

3 June 2026



Fast Track Panel

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DELMORE – FTAA-2512-1164

Minute 2 Of the Expert Panel 1 April 2026, Paragraph 10(d)

We have been asked to provide specialist legal input into the proposed resident's society structure for Delmore, and specifically to address the Panel's questions at paragraph 10(d) of Minute 2 (referred to above).

1. EXECUTIVE SUMMARY

1.1 We have worked with Barker & Associates to update the proposed conditions for both the private wastewater and water treatment plants. The proposal is that there is:

- (a) One Resident's Society for the Delmore development, with constitutional documents that provide the necessary flexibility for Delmore e.g. addressing the possibility that Stage 2 might also need private wastewater and/or that some stages may be able to connect automatically to a public system;
- (b) A Utility Company, established to own, operate and maintain the plants and associated infrastructure.

1.2 We have considered examples where this has been successfully implemented elsewhere, most notably Karaka North, in Auckland and others e.g. in Jack's Point, Queenstown Lakes. For developments of the scale of Delmore a single unified Resident's Society with separate Utility Company is the recommended option.

1.3 The proposal includes a registered lease of the land to the Utility Company upon which the private wastewater and water treatment plants are located. A registered lease provides the necessary flexibility where the land may not be required long term for the private wastewater and water treatment plants, yet delivers the necessary legal certainty for lot owners that these assets are protected in the event of solvency issues, whilst also ensuring there is a title to land that could be mortgaged or charged if required.

2. WHY IS A SINGLE RESIDENT'S SOCIETY THE BEST OPTION FOR DELMORE?

2.1 In response to the Expert Panel Minute dated 1 April 2026 (FTAA-2512-1164), and in particular paragraph [10](d), this submission addresses the Panel's questions regarding the proposed private infrastructure arrangements and the role of Residential Societies. Comment has been requested as to:

“the private infrastructure role proposed for the two Residential Societies – and examples of where this mechanism has been implemented elsewhere for proposals of similar scale and proposed shared roles and responsibilities (i.e. both between the developer as asset owner and the Societies, and also involving two or more Societies potentially needing to integrate the management of effectively mutual assets)”.

- 2.2 The proposal is that there is a single Residents Society for the development.
- 2.3 The submission draws on the established and functioning Karaka North in Auckland as a relevant precedent for large-scale, staged developments relying on privately owned and managed wastewater infrastructure. Other examples have also been considered.
- 2.4 A single Resident's Society with a Utility company is the best option for Delmore because the roles are explicit and documented in advance. The panel asks at paragraph 10(d)(iii) for more detail in this respect:

“The conditions appear silent regarding the Residential Society's role in managing the water treatment plant. Which party will be responsible for operating and maintaining this infrastructure.”

- 2.5 The panel also has said at paragraph 10(d)(v):

“Page 12 of the Wastewater Report states that if a LPS is privately owned it needs to be maintained by a utility company. How does this factor into the arrangement described above?”

- 2.6 To respond to both paragraph 10(d)(iii) and paragraph 10(d)(v) the proposal includes the following:

(a) Developer:

- (i) Plans, consents and builds the subdivision, including the private water treatment plant(s), the private wastewater treatment plant(s).
- (ii) Enters into design / build contracts with appropriately qualified designers and contractors.
- (iii) Establishes the Residents' Society and Utility Company structure.
- (iv) Retains “Controlling Member” responsibility in Resident's Society to enable delivery of subsequent stages of the subdivision.

(b) Residents' Society (Incorporated Society):

- (i) Mandatory membership for all lot owners.
- (ii) Is shareholder of, and owns the Utility Company.
- (iii) Sets levies to fund. operations, maintenance, compliance, renewals, may create sinking funds.
- (iv) Enforces bylaws and manages other matters e.g. JOALs, design controls.

(c) Utility Company (Society-owned entity):

- (i) Licensed / registered water supplier;
 - (ii) Holds and renews necessary consents e.g. discharge consents;
 - (iii) Holds operational responsibility for supplying potable water, Responsibility for wastewater treatment and discharge, interfaces with regulators;
 - (iv) Separates ownership/governance from day-to-day operations, which is considered good practice.
- (d) Operator and maintenance contractor(s):
 - (i) Designs, builds the water and wastewater plants;
 - (ii) Operates the system under contract: day-to-day operation, monitoring and maintenance, compliance reporting, emergency response.
- (e) Lot owners:
 - (i) Mandatory members of the Residents' Society.
 - (ii) Pay fixed and volume charges aligned with rates payable to public suppliers by way of payment to Utility Company and levies funding water supply, wastewater treatment, operator contracts, asset renewal, disconnection and connection to public supply.
 - (iii) Receive: potable water, wastewater services under contracts with Utility Company.

2.7 As there is a single Resident's Society for the entire development this provides a larger funding base and ensures the developer and all lot owners are under one structure until completion of the development. A Resident's Society can be designed that addresses all the needs of the development, including as to how costs are funded and/or on-charged (e.g. so that JOAL owners fund the costs for their JOAL) and when (e.g. there might be separate levies for different purposes, sinking funds can also be created), and ensures development wide common private infrastructure and assets are under a single unified structure.

2.8 This proposal addresses staging by establishing a single, enduring Residents' Society at the outset of development. Obligations relating to infrastructure ownership, operation, and funding run with the land via registered covenants in favour of the Resident's Society, rather than relying on future consent conditions. As a result, the Society's responsibilities automatically expand as new stages are developed, without requiring jurisdiction over future consents or future entities.

3. **INSOLVENCY RISK**

3.1 The Panel asks at paragraph 10(d)(i) "*The application proposes that the consent holder own the land and the wastewater treatment plant associated with it and leases it to the Stage 1 Residential Society, but that the latter operate, maintain when required and take responsibility for all costs of maintaining the plant (condition 113). What would happen to the provision of infrastructure services if the consent holder or subsequent owner of the land and plant went into liquidation or bankruptcy? If there are major repairs required to the plant, has the Applicant considered how the Residential Society*

would be able to raise the funds for those repairs given that it will not own the land or plant?”

3.2 Insolvency risk is managed by aligning control, and funding responsibility for wastewater and water infrastructure within a single entity – the Residents Society. The wastewater treatment plant, water treatment plan and associated land are held for the benefit of the Society by the Utility Company, enabling it to exercise full control and long-term stewardship until that is no longer required and connection to the public supply is possible. The structure is also fit for purpose if the plants are required permanently as it is possible for the leases to include a long term and/or renewal rights.

3.3 This model:

- (a) Is legally robust and well-understood in NZ;
- (b) Separates governance from operations;
- (c) Allows professional operation of complex infrastructure.

4. **LEASEHOLD PROPOSAL AND RESPONSE TO MINUTE PARAGRAPH 10(D)(I)**

4.1 We address expressly below in paragraph 4 the queries at [10](d)(i) of the minute concerning the lease suggested.

4.2 At Delmore, a registered ground lease is proposed to be granted over the Water Treatment Plant and Wastewater Treatment Plan Land. As we understand it, key concerns are regarding the legal security of the leasehold interest, the implications if the freehold landowner becomes insolvent, and the ability of the lessee to raise funding secured over the leasehold estate. We considered it useful to also provide some comment as to how ownership, maintenance, and eventual termination can be addressed in the lease and show why this is the preferred structure at Delmore.

4.3 It is proposed the lessee, with an exclusive right of possession for the term for the leasehold land, would be the Utility Company. The lease terms are not yet drafted but may include:

- (a) Commonly in infrastructure leases, the lessee owns the plant, buildings, and equipment during the lease term. The lease can further address what happens on expiry or termination, for example whether ownership transfers to the freeholder, remains with the lessee, or the lessee is required to remove the assets and reinstate the land. This flexibility allows the parties to align ownership outcomes with the long-term infrastructure strategy.
- (b) Typically, the rent payable under a lease such as this would be a “peppercorn”.
- (c) A registered lease will clearly allocate responsibility for repairs, maintenance, and operation of the land and improvements. In the context of a private water treatment plant for example, the lease would typically place responsibility for day-to-day operation, compliance, and maintenance on the lessee.
- (d) The lease term can be structured to continue for as long as the private water treatment plants are required. For example, the lease may remain in place until a public water connection becomes available, with termination rights arising for the parties on the occurrence of that. This provides flexibility and ensures that the lease end date aligns with the functional life of the infrastructure so that lot owners do not need to bear the cost of this land beyond its useful life.

- (e) The lease creates an incentive to the freehold owner of the land to participate in decommissioning and ensure it is completed, if the plants are not required long term. Removal of the plant and termination of the lease delivers the freehold land back to the developer for further development or on-sale.
- 4.4 A registered lease under New Zealand law is a legal interest in land. Once registered on the record of title under the Land Transfer Act 2017, the lease binds the land itself rather than merely the current owner. Section 51 of the Land Transfer Act 2017 provides that, upon registration, the leasehold interest will benefit from indefeasibility of title under the land transfer system. This means that any future owner of the freehold takes the land subject to the lease for the remainder of its term. The lease is not simply a contractual arrangement but a proprietary interest that runs with the land. The lease will be registered against the underlying fee simple title and will provide for the issue of a separate leasehold record of title in favour of the lessee. This enables the lessee to hold its interest as a distinct, registrable estate in land, capable of being independently dealt with.
- 4.5 The lessee may mortgage or otherwise charge its leasehold interest. As a result, the lessee can raise funds to finance the construction, operation, maintenance, or upgrading of the private water treatment plant by granting security over its leasehold interest. From a lender's perspective, this provides a clearly defined and legally protected interest in land, improving the bankability of the infrastructure.
- 4.6 The lease is not an asset available to the freeholder's creditors and cannot be terminated merely because the freeholder is insolvent, provided the lessee complies with the lease terms. Any mortgagee or purchaser from an insolvent freeholder takes the land subject to the registered lease.
- 4.7 In summary, a registered lease in New Zealand provides a secure, indefeasible legal interest in land that protects the lessee from freeholder insolvency, enables financing through a separate leasehold title, and clearly allocates ownership and maintenance responsibilities. For private water infrastructure, this model offers legal certainty, financial flexibility, and long-term operational security.

Please let us know if you require anything further.

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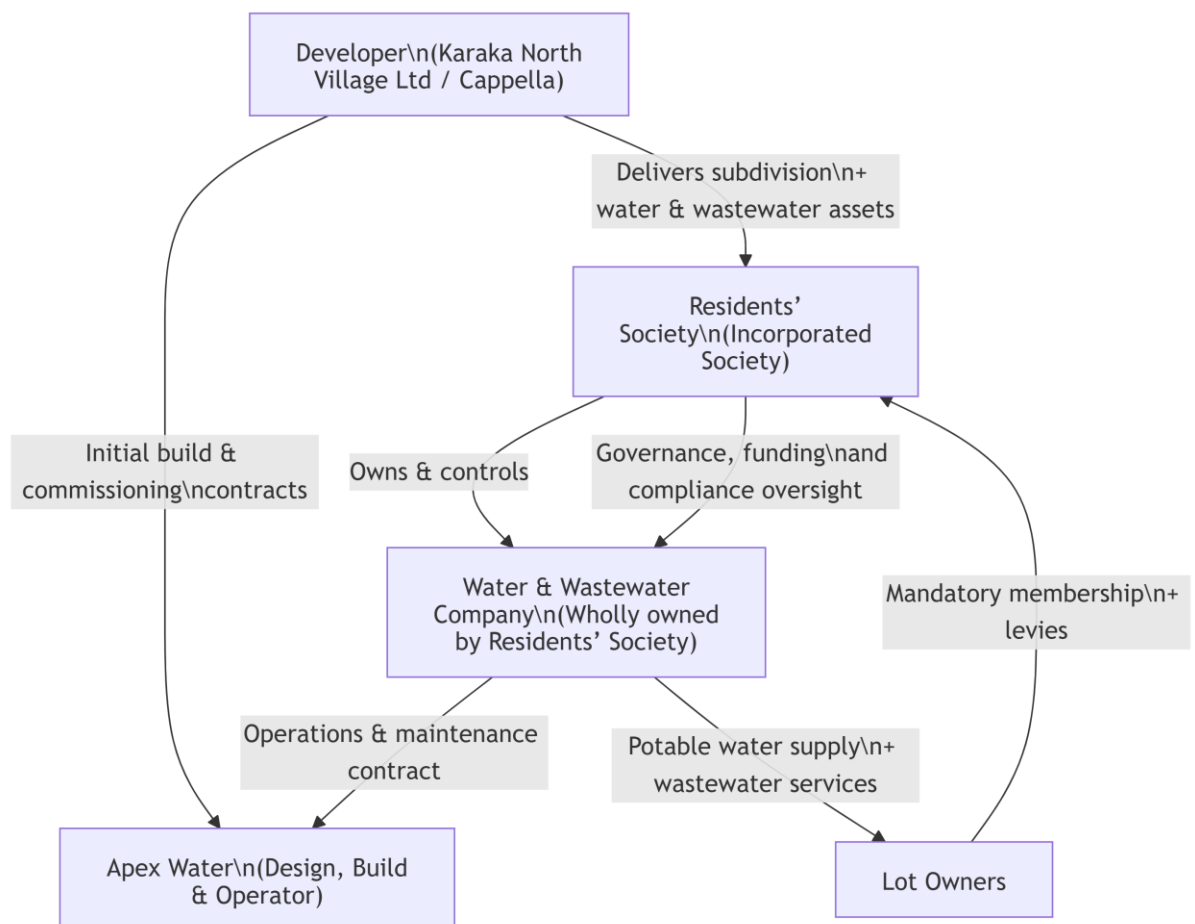
ATTACHMENT: EXAMPLE

1. KARAKA NORTH

1.1 By way of example, the below is a high-level analysis of a comparable scheme at Karaka North Village (New Zealand).

1.2 We have been told a proposed Membrane Bioreactor (MBR) wastewater treatment plant designed to treat sewage to Grade A standard for reuse in landscape irrigation around the development is employed here. This system is designed for a residential development of 850 residential units where the infrastructure is managed centrally. See <https://www.apexwater.co.nz/projects/karaka-village-water-and-wastewater-treatment-plants>

1.3 The diagram below summarises the legal structure:



1.4 The above shows:

- Water assets (potable water and wastewater) and the underlying land are owned by the Water Company.
- Shares in that water company are 100% owned by Karaka Village Residents' Society Incorporated.
- The Directors of the water company are representatives of the developers plus one nominated by Karaka Village Residents' Society Incorporated.

- (d) Water Company constitution anticipates shares may only be transferred to Watercare or a “similar type of entity” providing the water services. That is also who is entitled to receive the Water Assets (see below).
- (e) Monies received by the Water Company are held for the benefit of the Karaka Village Residents' Society Incorporated.
- (f) Karaka Village Residents' Society Incorporated and Water Company enter into a deed as to the provision of the Water Services. In turn Apex Water is contracted as to repair, maintenance etc.
- (g) Water Company's purpose is to hold, administer and manage the water assets and provide the water services.
- (h) Karaka Village Residents' Society Incorporated Constitution includes:
 - (i) 4.5 Each Member must acquire Water Services from the Water Company with appropriate fees and levies (e.g. a separate CAPEX and Maintenance Fund, Annual Charges, other costs, like IGC);
 - (ii) 4.6 Transfer of Water Assets: If the Society or the Water Company transfers the Water Assets to a third party (New Water Supplier) in accordance with rule 8.9.8 those Water Assets will cease to be a Communal Facility and the Society will no longer be liable to ensure the supply of Water Services to any Member, Developed Property or Communal Facility. Each Member must, in those circumstances, make its own arrangements with the New Water Supplier for the supply of Water Services in accordance with rule 6.4.
 - (iii) 6.4 anticipates if there is a New Water Supplier then members must contract with the new provider.
 - (iv) 8.9.8 authorises the transfer of the Water Assets to the New Water Supplier as long as they agree to continue supplying water services to residents.
 - (v) Clauses that anticipate staging and neighbouring land joining in the future
 - (vi) Various requirements to pay charges for connection, disconnection, ongoing, all quite detailed.
- (i) Water Company Constitution includes:
 - (i) The Water Company exists to own, operate and manage the water and wastewater system for Karaka Village.
 - (ii) The Water Company must provide potable water and wastewater services to Members' properties and to communal facilities while it owns or controls the Water Assets. Members must obtain those services from the Water Company and enter into a standard Customer Contract with the Water Company.
 - (iii) The Water Company may operate, maintain, repair, renew and replace the Water Assets, including water supply and wastewater systems. Members must not interfere with or access those assets.

- (iv) The Water Company's operating costs are recovered through Society levies and usage charges. Charges payable under Customer Contracts may be paid directly to the Water Company or recovered by the Society as levies. Long-term maintenance and renewal may be funded through the Capex and Maintenance Fund held by the Society.
- (v) The Water Company may transfer Water Assets to a new water supplier, provided continuity of services is offered. On transfer, those assets cease to be communal facilities and responsibility for water services ends. The Society may also sell or transfer its shares in the Water Company.
- (vi) The Water Company operates under a Water Services Deed with the Society.