

Before the Expert Consenting Panel

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

and

In the matter of Ashbourne

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

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

23 February 2026



Bill Loutit / Chris Ryan
T: +64-9-358 2222
bill.loutit@simpsongrierson.com
chris.ryan@simpsongrierson.com
Private Bag 92518 Auckland

Counsel instructed
Phil Lang
Riverbank Chambers
T: 021 870 660
p.lang@xtra.co.nz

MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Matamata Development Limited (**MDL**), in relation to Minutes 16, 17 and 18 of the Expert Consenting Panel (**Panel**). MDL appreciates the direction for the experts to conference in Minute 18 but, as explained below, wishes to ensure there are no remaining stormwater or other issues that MDL is unaware of.

Groundwater issues in Basin A

2. In Minute 16 the Panel gave notice that it had commissioned advice from Jon Williamson because of new concerns regarding “the groundwater issues associated with Basin A in the residential subdivision component” of the Ashbourne project (**Proposal**). If those issues are not able to be resolved in the course of expert conferencing, MDL can provide a fulsome response to the concerns raised by Mr Williamson in due course. However, and in advance of expert conferencing, we have been instructed that:
 - (a) Mr Williamson was not involved in earlier discussions regarding stormwater issues and had just three working days in which to prepare his advice,¹ noting the substantial amount of relevant material that has been filed with the Panel on those matters;
 - (b) Mr Williamson did not benefit from participating in the earlier expert witness conferencing regarding stormwater issues;
 - (c) Mr Williamson assumed that there was “an absence of time for further request for information from the applicant”, when that was a matter for the Panel to determine. As the Panel will be aware, MDL has been open to suspend the processing of the application as necessary;²

1 Mr Williamson states that he was instructed on 15 February 2026 (a Sunday) with his memorandum being dated 18 February 2026.
2 Refer to, for example, MDL's response to paragraph 5 of Minute 9.

- (d) Mr Williamson’s statement that “[t]he draft consent conditions proffered by the Applicant on 12 February 2026 do not adequately address the uncertainty, primarily because... they do not include recommendations from the JWS” is not correct.

“Other issues” reference by the Panel

3. Minute 17 refers to “other issues regarding groundwater/stormwater as well as other concerns”.³ Minute 18 refers to:

[4] ...the issues identified in Mr Williamson’s advice in relation to Basin A and the absence of appropriate conditions together with issues related to location and operation and maintenance of proposed subsoil drains required to limit elevation of groundwater levels within the proposed residential subdivision.

4. Other than the stormwater and groundwater issues referred to above any other unresolved issues are unknown to MDL. Particularly in relation to stormwater and groundwater issues, there was agreement in the expert’s joint witness statement between all of the relevant experts as to the management of those effects.
5. In Minute 17 the Panel stated that because of the unspecified “other concerns the Applicant may wish to address”, that it considered that “any conferencing to occur might benefit from the Applicant having understood the contents of the Draft Decision”.⁴
6. If there are “other issues” other than the aforementioned groundwater and stormwater issues, MDL respectfully considers that a more appropriate process would involve it having notice of the Panel’s concerns in advance of a draft decision being issued, so that MDL has the opportunity to respond or file evidence with the Panel that addresses its concerns. Noting the detailed responses that MDL has provided to the Panel to date, an efficient way for MDL to understand those concerns would be to convene a

3 Minute 17 at [3].

4 Minute 17 at [3].

conference with the Panel where the Panel can outline its outstanding issues. Expert conferencing, as has been directed in relation to the stormwater and groundwater issues, could then follow as needed.

7. As the Panel will be aware, both a decision to issue a draft decision and a final decision on the approvals sought for the Proposal, are exercises of a statutory power.⁵ Accordingly, those decisions are susceptible to review by the Courts.
8. MDL is concerned that aspects of the process adopted by the Panel does not accord with the principles of natural justice. As the Panel will be aware:
 - (a) those principles concern the observation of procedural fairness in the course of a decision-making process. They require that “the procedure before any tribunal which is acting judicially shall be fair in all the circumstances”;⁶ and
 - (b) the courts exercise a supervisory role to see that natural justice is observed.
9. In these particular circumstances, MDL submits that the especially relevant principles of natural justice are that:
 - (a) a subsidiary of the principles of natural justice include a requirement that decisions are to be made on correct facts.⁷ MDL considers that would include matters of expert evidence, where the Panel is relying on the advice provided to it by its expert advisors;

5 Under sections 69 and 87 of the Fast-track Approvals Act 2024. Under section 5 of the Judicial Review Procedure Act 2016 “statutory power” includes a power or right to exercise a statutory power of decision and that is conferred by or under any Act.

6 *Wiseman v Borneman* [1971] AC 297, 308 (HL) cited in *D v M and Board of Trustees of Auckland Grammar School* [2003] NZAR 726 (HC) at 732.

7 *D v M and Board of Trustees of Auckland Grammar School* [2003] NZAR 726 (HC) at 731.

- (b) "... a party should normally be given the opportunity to respond to an allegation which, with adequate notice, might be effectively refuted".⁸ If there are "other concerns the Applicant may wish to address" which the Panel has raised previously, given the comprehensive nature of its responses to the Panel's previous requests for information, those concerns are a surprise to MDL and are not foreseeable by it.

Next steps

- 10.** If there are other issues, other than the stormwater and groundwater issued referred to in Minute 18, MDL respectfully requests that:
 - (a) the Panel convenes a conference with itself and representatives of MDL, the Matamata-Piako District Council (**MPDC**) and Waikato Regional Council (**WRC**) to discuss the Panel's concerns;
 - (b) following that conference, and in relation to the residual areas where the Panel has concerns regarding the Proposal, the Panel could direct further expert conferencing between the relevant experts; and
 - (c) that the processing of the Proposal is suspended until the relevant joint witness statements are filed following expert conferencing.

- 11.** Naturally MDL agrees the Panel, MPDC and WRC can continue to incur costs in relation to these minutes and any issues on which the Panel requests their input while the application is suspended.

8 *Khalon v Attorney-General* [1996] 1 NZLR 458 (HC) at 464 and 466.

12. MDL has also received the 23 February 2026 memorandum of counsel on behalf of MPDC and WRC. It intends to respond to that memorandum separately.

DATED at Auckland this 23rd day of February 2026



W S Loutit / P Lang
Counsel for Matamata Development Limited