

BEFORE THE EXPERT PANEL

UNDER

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

AND

IN THE MATTER

of an application for approvals by Westhaven Residential Limited Partnership ("**Applicant**") in relation to the proposed urban development at 188 Beaumont Street, Auckland ("**Application**")

**MEMORANDUM OF COUNSEL ON BEHALF OF
WESTHAVEN RESIDENTIAL LIMITED PARTNERSHIP**

24 AUGUST 2026

**Russell
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MAY IT PLEASE THE PANEL:

Introduction

1. The Panel has requested further information from the Applicant on the Residential Development Agreement entered into between Auckland Council and the (now) Applicant dated 30 June 2021, as varied ("**Agreement**").¹ The Applicant has prepared a response to the Panel's request which is included in a separate memorandum of counsel.
2. The Panel directed that, if necessary, the Applicant could file a request for appropriate directions on the withholding of, or non-publication of, information on the Agreement.²
3. In response to the Panel's direction, the Applicant requests that publication or communication (including on the Fast-track website) of certain commercially sensitive information relating to its summary of the Agreement, as indicated in **Attachment A** (and summarised below at paragraph 8) be prohibited and restricted in accordance with section 42(3) of the Resource Management Act 1991 ("**RMA**") on the basis that its publication would:
 - (a) result in unreasonable prejudice to the Applicant's commercial position; and
 - (b) the importance of avoiding such prejudice outweighs any public interest in disclosure.

Legal framework

4. As the Panel is aware, clause 11, Schedule 3 of the FTAA enables the Panel to make an order prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings.³
5. To make such an order, the Panel must be satisfied that the order prohibiting or restricting publication is necessary to avoid unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information, and the importance of avoiding such prejudice outweighs the public interest in making that information available.⁴

¹ Panel Minute 7 dated 17 August 2026 at [12].

² Panel Minute 7 dated 17 August 2026 at [14].

³ FTAA, Schedule 3, clause 11, applying RMA, s 42(3)(b).

⁴ FTAA, Schedule 3, clause 11, applying RMA, s 42(1)(b).

6. Non-publication orders relating to confidential commercial information have been granted by the Environment Court. The types of information excluded from publication have included:
- (a) the location and position of commercial fishing activity which was information not typically available to the public and could prejudice a fishing operator's commercial position;⁵
 - (b) an Energy Yield Report and Business Plan containing the price the appellant could achieve for electricity it generates and the price it was willing to pay for various components of the project;⁶ and
 - (c) the revenue and profits of certain fishing operators.⁷
7. These cases illustrate that confidential and commercially sensitive information can be the subject of non-publication orders despite any public interest in disclosure that may exist.

Unreasonable prejudice to the commercial position of the Applicant outweighs any public interest in disclosure

8. The Applicant's response to Minute 7 contains a summary of relevant aspects of the Agreement including the following confidential and commercially sensitive information:
- (a) specific project requirements and sunset dates governing project commencement, material works commencement, and practical completion which are contained in a confidential development agreement that would otherwise not be information available to the public; and
 - (b) monetary figures detailing the capital expenditure the Applicant and Orams Marine has invested in the Orams Marine Yard ("**Site 18A**") and 188 Beaumont Street ("**Site 18B**") to date.
9. The Applicant considers the publication of the confidential and commercially sensitive information, dates and monetary figures will result in unreasonable prejudice to the Applicant that outweighs any public interest in disclosure:

⁵ *Friends of Nelson Haven and Tasman Bay Incorporated v Marlborough District Council* [2023] NZEnvC 31 at [6], [9], [10] and [19].

⁶ *Blueskin Energy Limited v Dunedin City Council* [2017] NZEnvC 57 at [22].

⁷ *Bay of Islands Maritime Park Incorporated v Northland Regional Council* [2023] NZEnvC 125 at [22].

- (a) The project requirements and timing obligations contained within the Agreement reflect the Applicant's commercial commitments and development timeline. If published, this information could be used by interested third parties, including by competitors, to prevent the Applicant from meeting its critical project milestones that would not otherwise be publicly available.
 - (b) Disclosure of the Applicant and Oram Marine's capital expenditure to date would reveal sensitive financial information that is not otherwise publicly available.
- 10. The Applicant seeks orders from the Panel that this specific information is withheld through the publication of a redacted version of the summary of the Agreement.
- 11. The unreasonable prejudice to the Applicant's commercial position that may result from publication outweighs any public interest in disclosure of this discrete information. The Applicant considers any public interest in accessing the Applicant's response to Minute 7 is preserved as the Applicant is only seeking orders to prevent the publication of the details in paragraph 8 above ie it does not otherwise seek to withhold the summary of the Agreement from publication.
- 12. The Applicant considers this strikes the appropriate balance between avoiding disclosure of confidential and commercially sensitive information and protecting the public interest in making available the information on the Agreement the Panel has requested.

Orders sought

- 13. The Applicant has filed its response to Minute 7 with its proposed redactions to the commercially sensitive information identified in this memorandum and an unredacted version has been provided separately for the Panel's consideration.
- 14. The Applicant respectfully requests that the Panel exercise its powers under clause 11, Schedule 3 of the FTAA to make the following confidentiality orders:
 - (a) the Applicant's response to Minute 7 as it relates to the Agreement may only be provided to parties invited to comment on the Application and made available on the Fast-track website where it has been redacted to exclude the confidential and commercially sensitive information mentioned at paragraph 8 above; and

(b) the Panel's decision on the Application will not refer to the confidential and commercially sensitive information mentioned at paragraph 8 above.

15. Should the Panel decline to make the orders sought, in accordance with the Panel Conveners' Practice and Procedure Guidance note, the Applicant respectfully requests that the Panel provide the Applicant with an opportunity to re-consider the information it provides in their response to Minute 7.⁸

DATED: 24 August 2026



Lauren Rapley | Alice Gilbert

Counsel for Westhaven Residential Limited Partnership

⁸ Fast-Track Approvals Act 2024, Panel Conveners' Practice and Procedure Guidance, dated 22 July 2025, at [26.4].