- 3.51 The term “adverse impact” is defined in section 85(5) as meaning “*any matter considered by the panel in complying with section 81(2) that weighs against granting the approval*”. The term is therefore broad, and could encompass (for example) adverse effects on the environment, matters arising from planning instruments, and section 104(1)(c) matters.
- 3.52 The Council’s assessment (summarised in **Section 5** below and in the Planning Memoranda) has identified several material adverse impacts that are considered sufficiently significant to be out of proportion to the project’s regional benefits.
- 3.53 Section 85(4) requires brief comment. The subsection states that a panel “*may not form the view that an adverse impact meets the threshold in subsection (3)(b) **solely on the basis** that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document*” (emphasis added).
- 3.54 The provision does not prohibit consideration of inconsistency or contrariness with planning documents – it only prevents reliance on inconsistency alone as sufficient grounds to decline a proposal. This suggests Parliament intended that inconsistency remains a relevant consideration. It simply cannot be the **only** factor supporting a decline decision.
- 3.55 Where inconsistency with planning provisions is, for instance, coupled with actual adverse impacts (environmental, social, or economic), both factors may legitimately contribute to a decision to decline.
- 3.56 While section 85(4) prevents reliance solely on planning inconsistency as grounds for decline, the underlying policy framework and the real-world issues it addresses remain highly relevant to the overall proportionality assessment.

#### **Power to decline in part**

- 3.57 It is well established that, when determining applications for resource consent, the decision-maker has “*the power to grant consent to something less than what is actually being sought*”.<sup>27</sup>

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<sup>27</sup> See *Director-General of Conservation v the New Zealand Transport Agency* [2020] NZEnvC 19 at [20].

3.58 In the decision of the expert consenting panel concerning an application for a comprehensive care retirement village at Kohimarama, Auckland under the FTCA, the Panel considered the following comments from RMA case law:<sup>28</sup>

The Resource Management Act provides procedures for applications for resource consent that are designed to enable all persons who wish to take part to do so. ... In practice, the lodging of submissions and the presentation of opponents' cases frequently leads to applicants or consent authorities modifying proposals to meet objections that are found to be sound. That must surely be part of the statutory intent in providing for making submissions.

3.59 The Panel then said that it saw:

... no reason why this approach should not be equally applicable to resource consenting under the FTA provided that the purpose of the FTA is not neglected in the process. For example, there may be instances where s 108 conditions of consent would be unavailable or inappropriate to restrict certain effects that can be remedied by a partial consent which still enables an effective project.

3.60 Therefore, under section 81(1) of the FTAA, the Panel has three options:

- (a) grant the full approval (with conditions);
- (b) decline it entirely; or
- (c) approve only part of what is sought (with conditions), and decline the remaining parts.

3.61 However, any decision to decline an approval (whether in whole or in part) must be made in accordance with section 85 of the FTAA. Therefore, the Panel must work through the considerations relating to section 85 identified above.

#### **4. OTHER LEGAL CONSIDERATIONS**

4.1 We address, from a legal perspective, a number of discrete legal topics/considerations relevant to the Panel's deliberations, as follows:

- (a) The NPS-HPL;
- (b) Adverse Impacts of Unplanned Out-of-Sequence Development; and
- (c) Conditions precedent.

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<sup>28</sup> Amended decision of the Kohimarama Comprehensive Care retirement village expert consenting panel released on 8 June 2021 at [53], citing *Collins v Northland RC* [2013] NZHC 3039 at [26] – [27] and *Haslam v Selwyn District* (1993) 2 NZRMA 628 (PT) at 634.

## NPS-HPL

- 4.2 The Ministry for the Environment's advice on the Ashbourne referral application said:<sup>29</sup>

We note that both MPDC and WRC have identified that the project is likely to be inconsistent with the National Policy Statement for Highly Productive Land 2022 (NPS-HPL) as it involves residential development of highly productive land in the rural zone. **This is a matter that an expert panel would need to consider when assessing a substantive application for the project.**

**[emphasis added]**

- 4.3 As the plan change to map highly productive land within the Waikato Regional Policy Statement is not yet operative,<sup>30</sup> the transitional definition in clause 3.5(7) of the NPS-HPL applies. Under the transitional definition, land is treated as highly productive land if it:

- (a) is:
  - (i) zoned General Rural or Rural Production; and
  - (ii) classified as Land Use Capability (LUC) Class 1, 2, or 3; **but**
- (b) is not:
  - (i) identified for future urban development; or
  - (ii) subject to a notified plan change to rezone it from general rural or rural production to urban or rural lifestyle.

- 4.4 The Applicant's legal memorandum in response to Minute 2 contends that:<sup>31</sup>

A small portion of the application site is zoned rural, however the majority is not zoned either rural or rural production. Approximately 75% of the application site is not under a rural or rural production zoning and therefore cannot be treated as highly productive land.

- 4.5 This assertion is incorrect. The planning maps confirm that the site is zoned as follows:<sup>32</sup>

<sup>29</sup> Ministry for the Environment [briefing](#) to the Minister for Infrastructure on the stage 2 analysis for the Ashbourne referral application at [32].

<sup>30</sup> Plan Change 2 to the Waikato Regional Policy Statement is currently on hold. See update on Waikato Regional Council's website [here](#).

<sup>31</sup> [Legal Memorandum for the Applicant dated 28 October 2025](#) at [15].

<sup>32</sup> [Volume 1: Ashbourne Evaluation & Overview Report Dated 14 July 2025](#) at pages 16 and 17.

Area	Zoning
Northern Solar Farm	General Rural Zone
Southern Solar Farm	General Rural Zone
Retirement Village	General Rural Zone
Two Lifestyle Lots	General Rural Zone
Residential and greenway	Rural Lifestyle Zone General Rural Zone (small portion) Eldonwood South Structure Plan

4.6 Approximately 83.5 hectares (67%) of the application site is zoned General Rural and lies outside the Eldonwood South Structure Plan. Further, the Council’s operative planning maps confine the “Urban Enablement Area” to the “Future Residential Policy Area” located on the opposite (eastern) side of Matamata.<sup>33</sup> The soils within the 83.5 hectare general rural zoned area include “LUC 1s1 and 2s1 soils that are versatile and capable of supporting a range of productive land uses.”<sup>34</sup> This area, therefore, falls within the transitional definition of highly productive land under clause 3.5(7) of the NPS-HPL.<sup>35</sup> Consequently, only 33% of the site does not meet the criteria for highly productive land, contrary to the Applicant’s assertion that this figure is closer to 75%. **Figure 1** below, prepared by Mr Rademeyer and included in his Planning Memorandum 2, illustrates these areas.

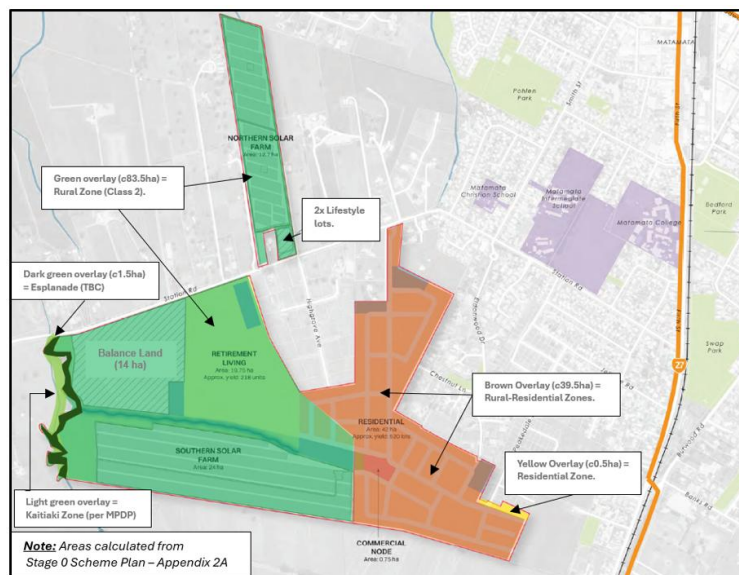


Figure 1: plan prepared by Mr Rademeyer<sup>36</sup>

<sup>33</sup> Marius Rademeyer, Planning Memorandum 2 dated 11 November 2025 at page 3.

<sup>34</sup> Review of NPS-HPL assessment for Ashbourne Project (FTAA 2507-1087) prepared for Matamata-Piako District Council by Perrin Ag Consultants Ltd dated 7 November 2025 at [5.3].

<sup>35</sup> NPS-HPL, clause 3.5(7).

<sup>36</sup> Marius Rademeyer, Planning Memorandum 2 dated 11 November 2025 at page 4.

- 4.7 Therefore, the general rural zoned part of the site (being an area of 83.5 ha<sup>37</sup>) is highly productive land under the transitional definition in clause 3.5(7) of the NPS-HPL and is subject to the NPS-HPL, the objective of which is:<sup>38</sup>

Highly productive land is protected for use in land-based primary production, both now and for future generations.

- 4.8 The objective of the NPS-HPL is supported by nine policies. The implementation methods for achieving the objective and the policies are set out in Part 3 of the NPS-HPL.
- 4.9 Clauses 3.8, 3.9, and 3.10 in Part 3 of the NPS-HPL set out specific exceptions applicable to land use and subdivision consents. Clause 3.6(a), which relates to rezoning proposals, is not relevant to the Substantive Application, as it seeks resource consents.
- 4.10 The Council's assessment is that the exception in clause 3.8 does not apply as the Substantive Application has not demonstrated that the proposed development will maintain the land's productive capacity, avoid cumulative loss of highly productive land, or adequately mitigate reverse sensitivity effects.<sup>39</sup>
- 4.11 The Council's assessment is that the solar farms could align with clause 3.9 if a functional or operational need is confirmed at this location and an agrivoltaic arrangement enabling continued productive use is implemented.<sup>40</sup>
- 4.12 The NPS-HPL does not itself define "functional" or "operational" need. However, these terms are commonly defined in the National Planning Standards as follows:<sup>41</sup>

**functional need** means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

**operational need** means the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

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<sup>37</sup> The Applicant's [Land Use Capability Classification Assessment](#) dated 21 August 2024 at paragraph 1 on page 3.

<sup>38</sup> NPS-HPL, clause 2.1.

<sup>39</sup> Marius Rademeyer, Planning Memorandum 2 dated 11 November 2025 at page 5.

<sup>40</sup> Review of NPS-HPL assessment for Ashbourne Project (FTAA 2507-1087) prepared for Matamata-Piako District Council by Perrin Ag Consultants Ltd dated 10 November 2025 at [1.5].

<sup>41</sup> Ministry for the Environment, November 2019 [National Planning Standards](#), Definitions List at pages 58 and 62.

- 4.13 The “functional need” test imposes a high threshold, requiring the Applicant to demonstrate that the solar farm can only be located at this specific site. As no evidence has been provided to substantiate this, the Council considers that the functional need test has not been met.
- 4.14 The operational need test sets a lower threshold. It requires the Applicant to demonstrate that the solar farm at this location is driven by specific technical, logistical, or operational requirements. In *CJ Industries Ltd v Tasman District Council*, the Environment Court noted that the term “operational need” is intended to cover situations where there are valid reasons why an activity should be enabled to occur in a particular location and, in that case, the Court accepted that the evidence (which included a cost-benefit analysis) supported the operational need for the quarry to be located close to its processing site.<sup>42</sup>
- 4.15 In *Hopkins v Waikato District Council*,<sup>43</sup> the operational need for a rural location was assessed in light of the relevant policy direction. In that case, the Environment Court said:<sup>44</sup>

The key policies would thus appear to provide for activities such as that proposed, provided they have a functional or operational need for a rural location and maintain rural character and amenity (by reference to their scale, intensity and built form), recognising that rural character and amenity values vary across the zone including the scale and extent of land use activities.

- 4.16 In *Crafar v Taupo District Council*, the Environment Court considered the planning framework that applied in that case and found that there was no clear policy preference for the use of the site as a dairy farm over its use for solar electricity generation.<sup>45</sup> While the Court did not need to make a finding on “operational need”, it noted that evidence presented referenced factors such as proximity to the national grid, availability of solar resources, and site characteristics as potentially relevant to assessing operational need. However, the site in the *Crafar* decision was not highly productive land under the NPS-HPL. Accordingly, the NPS-HPL did not apply, and the meaning of “operational need” for a solar farm in the context of the test in clause 3.9 was not tested.

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<sup>42</sup> *CJ Industries Ltd v Tasman District Council* [2025] NZEnvC 213 at [282] to [285].

<sup>43</sup> *Hopkins v Waikato District Council* [2025] NZEnvC 34.

<sup>44</sup> *Ibid* at [89].

<sup>45</sup> *Crafar v Taupo District Council* [2024] NZEnvC 091 at [104].

- 4.17 When applying the operational need test in clause 3.9, the Panel must also consider the requirements outlined in clause 3.9(3) of the NPS-HPL. These include:
- (a) Minimising or mitigating any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land; and
  - (b) Avoiding, if possible, or otherwise mitigating, any actual or potential reverse sensitivity effects on land-based primary production activities.
- 4.18 Even if the operational need test can be satisfied, it would only be satisfied in relation to the solar farm component. The other elements of the development (namely, the retirement village and residential houses) do not meet the requirements of clause 3.9.<sup>46</sup>
- 4.19 The Applicant also contends that the exemption in clause 3.10 of the NPS-HPL applies to the remaining highly productive land at the site. Clause 3.10 provides a separate enabling provision for the use of highly productive land if the tests in clauses 3.8 and 3.9 cannot be satisfied.
- 4.20 The following general principles apply to clause 3.10:
- (a) **Permanent or long-term constraints:** The exception in clause 3.10 will only apply if the land is affected by permanent or long-term constraints that render its use for land-based primary production economically unviable for a period of at least 30 years.<sup>47</sup> A “long-term constraint” is defined as one that is expected to persist for a minimum of 30 years.<sup>48</sup> The size of a landholding in which the highly productive land occurs is not of itself a determinant of a permanent long-term constraint.<sup>49</sup> More is required to satisfy the test in 3.10. For example:
    - (i) In *Johnston v Dunedin City Council*, the Court accepted that the constraint was “not just the size of the subject sites, but also the size and land uses of the surrounding sites, and the likelihood that those surrounding sites will periodically be

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<sup>46</sup> Review of NPS-HPL assessment for Ashbourne Project (FTAA 2507-1087) prepared for Matamata-Piako District Council by Perrin Ag Consultants Ltd dated 10 November 2025 at [4.3.6].

<sup>47</sup> NPS-HPL, clause 3.10(1)(a).

<sup>48</sup> NPS-HPL, clause 3.10(5).

<sup>49</sup> NPS-HPL, clause 3.10(4).

inundated, meaning that investment in productivity is highly unlikely.<sup>50</sup>

- (ii) In *Bettley-Stamef Partnership v Waikato District Council*, the Court accepted that the site had permanent constraints for use in agricultural production as it was severed from rural land to the east by the construction of the Waikato Expressway, and historic subdivision and development had already fragmented the land into a range of smaller lot sizes.<sup>51</sup>
  - (iii) In *Hopkins v Waikato District Council*,<sup>52</sup> the Court accepted that the economic viability of primary production was constrained due to the small parcel size, surrounding land uses, fragmentation, and the high land value making intensive production uneconomic.
  - (iv) The case law is still developing in this area. In the meantime, the implementation guidance published by the Ministry for the Environment suggests that the types of constraints envisaged under clause 3.10 may include: access to water; contamination; natural hazards or climate change-related hazards; or non-reversible land fragmentation.<sup>53</sup>
- (b) **Avoidance of Significant Loss:** To come within the clause 3.10 exception, the subdivision, use, or development must avoid any significant loss (either individually or cumulatively) of the productive capacity of highly productive land in the district and avoid fragmentation of large and geographically cohesive areas of highly productive land.<sup>54</sup>
- (c) **Reverse Sensitivity Effects:** The proposal must avoid, if possible, or otherwise mitigate any potential reverse sensitivity effects on surrounding land-based primary production activities.<sup>55</sup>

<sup>50</sup> *Johnston v Dunedin City Council* [2025] NZEnvC 144.

<sup>51</sup> *Bettley-Stamef Partnership v Waikato District Council* [2024] NZEnvC 209.

<sup>52</sup> *Hopkins v Waikato District Council* [2025] NZEnvC 034.

<sup>53</sup> Ministry for the Environment. 2022. *National Policy Statement for Highly Productive Land Guide to Implementation* available at: <https://environment.govt.nz/assets/publications/NPS-Highly-Productive-Land-Guide-to-implementation.pdf>

<sup>54</sup> NPS-HPL, clause 3.10(1)(b). Also see, *CJ Industries Ltd v Tasman District Council* [2025] NZEnvC 213 at [304].

<sup>55</sup> NPS-HPL, clause 3.10(1)(b)(iii).

- (d) **Balancing Benefits and Costs:** The environmental, social, cultural, and economic benefits of the subdivision, use, or development must outweigh the long-term environmental, social, cultural, and economic costs associated with the loss of highly productive land for land-based primary production. However, this test is only relevant if there is sufficient evidence to establish that there are permanent or long-term constraints that render the land economically unviable for land-based primary production for a period of at least 30 years.

- 4.21 While there are some wetness limitations at the application site, these wetness limitations are not sufficient to demonstrate that there are permanent or long-term constraints to satisfy the test in clause 3.10, “*given that these wetness limitations can typically be managed through appropriate land management and drainage practices.*”<sup>56</sup> As the Applicant has not demonstrated that the site is subject to permanent or long-term constraints, the Council’s assessment is that the “*land remains suitable and economically viable for ongoing productive use, including at a reduced scale.*”<sup>57</sup>
- 4.22 In summary, while the solar farm component may align with clause 3.9, the broader development does not meet the tests in clauses 3.8, 3.9, or 3.10 of the NPS-HPL. Therefore, the broader development is inconsistent with the NPS-HPL.
- 4.23 While section 85(4) of the FTAA prevents the Panel from declining an application **solely** on the basis of inconsistency with a planning instrument such as the NPS-HPL, this does not diminish the substantive adverse effects that flow from the proposed development. The ‘real world’ consequence is the permanent and irreversible loss of highly productive soils. The highly productive land that will be permanently lost includes:
- (a) The land that will be converted to a retirement village (19.98 ha);
  - (b) The General Rural Zoned portion of the land that will be used for the residential and greenway development (5.9 ha); and
  - (c) The two lifestyle lots (0.75 ha).

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<sup>56</sup> Review of NPS-HPL assessment for Ashbourne Project (FTAA 2507-1087) prepared for Matamata-Piako District Council by Perrin Ag Consultants Ltd dated 10 November 2025 at [5.4].

<sup>57</sup> Review of NPS-HPL assessment for Ashbourne Project (FTAA 2507-1087) prepared for Matamata-Piako District Council by Perrin Ag Consultants Ltd dated 10 November 2025 [1.5].

- 4.24 Reverse sensitivity issues and cumulative effects may also arise for the surrounding highly productive land. This represents not merely a policy inconsistency, but an actual reduction in New Zealand's finite stock of high-quality agricultural land capable of supporting land-based primary production.

#### **Adverse Impacts of Unplanned Out of Sequence Development**

- 4.25 As noted in Planning Memorandum 1, the proposal "*forces unplanned public three-waters servicing to be extended to an area not sequenced for reticulated services.*"<sup>58</sup>

- 4.26 The Environment Court's decision in *Pinehaven Orchards Ltd v South Wairarapa District Council* highlighted the separation of roles between councils as consent authorities (regulators) under the RMA and as the infrastructure asset owners.<sup>59</sup> In the *Pinehaven* decision, the Environment Court clarified that a Council, in its capacity as the owner of infrastructure assets like water-supply and wastewater systems, retains the authority to decide what connections may be made to those services and which properties are to be served. The Court specifically said:<sup>60</sup>

Although the Court has the same power as a council against whose decision the appeal is brought, that power is limited to the council's power as a consent authority under the Resource Management Act. The Court does not have the power that a council has as the owner of water-supply and wastewater infrastructure to decide what connections may be made to those services, or what properties are to be served by them.

- 4.27 The Court also identified in *Pinehaven* that if the Council declines connections to its main sewer system, on-site disposal of sewage would have significant adverse effects on the environment, including contamination of groundwater, which is used to augment the urban water supply.<sup>61</sup>
- 4.28 The 'real world' consequences (adverse impacts) arising out of the unplanned Ashbourne development identified by the Council's experts are set out in **Section 5** below.

<sup>58</sup> Marius Rademeyer Planning Memorandum 1 dated 11 November 2025 at page 6.

<sup>59</sup> *Pinehaven Orchards Ltd v South Wairarapa District Council* W054/06, 4 July 2006 [2006] ELHNZ 274 at [104].

<sup>60</sup> *Ibid* at [2].

<sup>61</sup> *Ibid* at [139].

### Conditions precedent

- 4.29 As noted above, Mr Black has recommended early connection to Firth Street to avoid transport effects on the existing network.<sup>62</sup> Mr Rademeyer considers that this is vital because of the uncertainty of timing of construction of the various stages and components of the proposed development.<sup>63</sup>
- 4.30 Should the Panel be minded to approve the Substantive Application, the use of a condition precedent will be essential to ensure that defined development does not occur prior to the Firth Street connection being completed. It is therefore appropriate to briefly address RMA case law on such conditions, which we submit would apply equally to the FTAA context.
- 4.31 A condition precedent is one “*that must be satisfied before a consent-holder can undertake activities authorised by a consent or a designation*”.<sup>64</sup> In *Westfield (New Zealand) Ltd v Hamilton City Council*, the High Court confirmed that a condition precedent which defers the opportunity for an applicant to embark upon the activity until a third party carries out some independent activity is not invalid.<sup>65</sup>
- 4.32 A condition precedent is lawful subject to the requirement that it does not:<sup>66</sup>
- (a) Purport to impose conditions prior to the substantive consent having legal effect;<sup>67</sup>
  - (b) Require the consent holder to do something that it cannot lawfully do;<sup>68</sup>
  - (c) Frustrate the grant of consent;<sup>69</sup>
  - (d) Give rise to undue uncertainty as to the effects of the consented works and whether the mitigation measures proposed can be implemented, and if they are, whether they would be effective.<sup>70</sup>

<sup>62</sup> Statement of Evidence of Alastair James Black (Transportation) dated 11 November 2025.

<sup>63</sup> Planning Memorandum 1 by Marius Rademeyer dated 11 November 2025 at pages 6-7.

<sup>64</sup> *Tram Lease Limited v Auckland Transport* [2015] NZEnvC 137 at [28].

<sup>65</sup> *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254, at [56].

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*, citing *Director-General of Conservation v Marlborough District Council* HC Wellington CIV-2003-485-2228, 3 May 2004, HC, 2004 at [15].

<sup>68</sup> *Ibid.*, citing *Westfield (NZ) v Hamilton City Council* HC Hamilton, CIV-2003-485-000956, 17 March 2004.

<sup>69</sup> *Ibid.*, citing *Hildeman v Waitaki District Council* [2010] NZEnvC 51.

<sup>70</sup> *Ibid.*, citing *Laidlaw College Inc v Auckland City Council* [2011] NZEnvC 248.

- 4.33 While conditions precedent are clearly a legally available mechanism, they are not always appropriate in practice. In *Laidlaw College Inc v Auckland City Council*, the Environment Court noted that the factual situation must support the imposition of such a condition, particularly where third party agreement or assessment is required.<sup>71</sup> The Court emphasised that there must be sufficient certainty that proposed mitigation measures would be effective before a condition precedent can appropriately be imposed. Similarly, a condition precedent should not be imposed where it would potentially render the grant of consent futile due to practical impediments such as lack of funding or third-party commitment to necessary works.<sup>72</sup>
- 4.34 Accordingly, while a condition precedent may be a useful tool to address the Firth Street connection, careful consideration must be given to the practical ability for the condition to be fulfilled to avoid transport effects on the existing network.

## 5. OUTCOME OF THE COUNCIL'S ASSESSMENT OF THE SUBSTANTIVE APPLICATION TO DATE

- 5.1 The Council has undertaken a comprehensive review and assessment of the Substantive Application which is set out in the Planning Memoranda and associated statements and reports from the various Council experts. We provide a brief summary below of the key findings with respect to adverse impacts, the extent of benefits, and the proportionality assessment.

### Adverse impacts

- 5.2 The significant adverse impacts identified by the Council's assessment include:
- (a) **Issue 1 - Economic Impacts:** Early infrastructure upgrades will be required to enable the Ashbourne development. This raises concerns about planned infrastructure delivery and may require deferral of other programmed works. Even if direct costs are covered by developer agreements, indirect costs such as delayed development in already zoned areas may arise. We draw the Panel's attention to the evidence of Susanne Kampshof (water and wastewater), Alastair Black (transport), and Tim Heath (economics).

<sup>71</sup> *Laidlaw College Inc v Auckland City Council* [2011] NZEnvC 248 at [52].

<sup>72</sup> *Hildeman v Waitaki District Council* [2010] NZEnvC 51.

- (b) **Issue 2 – Infrastructure Impacts:** The Council’s experts have identified several potential infrastructure impacts. For example, Mr Black has recommended early connection to Firth Street to avoid transport effects on the existing network.<sup>73</sup>
- (c) **Issue 3 - Contrary to Planning Instruments:** The Substantive Application is inconsistent with multiple planning instruments and statutory directions. It proposes development in an unplanned, poorly serviced location, with no compelling justification under the FTAA framework – except for the solar farm, which may align with some policy intent. The ‘real world’ consequences of this include:
- (i) The permanent and irreversible loss of highly productive soils to the retirement village and residential components of the development. This represents not merely a policy inconsistency, but an actual reduction in New Zealand’s finite stock of high-quality agricultural land capable of supporting land-based primary production.
  - (ii) Reverse sensitivity issues as the proposal does not adequately mitigate adverse effects on adjacent rural and rural-residential land.
- (d) **Issue 4 - Environmental effects:** The site’s geology and groundwater regime are complex, and the geotechnical evidence provided by Mr Cowbourne highlights gaps in the assessment of ground conditions and associated risks. In particular, he notes that:<sup>74</sup>
- The limited amount of ground information contributes to uncertainties with respect to the bore water supply. There appears to be elevated risk with the proximity of the water bore to the proposed wastewater disposal field.
- This raises the potential for adverse environmental effects, particularly in relation to water quality and public health.
- (e) **Issue 5 - No Demonstrated Need:** There is already sufficient zoned residential and retirement village land to meet projected demand in the district, meaning the project is not required to meet statutory

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<sup>73</sup> Statement of Evidence of Alastair James Black (Transportation) dated 11 November 2025.

<sup>74</sup> Statement of Evidence of Anthony John Cowbourne (Geotechnical) dated 10 November 2025 at paragraph 1.5.

housing capacity obligations under the NPS-UD.<sup>75</sup> Further, the Ashbourne development is unlikely to generate additional residential demand in Matamata. Rather than unlocking latent or unmet demand, it would redistribute growth that is already planned for.

- (f) **Issue 6 - Cumulative effects:** If further lots are developed or similar subdivisions are allowed in the general rural zone this could lead to further unplanned urban expansion and increased pressure on infrastructure.

### **Benefits Assessment**

- 5.3 The Substantive Application claims that the Ashbourne project will create a range of benefits including increased housing and aged-care supply, and renewable energy generation. The proposal includes over 700 residential and retirement units, a neighbourhood centre, and two solar farms capable of powering approximately 8,000 homes annually. The project also delivers green infrastructure and self-serviced utilities. While these benefits are acknowledged, the evidence of Tim Heath<sup>76</sup> questions whether the economic benefits will be materially lower than asserted given existing zoned capacity and the potential displacement of existing planned development.
- 5.4 Having noted the above matters, even if the Panel were to accept the Applicant's assessment of regional benefits, the Council's assessment is that there remain a number of adverse impacts that are sufficiently significant to be out of proportion to those benefits.

## **6. CONCLUSION AND RECOMMENDATIONS**

- 6.1 The proposal represents unanticipated development on unsuitable land that would displace planned development while creating significant risks to public safety and environmental values due to the elevated risk with the proximity of the water bore to the proposed wastewater disposal field. The adverse impacts significantly outweigh any claimed benefits, warranting a decline under the FTAA.

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<sup>75</sup> Statement of Evidence of Tim Heath (Economics) dated 11 November 2025.

<sup>76</sup> Statement of Evidence of Tim Heath (Economics) dated 11 November 2025.

6.2 As matters stand on 11 November 2025, the result of the Council family's comprehensive assessment is that the Substantive Application should be **declined**.

**DATED** the 11<sup>th</sup> day of November 2025

Handwritten signatures in blue ink. The first signature is 'Andrew Green' and the second is 'Michelle Hooper'.

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**Andrew Green / Michelle Hooper**

Counsel for Matamata-Piako District Council