

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**

26 February 2026



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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of the applicant, Matamata Development Limited (**MDL**).
2. MDL has had the opportunity to consider Minute 19 of the Expert Consenting Panel (**Panel**) and appreciates the Panel providing further clarity around the initial steps that it proposes to take following the release of the draft decision, which MDL understands will decline some of the approvals sought.¹ MDL, in association with Matamata-Piako District Council (**MPDC**), has contacted the relevant experts to make arrangements for expert conferencing in accordance with paragraph 30 of Minute 19.
3. However, and in the interests of assisting the Panel, MDL has concerns around the process following a draft decision to partially refuse an application which it wishes to draw to the Panels attention and have considered prior to the release of the draft decision. It is concerned that the process proposed in paragraph 29 of Minute 19, with a draft decision being issued on 26 February 2026 and then expert conferencing on groundwater and stormwater issues following that, is not a process envisaged under sections 69 and 70 of the Act.
4. The relevant parts of those two sections are as follows:

69 Panel provides draft decisions to applicant before declining approval

- (1) This section applies if a panel—
 - (a) proposes to decline an approval under section 81; and
 - (b) has not previously invited the applicant to make a proposal under subsection (2)(b).
- (2) The panel must direct the EPA to—
 - (a) provide the applicant with a copy of its draft decision document for every approval sought in the substantive application; and
 - (b) invite the applicant to—
 - (i) propose conditions on, or modifications to, any of the approvals sought; or
 - (ii) withdraw the part of the substantive application that seeks any of the approvals sought

1 Minute 16 at [6] and Minute 19 at [7].

70 Panel seeks comment on draft conditions before granting approval

- (1) Before a panel decides to grant an approval under section 81, the panel must direct the EPA to provide a copy of its draft conditions to the following, inviting comments on the draft conditions:
- (a) the applicant; and
 - (b) every person or group that provided comments under section 35 or 53; and
 - (c) any local authority or other body with a statutory responsibility to enforce or monitor compliance with the conditions.

5. Unlike section 70, section 69 does not include an express reference to the applicant having a right to “comment on” the draft decision to decline an approval. Instead, the applicant is limited to taking the steps in section 69(2)(b), which involve either proposing conditions or modifications to the approvals sought or withdrawing parts of the application. By contrast section 70 dealing with a draft decision to grant allows for the applicant and parties to comment on the draft application. It is the lack of an ability to comment in section 69 that causes MDL to be concerned. This is because MDL considers that the ability to “comment” inherently includes the ability for it undertake other steps, such as to filing further expert evidence and legal submissions, or requesting that the Panel convene a conference or hold a hearing.
6. Section 70 would appear to give the Panel more options when it comes to draft decisions to grant approvals. Although the Panel has the discretion to “regulate its own procedure as it thinks appropriate”,² that discretion is arguably limited by sections 69 and 70.
7. Noting the Panel’s view that the joint witness statement produced following expert conferencing on stormwater and groundwater issues “might be pivotal”,³ it is also not clear that sections 69 and 70 envisage significant evidential matters arising after a draft decision is issued. This may reflect practical issues that could arise. For example, if the Panel was to decide following expert conferencing to grant any of the approvals that the draft decision had indicated were to be declined, it would then be required to comply with the requirements of section 70. There would be

2 Fast-track Approvals Act 2024, section 10(1).

3 Minute 19 at [26].

limited time available for the Panel to take those steps, given the timeframe for the Panel to issue its final decision and the time required for parties to comment on the proposed consent conditions.

8. Should the Panel share those concerns or wish to have further input about them, MDL respectfully requests that the Panel convenes a conference or seeks more detailed submissions on them prior to the draft decision being released so that these procedural concerns above can be discussed. Alternatively, if the Panel does not share MDL's concerns, it could confirm its understanding of the process and any limitations (if any) on expert conferencing, the ability to file further evidence and legal submissions and the ability to have a conference/s or hearing/s before the Panel, once the draft decision is issued.

DATED at Auckland this 26th day of February 2026

A handwritten signature in blue ink, appearing to be 'W S Loutit / P Lang', written over a horizontal line.

W S Loutit / P Lang
Counsel for Matamata Development Limited