

Before the Expert Consenting Panel

In the matter of an application for approvals under section 42 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**

30 March 2026



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MAY IT PLEASE THE PANEL:

1. This Memorandum is filed on behalf of the Applicant, Matamata Development Limited (**MDL**).

Scope of this Memorandum

2. This Memorandum is filed in response to Minutes 27 and 28 of the Expert Consenting Panel (**Panel**) and is intended to be read in conjunction with the Applicant's responses to the stakeholder comments on consent conditions. This Memorandum addresses some issues that are relevant to the consideration of the stakeholder comments and the Applicant's responses to them.
3. Although the Applicant is providing, along with this memorandum, responses to stakeholders' comments, for the avoidance of doubt, its overall position on the Panel's draft consent conditions continues to be as set out in its response dated 23 March 2026.

Scope of stakeholder comments on conditions under s 70 of the Act

4. It has been noted that some of the stakeholders' comments on the draft conditions extend beyond matters relating to the conditions and into the foundations for some of the Panel's substantive determinations on whether to grant or decline the applications.
5. The Panel has previously considered the scope of matters that can be addressed by the Applicant and other stakeholders under ss 69 and 70 of the FTAA. Minute 23 of the Panel issued on 11 March 2026 notes at paragraph 10 that "*section 70 enables comments to be received only in respect of the proposed conditions and not the draft decision itself*".¹ That conclusion reflects the Panel's earlier comments in Minute 20, which stated that:²

1 Emphasis in original.

2 At paragraph 2.

The Panel notes that the Applicant's submissions rely on section 70 of the Fast-track Approvals Act 2024 ("the Act") to suggest that the Applicant should be entitled to provide further evidence, submissions, or commentary following the release of a draft decision that contains both proposed grants and proposed declines. The Panel must make clear that this interpretation is incorrect.

6. Minute 26 of the Panel issued on 18 March 2026 notes at paragraph 13, in response to a legal opinion concerning the scope of submissions under s 70, that s 70 provides an opportunity for comments to be made on conditions when an application is approved and as such does not preclude comments on the draft decision itself. The Panel accepted that a commenter may provide the background reasoning for a condition to be added, modified or removed pursuant to s 70, in that limited context of comments on the draft conditions.
7. However, the Applicant's reading of some of the comments on conditions is that matters relating to the substantive decisions on the applications are raised, extending beyond explanation of the reasons for comments on the conditions. Instead, the comments seek to raise procedural concerns or revisit substantive matters that were determined in the draft decision.
8. Where that occurs, the Panel would be able to disregard those aspects of the comments from stakeholders. Examples of such broad ranging comments from stakeholders are addressed in specific terms in the Applicant's responses to stakeholder comments.
9. MDL has also identified comments that:
 - (a) raise speculative concerns without any supporting expert evidence; or
 - (b) seek to revisit matters that were the subject of undisputed expert evidence; or

- (c) propose conditions that are contrary to the conditions agreed and proposed as a part of expert conferencing and are set out in the relevant joint witness statements (**JWS's**); or
- (d) seek that the consents be subject to conditions which impose abnormal monitoring periods, additional costs, and certification processes.

10. Even if the Panel was to consider those comments to be within the scope of section 70, in MDL's submission those comments seek conditions that are plainly "more onerous than necessary to" address the matter that those conditions are managing.³

Separate land use consents

11. As the Panel will be aware, it is councils' ordinary practice when granting consents for bundled activities to issue a set of conditions that identifies which conditions apply to the particular activities that have been bundled together. In MDL's submission, there is good reason for taking that approach in relation to the Ashbourne project. In particular:

- (a) it will assist with enforcement, noting that compliance with some conditions will be monitored by the Matamata-Piako District Council (**MPDC**) whereas others will be monitored by the Waikato Regional Council (**WRC**). The councils will be assisted by it being clear which conditions relate to each activity;
- (b) as is addressed in further detail below, the consents for the solar farms have a specified duration and expiry, unlike the other land use consents; and

3 FTAA, section 83.

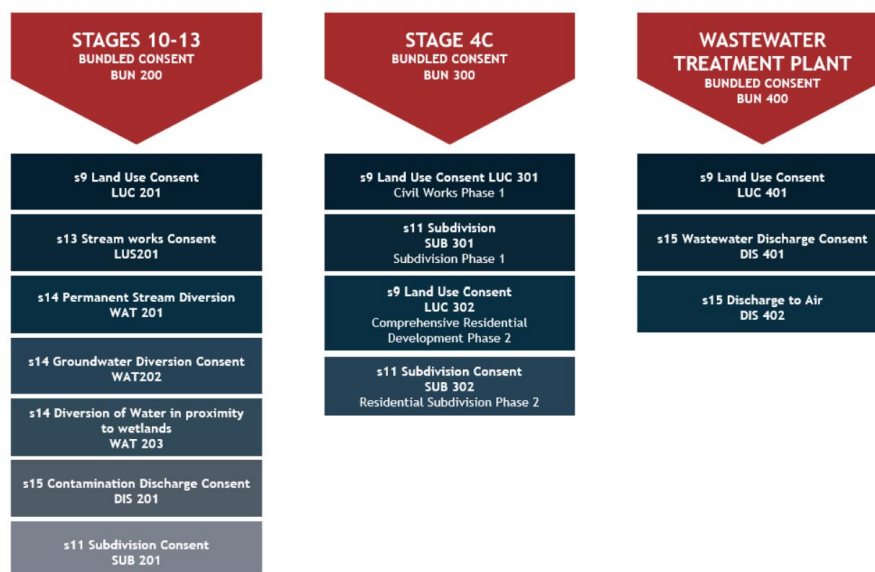
(c) as the Panel is aware,⁴ MDL has partnered and entered into commercial arrangements with Lightyears Solar, an established developer and operator of grid-connected solar projects. That, and along with the physical separation of the northern solar farm from the other components of the project, mean that implementation of the consents granted will be more straightforward when the conditions applying to each of the solar farms are clearly separated within the conditions.

12. The Applicant notes that the expert panel in the *Milldale* project decision adopted a structure for multiple consents, producing a separate set of consents for each component of the proposal. Each component of the proposal had conditions structured to show:

- (a) general conditions applying to all aspects of that part of the proposal (including where consents were bundled together);
- (b) specific conditions for each consent type; and
- (c) other relevant groupings of conditions as appropriate.

4 See paragraph 7(c) of the memorandum of counsel on behalf of the applicant dated 19 January 2026.

13. Those arrangements are summarised in section 1.1 of the consent, and in the diagram below (taken from the consent conditions):⁵



14. Minute 27 of the Panel requests “the Applicant to provide a clear means by which the components of the project can be approved as separate entities with separate conditions, while still ensuring that the approved aspects of the project can be integrated in terms of certainty of delivery”.⁶ In this context, the Applicant notes that the draft decision includes determinations that the solar farms proposals and the residential development proposal, excluding some parts, individually have regional significance.⁷ In the context of those determinations, the Applicant is unsure why there would need to be certainty of delivery of all the approved aspects of the project.

15. Nevertheless, the Panel has proposed conditions precedent in the residential subdivision consent conditions, requiring that:

- (a) the northern solar farm must be operational, including a connection to the Tower Road sub-station, before stage 4 and beyond of the residential development commences;⁸ and

5 <https://www.fasttrack.govt.nz/__data/assets/pdf_file/0015/13803/Appendix-A-Milldale-Conditions-v.1.pdf>.

6 At paragraph 7.

7 Draft decision paragraphs 681(b), paragraphs 477, 501.

8 Condition 11.

(b) the southern solar farm must be operational, including a connection to the Tower Road sub-station, before stage 7 and beyond of the residential development commences.⁹

16. The Applicant supports those proposed conditions, and considers that they are adequate to ensure that the residential development will not proceed beyond stages 4 and 7 unless the solar farms are operational.

17. There is no ability for the consent conditions to require any component of the project to proceed, as all the consents will enable implementation rather than compelling it. However, this condition precedent approach is a valid way of ensuring that residential stages 4 and beyond will not proceed unless there is sufficient progress with the solar farm developments.

Expiry of solar farm consents

18. The land use consents for the solar farm activities are proposed to have an expiry date of 40 years. However, section 123B of the Resource Management Act 1991 (**RMA**) provides that:

- (1) A resource consent authorising a renewable energy or long-lived infrastructure activity must specify the period for which it is granted.
- (2) The period specified under subsection (1) is 35 years after the date of commencement of the consent under section 116A unless—
 - (a) the applicant requests a shorter period; or
 - (b) a national environmental standard, a national policy statement, or a national planning standard expressly allows a shorter period; or
 - (c) the consent authority decides to specify a shorter period after considering a request from a relevant group for a shorter period for the purpose of managing any adverse effects on the environment.

19. In light of that limitation, MDL proposes the following condition:

The consent will commence in accordance with section 116 of the Resource Management Act 1991 (RMA) and provides for the operation of the solar farm for a period of 33 years from its commercial operating

9 Condition 12.

date (being the first date that the project is commercially exporting power to the National Grid, excluding operations under test conditions) after construction has concluded. The consent will expire and cease to authorise the activities 2 years after the cessation of generation, to enable the decommissioning of the solar farm.

FTAA ss 83(a) and 84A considerations

- 20.** It is submitted that s 83(a) of the FTAA is intended to ensure that conditions of an approved proposal do not extend beyond what is truly needed and as a result the conditions will not be **unduly onerous**.
- 21.** The s 83(a) constraint on conditions is raised by the Applicant in the context of one of the conditions proposed by the Panel and one of the conditions proposed by MPDC.

Collector road construction (condition 74)

- 22.** Draft condition 74 proposed by the Panel requires either certain upgrades to Hampton Terrace, Peakedale Drive and Jellicoe Road, or construction of the collector road to Firth Street, “prior to commencing construction on the Site (including Site enabling works)”. The Applicant’s contention is that such a requirement for early construction of the whole of that collector road is unnecessary to address any adverse impacts of the residential development proposal in those early development stages and does not achieve an identifiable resource management purpose. As such, it would be an overly onerous condition of the type referred to in s 83(a). It would have the effect of requiring early commitment of resources that will not result in an intended positive effect or mitigate any identified adverse impact.
- 23.** The transportation experts at a relatively early stage in the FTAA process met and reached agreement on a number of transportation matters. The agreements reached did not signal any need for or any benefit from the early construction of that collector road through to the property boundary, but did acknowledge the benefit of a construction vehicle pathway to assist

in the management of potential construction noise effects from Stage 3 of the residential development onwards, rather than access being via Peakedale Drive.¹⁰ In their comments on the application, MPDC sought that the “proposed staging and development thresholds are altered to require alternative direct connections to the existing network at Station Road or Firth St earlier in the development staging” (emphasis added).¹¹ As the Panel will be aware, the Applicant has proposed connecting to Station Road.¹² The Applicant is not aware of any further information that has emerged that indicates a positive effect or adverse impact mitigation that would result from such a requirement to provide a connection to Firth Street.

- 24.** Section 84A of the Act enables the Panel to set conditions to ensure that the infrastructure in the project area or other infrastructure that the project will rely on is or can be made adequate to support the project or the stage of the project to which the project relates. That section is in addition to and not in limitation of any other powers to set conditions.
- 25.** The proposed collector road construction condition appears to go beyond what would be needed to support the project in its early development stages and is potentially intended to provide a benefit or benefits outside of the project area. The combination of provisions in ss 84A and 83 should limit any condition concerning the construction of the collector road to addressing the reason for which the condition is imposed. In the Applicant’s submission, the effect of those provisions is to require much more than the “logical connection” between a proposal and a consent condition than would ordinarily be required for a condition of consent to be proposed under section 108 of the RMA.¹³ In the context of ss 83 and 84A, it is not clear what reason would be available to require full construction of the collector road in the early stages of residential development. The proposed condition is therefore significantly more onerous than a condition that, for

10 Matamata-Piako District Council response to Minute 3, Memorandum 6 at page 7 (Table 2).
11 Matamata-Piako District Council comments under section 53, Annexure G at paragraph 4.33.
12 Applicant's response to comments received, Attachment 24.
13 *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, [2007] 2 NZLR 149 at [66].

example, prevents occupations of dwellings above a certain threshold number before the collector road is in place.

MPDC proposed condition precedent (amendments to condition 1)

- 26.** MPDC have proposed amendments to condition 1, with the additional sub-clauses being a condition precedent to any substantial implementation of the approvals. The pre-conditions relate to the establishment of a Private Developer Agreement (**PDA**) and approval of the Stormwater Management Plan (**SMP**) before the exercise of the approvals.
- 27.** The negotiation of the PDA has been undertaken throughout the duration of the FTAA approval process, separately from that FTAA process and is in a full working draft. That is the appropriate course to take as it is not a RMA or FTAA issue but a Local Government Act issue.¹⁴ The establishment of a PDA will enable the consent holder to secure connection to Council services through a negotiated works advancement and cost sharing programme.
- 28.** The proposed consent conditions rightly include a requirement for connection of developments to Council infrastructure.¹⁵ That is how the consent conditions require settlement of a PDA or some other process to ensure adequate servicing. There is already adequate provision through that consent condition to ensure that servicing will be achieved on a basis that is satisfactory to MPDC.
- 29.** The very specific condition proposed by MPDC is therefore “more onerous than necessary to address the reason for which it is set”.
- 30.** The SMP development process is defined in the Panel’s draft consent conditions in a way that provides the appropriate degree of certainty about development of an acceptable management plan with the Council having a recognized and commonly adopted approval role. The Panel’s draft

14 See ss 207A to 207F regarding development agreements.
15 Conditions 66, 110 and 111.

conditions relating to the SMP are adequate to provide certainty about that management plan, without adding a condition precedent into the conditions as proposed by MPDC.

31. The stormwater and groundwater expert conference recently addressed stormwater management issues and comprehensive agreement was reached amongst all the participating experts. Those experts did not identify any need for a condition precedent or other additional assurance about the SMP development and approval process. That conference and the JWS included participation by MPDC’s stormwater and groundwater experts.¹⁶

Interface with southern solar farm

32. Minute 28 concerns the interface between the residential development and the adjoining southern solar farm land. The Applicant has a sale and purchase agreement for the southern solar farm land, and will own that land at the time development commences. It is implicit that the Applicant gives written approval in relation to the activities that are the subject of the application that are proposed to occur on adjoining parcels of land that are within its ownership and control.

33. As the Panel will be aware, when considering an application under section 104(3)(a)(ii) of the RMA, a consent authority must not have regard to “any effect on a person who has given written approval to the application”. The Panel must take section 104 into account when considering the application and the conditions it proposes.¹⁷

Expert conferencing and suspension of time to allow for the same

34. The Applicant thanks the Panel for its direction regarding expert conferencing regarding the consent conditions.¹⁸ It confirms that it is

16 Namely, Bronwyn Rhynd and Tony Cowbourn.

17 FTAA, Schedule 5 clause 17(1)(b). Under clause 17(6) references in section 104 of the RMA to a consent authority must be read as a reference to the Panel.

18 Minute 27 at paragraph 9.

liaising with Chancery Green and the relevant experts regarding the arrangements for that conferencing.

- 35.** In relation to paragraph 8 of Minute 27, and the appropriateness of certain conditions providing for the deemed certification of some management plans, MDL considers those conditions should be discussed by the planning experts during expert conferencing on the conditions of consent.
- 36.** Expert conferencing on the conditions is proposed to occur on 1 April 2026. So that expert conferencing can occur, the Applicant respectfully requests a two working day suspension of time. Naturally, if the Panel grants the suspension, MDL agrees:
- (a) the Panel can continue to incur costs in relation to the application while the application is suspended; and
 - (b) MPDC and WRC can continue to incur costs in relation to expert conferencing.

DATED at Auckland this 30th day of March 2026



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