
MINUTE 17 OF THE EXPERT PANEL
Legal Questions and Further Information Requests
Sunfield [FTAA-2503-1039]

(2 December 2025)

1. The Expert Panel (Panel) is in receipt of various Joint Expert Witness Statements. A number of questions arise.

Legal Questions

2. Following conferencing, there remains a difference in position as between the Applicant and the Council in relation to the availability of potable water supply and capacity within the wastewater network to service the development.
3. The Applicant's position on the question of capacity is set out at paragraph 5.7 of a Memorandum of Counsel of the Applicant with Response to Comments dated 15 October 2025:

As correctly noted by Brookfields, a resource consent decision cannot, through conditions or otherwise, compel Watercare to provide new connections, commit funding for infrastructure, or accept the vesting of assets. A claimed lack of capacity therefore constitutes a developer's risk with proceeding; it is **not** an effect on the environment **nor** a consenting issue.

(footnote omitted)

4. The Applicant also notes in that same Memorandum, that conditions 117, 120, 162, 167 – 169, 175 and 205 have been proposed to address this issue.

5. It is unlikely that this development can proceed without the provision of potable water and capacity within the wastewater network to service the it. The Applicant appears to acknowledge this situation, but simply states that it is a developer's risk.
6. The Panel is interested in the validity of conditions of resource consent requiring that buildings are provided with stormwater, wastewater and waster supply connections to the reticulated networks prior to occupation. The following legal questions arise:
 - a. Do such conditions require the approval of a third party (i.e., Watercare)?
 - b. Are such conditions sufficiently certain noting that fulfilment of them is not within the Applicant's control?
 - c. Are those conditions structured as conditions precedent such that the resource consent does not commence until they are fulfilled?
 - d. Are the conditions offered on an "Augier" basis?
 - e. Are the conditions otherwise lawfully valid, and can the Panel impose them on this application?
7. The Panel seeks legal submissions on these questions. A sequential exchange is preferred, with the Applicant filing first, followed by the Auckland Council Family and any other party who wishes to file submissions on these questions.
8. Accordingly, the Panel directs:
 - a. That the Applicant is to file written legal submission addressing the questions set out at paragraph [6] of this Minute by **4pm, Friday**

5 December 2025.

- b. That the Auckland Council Family is to file written legal submission addressing the questions set out at paragraph [6] of this Minute by **4pm, Wednesday 10 December 2025.**
- c. That any other party may file written legal submission addressing the questions set out at paragraph [6] of this Minute by **4pm, Wednesday 10 December 2025.**

Conditions of Consent

- 9. The Panel observes that the proposed conditions of consent may have been updated as a result of the Joint Witness conferencing, and the reports from the Panel's special advisors.
- 10. The Applicant is directed to file an updated word.doc version of the proposed conditions, with any further changes made since the 15th of October version tracked for ease of reference.
- 11. Accordingly, the Panel directs the Applicant to file an updated word.doc version of conditions by **4pm, Friday 5 December 2025.**

Ecology

- 12. By Memorandum of Counsel dated 26 November 2025, counsel for the Auckland Council Family sought leave to present findings of Mr Smith's review of the Applicant's ecology report dated 21 November 2025.
- 13. A draft of Mr Smith's review was attached to that Memorandum.
- 14. The Panel has not considered the contents of Mr Smith's review because it is not properly before the Panel.

15. Should parties seek to file further information, they should describe what the information is, and set out the reasons for why the Panel should exercise its discretion to request the provision of such information.

16. Notwithstanding the above observations, the Panel directs Auckland Council to produce Mr Smith's technical review pursuant to section 67(1)(a)(iv) of the FTAA. The further information is to be provided by **1pm, Wednesday 3 December 2025.**

17. The Applicant may respond to the further information (if it so chooses) by filing a response no later than **3pm, Tuesday 9 December 2025.**

Cultural Issues

18. By letter dated 17 November 2026, Te Ākitai Waiohū Settlement Trust (**TAWST**) provided a narrative description of cultural issue(s) that remain in relation to this application (purportedly) in response to Minute 14.

19. The Panel observes that it did not seek any response from TAWST in its Minute 14.

20. However, when the letter is read as a whole, it is apparent to the Panel that TAWST wishes to highlight that (contrary to the Applicant's assertion during the issues conference that there were no remaining cultural issues), it considers there are extant cultural issues.

21. The Panel notes the issues described in TAWST's letter dated 17 November 2025, and invites the Applicant to respond to (if it so chooses) by filing a response no later than **3pm, Tuesday 9 December 2025.**

Potential Hearing

22. The Panel is likely to have questions of experts on the following topics:

- a. Stormwater management;
- b. Public Transport; and
- c. Economics

23. The Panel is likely to hold a hearing on these topics on **17 and 18 December** 2025. A Notice of Hearing and further directions will likely issue in due course.



Philip Maw
Expert Panel Chair