

**BEFORE THE FAST-TRACK APPROVALS
EXPERT PANEL**

FTAA-2512-1158

UNDER the Fast-track Approvals Act 2024 ("**FTAA**")

AND

IN THE MATTER of an application for approvals by Precinct Properties
New Zealand Limited ("**Applicant**" or "**Precinct**") in
relation to the proposed Downtown Carpark Site
Development ("**Application**")

MEMORANDUM OF COUNSEL

21 MAY 2026

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MAY IT PLEASE THE PANEL:

Introduction

1. On 8 April 2026, the expert panel ("**Panel**") released Minute 3, which invited parties to comment on the Application under section 53 of the FTAA.
2. Prior to this, on 7 April 2026, Precinct provided a memorandum of counsel with addendum reports which provided an updated position on outstanding issues as it stood then, to enable the parties invited for comment to have the most up-to-date position to hand. Comments on the Application were received on 7 May 2026.
3. Precinct and its expert team have endeavoured to respond to the comments received in a constructive manner to assist the Panel with its decision-making. This memorandum and the attachments provide a comprehensive response under section 55 of the FTAA to the comments received, including an updated set of conditions.
4. That said, this combined response does not address every comment received under section 53 individually. Precinct has approached its response on a "key themes" basis, focusing on the outstanding matters of contention and updating the proposed conditions. **Attached** to this memorandum are the following:
 - (a) **Attachment A:** Letter from Phil Wilson, Chief Executive at Auckland Council, in support of the Application;
 - (b) **Attachment B:** Planning memorandum;
 - (c) **Attachment C:** Corporate memorandum;
 - (d) **Attachment D:** Ngāti Whātua Ōrākei Whai Rawa letter;
 - (e) **Attachment E:** Cultural Values Assessment ("CVA") response;
 - (f) **Attachment F:** Traffic memorandum;
 - (g) **Attachment G:** Hotel pick up and drop off ("**PUDO**") peer review;
 - (h) **Attachment H:** Noise and vibration memorandum;
 - (i) **Attachment I:** Economics memorandum;
 - (j) **Attachment J:** Urban design memorandum;

- (k) **Attachment K:** Landscape memorandum;
- (l) **Attachment L:** Wind memorandum;
- (m) **Attachment M:** Air quality memorandum;
- (n) **Attachment N:** Geotechnical memorandum;
- (o) **Attachment O:** Structural memorandum;
- (p) **Attachment P:** CPTED memorandum;
- (q) **Attachment Q:** Healthy waters memorandum;
- (r) **Attachment R:** Design memorandum;
- (s) **Attachment S:** Updated design drawings and updated Architecture and Landscape Report;¹
- (t) **Attachment T:** Updated draft management plans;²
- (u) **Attachment U:** Updated Authority to Modify conditions; and
- (v) **Attachment V:** Updated proposed conditions (both in track change with explanatory comments, and as a clean copy, noting that Precinct is happy to provide the Expert Panel with a word version if that would be helpful).

5. Comments were received by the following parties:

- (a) Auckland Council (including Watercare, Healthy Waters and Auckland Transport);
- (b) Millennium & Copthorne Hotels New Zealand Limited ("**MCK**");
- (c) Ngāti Whātua Ōrākei;
- (d) Paul Goldsmith – Minister for Arts, Culture and Heritage (no comment);
- (e) Nicola Willis – Minister for Economic Growth;

¹ The relevant updated sheets are 16, 17, 18, 33 and 36.
² Construction Noise and Vibration Management Plan; Construction Traffic Management Plan; Groundwater and Settlement Monitoring and Contingency Plan; Hotel Pick Up and Drop off Management Plan; Operational Waste Management Plan; Servicing and Loading Management Plan; and Flood Barrier Management Plan.

- (f) Heritage New Zealand Pouhere Taonga;
- (g) New Zealand Transport Agency;
- (h) Body Corporate 199380 (the Sebel);
- (i) Viaduct Harbour Holdings Limited;
- (j) Piccadilly Trustee Limited;
- (k) Quay Street Investments Limited;
- (l) Quattro RE Limited (Kyndryl);
- (m) Mornington Trustee Limited;
- (n) Colliers;
- (o) Individual owners of units at the Sebel: [REDACTED]
[REDACTED]
[REDACTED] Gods in Motion Limited, City View Investments Limited;
- (p) [REDACTED] Hauraki Trustee Services (2004) Limited,
[REDACTED]
- (q) Clearcut Consultants Limited;
- (r) [REDACTED] and
- (s) [REDACTED]

Preliminary comments

6. Precinct has, today, received a letter from Phil Wilson, the Chief Executive of Auckland Council, which we wish to bring to the Expert Panel's attention. The letter is attached as **Attachment A**. Mr Wilson confirms Auckland Council's support of the Application, confirming that the project will have a "very positive" effect in Auckland's city centre and that Precinct's partnership with Ngāti Whātua Ōrākei is an example of the economic, environmental and cultural benefits that can be achieved in 21st century Auckland.
7. Precinct has undertaken significant and meaningful engagement with key stakeholders which has already resulted in the narrowing of many of the issues

between the parties. The updated proposed condition set provided reflects this. Notwithstanding, Precinct intends to continue to engage directly with key stakeholders on any issues that remain outstanding in respect of the proposed conditions.

8. In particular, there are a range of outstanding issues on conditions which Precinct considers it would be beneficial to try to resolve party-to-party. We also acknowledge the suggestion made by Mr Allan on behalf of MCK that expert conferencing and/or facilitated mediation could be appropriate to resolve outstanding issues on conditions.
9. As such, in the first instance Precinct will now contact the relevant parties again to try to set up engagement to further narrow the issues. Given the time constraints of the FTAA process, ideally this engagement will occur in the next few weeks. If thereafter unresolved issues remain regarding the proposed consent conditions that would benefit from formal dispute resolution, Precinct may then seek formal directions from the Expert Panel.
10. For completeness, the outstanding matters we consider could benefit from further direct engagement with the relevant parties are:
 - (a) **Planning:** further discussion between Precinct, the Council and other parties who have made relevant comments on proposed updated conditions, including further discussion with the Council planner on the outstanding issues (which should be narrowed following this section 55 response) and overall recommendation.
 - (b) **Construction traffic:** further discussion between Precinct and AT on outstanding issues on the proposed construction traffic conditions, including:
 - (i) Additional monitoring for heavy construction vehicles;
 - (ii) Prevention of light construction vehicles from using the Lower Hobson Street entrance;
 - (iii) Mitigation measures for closure of the Customs Street West end of the service lane;
 - (iv) Heavy construction vehicle restrictions during AT's retaining wall works; and
 - (v) Barrier on flyover.

- (c) **Operational traffic:** further discussion between Precinct and AT on outstanding issues AT has with the management of the proposed hotel PUDO. This is noting that Precinct has obtained a PUDO peer review from Mr Daryl Hughes (**Attachment G**).
 - (d) **Noise:** to the extent that any further discussions are required between Precinct and M Social / Sebel / Quattro on the particular wording of the proposed noise conditions, including the "scheduling" process.
 - (e) **Flooding:** to the extent any further discussion is needed with the Council on the particular wording of the proposed flood barrier management plan conditions and/or draft management plan.
 - (f) **Wind:** to the extent that any further discussion is needed with the Council on the particular wording of the proposed wind mitigation conditions.
 - (g) **Geotechnical and structural:** to the extent that any further discussion is needed between Precinct and MCK on the updated geotechnical and structural conditions.
11. There are some issues which have been extensively discussed already between Precinct and the relevant stakeholder(s) where there continues to be disagreement but which we do not consider would be helpfully advanced by any further dispute resolution and/or meetings. For these matters, we consider it will be most efficient for the Expert Panel to determine these issues based on the evidence in front of them. The outstanding issues that we consider fall into this category are:
- (a) **Economic:** the Council and Precinct experts have differing expert opinions about how the economic assessment is to be undertaken, but that ultimately there does not appear to be any dispute that the Application will generate significant regional benefits.
 - (b) **Landscape:** Precinct's and the Council's landscape experts have taken matters as far as they can as it relates to the key outstanding issue, being the infringement of the Harbour Edge Height Control Plane ("**HEHCP**"). Ultimately, each expert has differing expert opinions on the impact of the infringement.

Legal response

12. We respond below to the following legal matters raised in the comments:
- (a) The significant benefits test under the FTAA;
 - (b) The test under section 85(3) of the FTAA;
 - (c) Inconsistency with a provision of a specified Act or other document;
 - (d) Effects on parties that were not invited to comment;
 - (e) Permitted baseline;
 - (f) Comparative shading;
 - (g) Off-site mitigation;
 - (h) Archaeological conditions;
 - (i) Cost-benefit analysis; and
 - (j) Position on Kindercare.

The benefits test under the FTAA

13. As the Expert Panel will be aware, the purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.³
14. The Resource Management Act 1991 ("**RMA**") provisions are incorporated into the FTAA process.⁴ However, the legal framework for decision-making under the FTAA differs significantly by requiring the greatest weight to be given to the purpose of the FTAA,⁵ which is the delivery of infrastructure and development projects with significant regional or national benefits.
15. The Council's economist considers that Precinct's economic assessment does not demonstrate that the Application will generate regionally significant economic benefits, albeit it ultimately concludes that the Application is supported on economic grounds. A technical response to the economic issues

³ FTAA, section 3.

⁴ FTAA, Schedule 5, Clause 17.

⁵ FTAA, Schedule 5, Clause 17(1).

raised is provided as **Attachment I**, confirming that the Application will in fact generate significant regional economic benefits.⁶

16. As the Expert Panel will be aware, the significant regional or national benefits test under the FTAA is, deliberately, not limited only to economic or quantifiable benefits, but rather includes all relevant "benefits" of the proposal. The benefits of this Application extend well beyond its (significant) economic benefits and also include several long-term other qualitative benefits. These benefits include, in summary:
 - (a) **Cultural benefits**, as outlined in the letter from Ngarimu Blair that formed part of the Application, the Ngāti Whātua Ōrākei section 52 comments, and the Ngāti Whātua Ōrākei Whai Rawa letter in **Attachment D**.
 - (b) **Social benefits**, with the introduction of major new public spaces (including the Urban Room).
 - (c) **City-shaping benefits**, with strengthened vitality, amenity and liveability of the city centre through the mixed-use development, with increased retail, commercial, residential, and hotel capacity in the city centre.
 - (d) **Environmental benefits**, through the Application creating intensification in a highly transit-oriented location and the enhanced east-west connectivity across the Waitematā harbour for pedestrians.
17. Overall, the Application clearly meets the significant regional benefits test (and, we say, in fact has benefits of national significance), not only for economic reasons, but also based on the significant wider benefits that the proposal will generate.

The Section 85(3) FTAA test

18. Section 85(3) gives a panel discretion to decline an approval if the panel forms the view that there are one or more adverse impacts in relation to the approval that are "sufficiently significant to be out of proportion" to the project's regional or national benefits, even after taking into account conditions.

⁶ Economic response dated 19 May, Property Economics, page 4.

19. An "adverse impact" means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.⁷
20. Auckland Council's planning assessment identifies a list of nine alleged adverse impacts that the planner considers individually or collectively may meet the section 85(3) threshold.⁸ The Council planner ultimately concludes that the Application will generate significant adverse impacts (referring to these nine adverse impacts identified) which collectively could be out of proportion to the benefits.⁹ The planner has stated that due to there being "information gaps" in the application, she is unable to conclude yet on whether this would be the case.¹⁰
21. While determinations made by expert panels on other approvals under the FTAA are not binding on the Expert Panel for this Application, they are useful in providing some guidance as to how the FTAA may be applied, given that the FTAA is early into its implementation. In relation to the test under section 85(3), the expert panel in *Ayrburn Screen Hub* determined that a "material difference" is required between adverse impacts and benefits, and it will not be sufficient if the adverse impacts are marginally greater than the benefits.¹¹
22. In our submission, the wording of section 85(3) of the FTAA itself, supported by the interpretation taken in *Ayrburn Screen Hub*, creates a high threshold, which, in our respectful submission, is not even close to being met by this Application, either individually or collectively, by the nine issues raised by the Council.
23. The potential adverse impacts of this Application are primarily construction related. They are also entirely what would be expected of the largest private sector investment in a mixed-use development in the history of Auckland's core CBD. Quite plainly, in our submission, those potential adverse impacts do not materially outweigh the significant benefits of Precinct's proposal which have been summarised above at paragraph 16.
24. Further, in our submission, Precinct's response to the Council comments, including the updated proposed conditions provided at **Attachment V**, appropriately address all of the outstanding issues identified by the Council. This is also addressed in the planning response from Barker & Associates at

⁷ FTAA, section 85(5).

⁸ Auckland Council Planning memorandum dated 7 May 2026 at [544], [570] and the table at [564].

⁹ At [575].

¹⁰ At [575].

¹¹ Record of Decisions of the Ayrburn Screen Hub Expert Panel at [115].

Attachment B to this memorandum, which goes through each of the nine issues and clearly confirms why there are no adverse impacts that are out of proportion to the very significant regional (and, indeed, national) benefits of the Application.¹²

25. Where the Council has identified "information gaps", we strongly disagree that these are information gaps, but rather are issues where the Precinct and Council experts continue to disagree, despite the significant information that has been provided to date and the very comprehensive engagement that Precinct has undertaken with the Council. There is an important distinction between a genuine gap in information versus an expert-to-expert disagreement on technical matters. Again, the planning response from Barker & Associates addresses this in further detail, confirming that there are in fact no information gaps in respect of the matters that the Council identifies.¹³

Inconsistency with a provision of a specified Act or other document

26. Auckland Council's landscape expert has concluded that he does not support the Application on the basis that Tower 1 ("T1") infringes the HEHCP.¹⁴ The Council's landscape expert is the only expert that provided comment on the Application that does not support the proposal as currently proposed (noting others have sought condition amendments, which are addressed elsewhere in Precinct's response).
27. The Council planner considers that due to the height of T1, "significant adverse landscape effects are concluded" and that this "will require a proportionality assessment".¹⁵
28. A technical response is provided by Mr Jones in **Attachment K** to this memorandum. Mr Jones confirms that the Application is appropriate for Auckland's city centre and that although the height of T1 results in an infringement to one rule of the Auckland Unitary Plan ("**AUP**"), overall the proposal will achieve the purpose of the HEHCP. This assessment is supported by Barker & Associates, concluding that none of the adverse landscape impacts arising from the height of T1 are out of proportion with the significant benefits of the project.

¹² Planning Response, 21 May 2026, Barker & Associates, section 2.2, Table 1.

¹³ Being the economic assessment, comparative shading, infrastructure servicing, wind mitigation, flood barrier and transport matters. Refer to section 2.1 of the Planning Response, 21 May 2026, Barker & Associates.

¹⁴ Auckland Council landscape architecture memorandum dated 23 April 2026 at [5.7] and [5.8].

¹⁵ Auckland Council planning memorandum dated 7 May 2026 at [212].

29. Section 85(4) of the FTAA precludes a panel from forming the view that an adverse impact meets the threshold in section 85(3) solely on the basis that the adverse impact is inconsistent with, or contrary to, a provision in a specified Act or other document. This means that where there is an adverse impact that arises because it is inconsistent with one relevant plan provision, that alone cannot meet the high threshold in section 85(3).¹⁶
30. Even if the Expert Panel prefers the Council landscape evidence over the Precinct evidence and concludes that the infringement of the HEHCP is a significant impact, based on section 85(4), it would not have the ability to decline the Application on that basis alone.
31. As clearly outlined in the planning response from Barker & Associates, there are no adverse effects from the Application that are of the scale that they are out of proportion with the significant regional (and, we say, national) benefits of the project, either individually or cumulatively.¹⁷ The overall effects assessment by Barker & Associates is that the potential impacts will be minor (except for construction noise, which will be moderate).¹⁸

Effects on parties not invited to comment

32. In the legal memorandum contained within the Body Corporate 199380's comments on the Application,¹⁹ Ms Campbell states that although the Expert Panel decided not to invite the additional Viaduct Harbour bodies corporate²⁰ to comment on the Application, the Panel is not statutorily restricted from considering effects on those parties or imposing conditions to address those effects.
33. We do not disagree with the legal position outlined by Ms Campbell. However, from a weighting perspective, the Expert Panel still needs to consider any effects on these additional body corporate parties in context. These additional third parties are not proximate to the Application site and will not experience any effects that have not already been considered by Precinct and its experts. The additional third parties are located in the Viaduct, most being separated

¹⁶ While the draft decision is not binding on the Panel, there was unanimous agreement to this interpretation in the recently issued draft decision for the Taranaki VTM application under the FTAA, *Draft Decision Taranaki VTM* Expert Panel FTAA-2504-1048, 4 February 2026, at [237] to [241].

¹⁷ Planning Response, 21 May 2026, Barker & Associates, sections 2.2 and 2.3.

¹⁸ Planning Response, 21 May 2026, Barker & Associates, section 2.3.

¹⁹ Body Corporate 199380 legal memorandum dated 7 May 2026 at [21].

²⁰ Body Corporate 198900 The Quays, Body Corporate 199318 The Point, Body Corporate 313742 Viaduct Point, Body Corporate 358939 Lighter Quay Halsey, Body Corporate 343562 Lighter Quay Stratis, The Parc Bodies Corporate (336460/321390/321391/336459/383524/278969/323876/321393/321289), Dockland Management Limited.

from the Site by the Viaduct basin, other buildings and road crossings. For example, even the closest non-adjacent third party, the Quays, does not have frontage onto the same road as the Application, and is separated entirely by another building. In this context, and with the conditions of consent proposed by Precinct, we submit there will not be any meaningful adverse impacts on these third parties.

Permitted baseline

34. The Auckland Council economist has made an assertion that 74% of the Application is permitted by permitted activity rules which would, in his view, create a "permitted baseline" to assess the Application against from an economic benefits perspective. The economist has said that only the remaining 26% of the Application could properly be attributed to the FTAA process and has therefore assessed the economic benefits based on the 26% only.²¹
35. Respectfully, this approach is fundamentally wrong.
36. Under the RMA, the permitted baseline is a discretion a decision-maker may apply to remove certain effects permitted by a plan from consideration.²² As set out in the planning response from Barker & Associates, the construction of any new building in the City Centre Zone requires resource consent and therefore there is no legal permitted baseline that can be applied to the proposal.²³
37. Fundamentally, the construction of a development of this size in the Auckland CBD will always require consent for a multitude of reasons. The Environment Court has also been very clear that the legal "permitted baseline" cannot be co-opted so as to apply to what may allegedly be anticipated by the relevant plan.²⁴ On that basis, there can be no "permitted baseline" in the planning sense that can be applied to the assessment of the regional and national benefits of this Project.
38. More importantly, to the extent any development on the Site may be enabled by the AUP, that does not logically mean the benefits of that enabled development are already "baked into" the FTAA assessment. That is to say, it still takes a developer like Precinct (with, in this case, its project partner Ngāti Whātua Ōrākei) to take the significant risk to invest in realising that plan-

²¹ Auckland Council economics memorandum dated 14 April 2026, pages 10 and 11.

²² *Queenstown Lakes District Council v Hawthorn Estate Limited* CA45/05 at [66].

²³ Planning Response, 21 May 2026, Barker & Associates, section 6.6.1.

²⁴ See *Drive Holdings Ltd v Auckland Council* [2021] NZEnvC 159 at [85].

enabled development. We submit it is the proposed real-world realisation of those benefits, even if they are "plan-enabled", that must be considered by the Panel in determining the Application.

Comparative shading

39. Auckland Council's planner and urban design experts have requested a comparative assessment identifying the shading generated by the portion of T1 above the HEHCP, stating in their section 53 memorandum that "this remains a material issue for the panel's consideration" and the planner stating that "the absence of comparative shading diagrams make it difficult to ascertain how well the 'height, scale and form of the towers' have managed to avoid these [dominance and amenity (shade and wind)] effects on the streets and open spaces".²⁵
40. From a technical perspective, Precinct's urban design expert Mr McIndoe has confirmed that the requested comparative assessment is unnecessary because the shading assessment that was undertaken has considered all shade from the Application (which includes the shade associated with any infringements), and the conclusions of shading effects from any comparative assessment will be virtually the same as for assessment of all shade cast by the proposal.²⁶ Precinct's planners, Mr Cook and Ms Santos, conclude that shading effects "have been assessed comprehensively and in-the-round".²⁷
41. From a legal perspective, the Environment Court²⁸ has made it clear that comparisons with "compliant" schemes that require resource consent are not relevant or helpful to a decision-maker's consideration of a proposal.
42. There is no basis for which comparative shading diagrams are required, either from a legal or technical perspective.

Off-site mitigation

Wind mitigation

43. The Council has raised concerns about Precinct's reliance on the wind mitigation (proposed trees) proposed on MCK land and road reserve, in the absence of any third-party approval for such mitigation.²⁹

²⁵ Auckland Council planning memorandum dated 7 May 2026 at [95].

²⁶ Memorandum of counsel dated 7 April 2026 Appendix 3 – Urban Design dated 30 March 2026 at section 3.

²⁷ Planning Response, 21 May 2026, Barker & Associates, section 2.1.5

²⁸ See *Drive Holdings Ltd v Auckland Council* [2021] NZEnvC 159 at [83]; and *Panuku Development Auckland Ltd v Auckland Council* [2020] NZEnvC 24 at [72] and [138].

²⁹ Auckland Council planning memorandum dated 7 May 2026 at [301].

44. As explained by Barker & Associates in the planning response, to address these concerns, Precinct's wind expert Mr Verhaeghe has assessed an alternative mitigation solution, a 5m high screen within the Precinct landholding. Mr Verhaeghe has confirmed that the screen would provide equivalent, if not better, mitigation than the proposed trees off-site.³⁰ Mr McIndoe has confirmed that the proposed screen is acceptable from an urban design perspective.³¹

45. Precinct proposes that:

- (a) it is still Precinct's intention to implement the off-site wind mitigation in the first instance (subject to approval from MCK and Auckland Transport);
- (b) however, if approval cannot be obtained, Precinct will implement the proposed wind screen on its own land.

46. A consent condition is proposed (condition 107A) to require either of the two options for wind mitigation to be implemented.

Noise for day sleeping at M Social

47. The Council has also raised concerns around the mitigation being relied upon at the M Social Hotel for construction noise for day sleepers.³²

48. Precinct's acoustic expert Mr King has confirmed that a small number of guestrooms (three to five, making up around 2-3% of the hotel guestrooms) for a short period of time during the construction period (6-8 weeks) are predicted to experience noise that is reasonable for occupants during the day, but could cause difficulties for occupants that sleep during the day. Mr King noted that it is anticipated that M Social would be able to manage which rooms day sleepers are assigned to.³³

49. In response to the Council's concerns, it is confirmed that:

- (a) Mr King has explored potential mitigation options on Precinct's land, with the only potential option being a 20m high noise wall which would be unfeasible.

³⁰ Wind Engineering Response dated 20 May 2026, Holmes, page 1.

³¹ Urban Design Response dated 19 May 2026, McIndoe Urban Limited at [18].

³² Auckland Council noise and vibration memorandum dated 23 April 2026, pages 3 and 4.

³³ Memorandum of counsel dated 7 April 2026 Appendix 4 – Acoustic Assessment Addendum dated 1 April 2026, Page 2.

- (b) The potential effects have to be assessed in the context of a large hotel, where only 2-3 % of the rooms are likely to be affected (and noting this only impacts any day sleepers that may be occupying those rooms at those times, not all occupants), and the noise occurring for a very short period of time (6-8 weeks) in the context of the five + year construction period.
- (c) Although M Social's actions cannot be strictly relied upon, we submit it must be relevant to the Expert Panel that there would be obvious options available for M Social to manage its own hotel, so that the 2-3 % of impacted rooms during the limited 6-8 week period are not allocated to known day sleepers (for example, airline staff).

Archaeological conditions

- 50. Precinct and Ngāti Whātua Ōrākei (as project partner) have provided a joint response to the CVA provided by Ngāti Whanaunga (refer **Attachment E**). In this response, Ngāti Whātua Ōrākei sets out its position regarding the proposed conditions of the archaeological authority in relation to Tikanga.
- 51. As set out in the conditions provided within Heritage New Zealand Pouhere Taonga's section 53 comments, Waikato-Tainui and Ngāti Whanaunga are proposed to be involved in the archaeological process alongside Ngāti Whātua. Precinct supports Ngāti Whātua Ōrākei's position that it should only be Ngāti Whātua Ōrākei referenced in these conditions, as tangata whenua of Tāmaki and the project site.
- 52. Precinct therefore seeks removal of Waikato-Tainui and Ngāti Whanaunga from proposed conditions 5, 6 and 11 to the Authority to Modify (refer **Attachment U**)

Cost-benefit analysis

- 53. The Council's economist considers a cost benefit analysis ("**CBA**") is required for the economic assessment of this proposal.³⁴
- 54. From a legal perspective, there is no statutory requirement under the FTAA for a CBA to be submitted with an application.
- 55. Section 85(3), which requires the weighing of a project's benefits and its adverse impacts, does not require a CBA to be undertaken in order to

³⁴

Auckland Council economics memorandum dated 14 April 2026, page 9.

undertake that exercise. Under section 22 of the FTAA, the Minister may consider a range of different factors when making a determination as to whether a referral application is for a project that would have significant regional or national benefits. One of these considerations is whether the project will deliver significant economic benefits.³⁵ While section 22 is not directly relevant to a substantive application, it is useful direction when considering regional or national benefit at the substantive application stage. The explicit inclusion of economic benefits, without also including economic costs, indicates that the FTAA does not require a full CBA when considering significant regional or national benefits. There is nowhere else within the FTAA which states that a CBA is required.

56. Expert panels on other Fast Track applications have also come to the conclusion that the FTAA does not require a full CBA to be undertaken when determining whether a project's adverse impacts are out of proportion to its benefits.³⁶
57. From a technical perspective, Mr Heath has confirmed in his response (refer **Attachment I**) that a CBA would not be appropriate or necessary.³⁷

Kindercare

58. Precinct has confirmed that Kindercare will vacate its premises at the Aon Building prior to demolition.³⁸ The Council has raised concerns that there is no evidence of Kindercare vacating its premises.
59. To address this concern, Precinct has put forward a proposed condition (condition 45A) which requires that prior to demolition works, Kindercare must vacate their premises and confirmation must be provided to Auckland Council. Legally, compliance with consent conditions must be assumed when a decision-maker determines conditions of consent.³⁹

Final comments

60. As the Expert Panel is aware, the Application is for a large mixed-use development in the heart of Auckland City. It is a much needed and exciting proposal, which will revitalise the CBD, build on the success of the existing

³⁵ FTAA section 22(2)(a)(iv).

³⁶ See for example: Final decision of the *Sunfield* Expert Panel at [252] – [526].

³⁷ Economics response dated 18 May 2026, Property Economics, page 2.

³⁸ Downtown Carpark Site Development Fast-track Approvals Act Substantive Application Assessment of Environmental Effects dated 18 December 2025, page 22.

³⁹ *Wallace Corporation v Waikato District Council* [2007] NZRMA 78 at [13].

precinct (including Precinct's Commercial Bay), and introduce vibrancy and connectivity to a critical underdeveloped area in the middle of our city.

61. For a project of this scale, it would be impossible to internalise all effects. In fact, the RMA does not mandate absolute internalisation of all effects, with residual effects managed by conditions of consent. Although this Application is being decided under the FTAA, key principles of the RMA apply; the Expert Panel must consider applicable parts of the RMA when making its decision on the application (FTAA, Schedule 5, clause 17(1)(b)). The RMA is not a "no effects" statute. In *C J Industries Ltd v Tasman District Council*, the Court explained:

The RMA is not a no-effects statute. Every activity has some form of an effect and an approach of prohibiting activities with any adverse effects at all would not enable positive effects, or allow people to provide for their social, cultural or economic wellbeing...⁴⁰

62. In this case, Precinct and its advisors have worked hard over many years to address the potential adverse effects of the proposal. A comprehensive condition set is proposed (with further updates offered as part of this response) along with a suite of draft management plans.
63. Under the FTAA, there is a specific provision (in section 83) which requires that a panel, when exercising its discretion to set a condition, must not set a condition that is more onerous than necessary to address the reason for which it is set.
64. A common theme in the section 53 comments is a perceived lack of detail being provided in conditions, with a criticism that such detail is being left to the (draft) management plans. Precinct acknowledges those concerns (albeit it does not agree with them entirely) and has attempted, where appropriate, to address this by updating some of the conditions to include further detail. For a project of this scale, with detailed design yet to occur, it is entirely normal and expected for management plans to be in place to address the detail, once that detail is known.
65. There are some comments on conditions that Precinct did not adopt, and Precinct has set out the reasons for this. Key reasons for not adopting various comments include where the requested condition is not required for a resource management purpose, is already contained within the condition set elsewhere, or is a building consent matter.

⁴⁰

C J Industries Ltd v Tasman District Council [2025] NZEnvC 213 at [324].

66. In our submission, the proposed conditions in **Attachment V** comprehensively address the adverse effects of the proposal, and the concerns of the parties invited to comment, whilst meeting the requirements in section 83 of the FTAA.

DATED: 21 May 2026



Simon Pilkinton | Louise Espin
Counsel for Precinct Properties Holdings Limited

Attachments
(provided separately)