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20 November 2025

Jayne McDonald
Chair of the Homestead Bay Fast-Track Panel
Environmental Protection Authority | Te Mana Rauhī Taiao

By Email: [redacted]

ADVICE ON HOMESTEAD BAY FAST-TRACK PROPOSAL

INTRODUCTION

1. We refer to your email dated 10 November 2025 seeking advice on several questions relating to the Homestead Bay proposal by RCL Homestead Bay Limited (**Applicant**), which is a substantive fast-track application under the Fast-track Approvals Act 2024 (**FTAA**).

BACKGROUND / YOUR QUESTIONS

2. The Homestead Bay application is a listed project in Schedule 2 to the FTAA, where it is described as follows:

Authorised person	Project name	Project description	Approximate geographical location
RCL Homestead Bay Limited	Homestead Bay	Develop approximately 2,800 residential allotments, an approximately 1,100 square metre commercial retail precinct, and associated features such as parks, trails, and native revegetation	Near Homestead Bay Road, Homestead Bay, Queenstown

3. The substantive application lodged by the Applicant seeks consent for *inter alia* the following:

    1. Subdivision of the land to provide 1438 standard residential lots, 22 medium density superlots allowing for approximately 203 future residential units and

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fourteen high density superlots allowing for approximately 890 future residential units. Combined, the proposal will provide for approximately 2,531 residential units.

2. Creation of three commercial superlots which have a combined area of approximately 2.5 hectares allowing for the future development of around 11,000m2 of retail floorspace. …

We understand that land use consent is being sought now for the future development of the single house lots. By contrast, further resource consents will need to be sought in the future for the superlots.

4. You have sought advice on two topics. The first topic relates to issues concerning the reduction in project scope, while the second relates to issues concerning the consideration of counterfactuals. We set out the Panel's specific questions relating to each topic below.

Topic 1 – Questions relating to reduction in project scope

5. Comments on the application, notably those of the Jacks Point Residents and Owners Association Inc (**JPROA**) and Jacks Point Group (**JPG**)[1], raise issues as to the reduced scope of the proposal, by comparison with the project description in Schedule 2 to the FTAA.

6. The Panel seeks advice on the following questions on this topic:

(a) **Question 1**: Is it legally permissible to reduce the scope and scale of the project from that described in the Schedule 2 listing, given that the FTAA does not provide for staging of listed projects?

(b) **Question 2**: What is the extent of "the proposal" that the Panel may consider under s 81 of the FTAA?

(c) **Question 3**: Assuming such a reduction is permissible, is the Panel limited to assessing the benefits, effects, and impacts of the portion of the development that is being delivered and consented under the substantive application — namely, the creation of 1,438 residential lots and associated land use consents and infrastructure — while excluding the future development of the superlots not currently being delivered?

Topic 2 – Questions relating to consideration of counterfactuals

7. The comments by counsel for D S & J F Jardine state[2] that, when considering whether a proposal has significant regional or national benefits, the Panel must assess those benefits against a relevant counterfactual. The comments suggest that this counterfactual is development occurring under the recently adopted Te Tapuae Southern Corridor Structure Plan (**Structure Plan**).

[1] Set out in memoranda of counsel for JPROA and JPG dated 28 October 2025.
[2] Set out in a memorandum of counsel on behalf of the Jardines dated 28 October 2025, at paragraphs 3.6 and 3.7.

8. The Panel seeks advice on the following questions:

   (a) **Question 4**: Is there a statutory requirement under s 81(4) of the FTAA to assess the regional benefits of a proposal against a counterfactual scenario?

   (b) **Question 5**: If so, what is the appropriate counterfactual? Specifically, should it be:

      i. The current Rural zoning of the application site; or

      ii. A form of future urban development envisaged under a Structure Plan approved by the Queenstown Lakes District Council (**QLDC**) under the Local Government Act 2002, noting that the Structure Plan itself does not yet have statutory effect?

EXECUTIVE SUMMARY

9. In relation to **Topic 1**, we advise as follows:

   (a) In our opinion, the Panel may lawfully consider and determine the Homestead Bay application notwithstanding that it represents a reduced scope compared to the Schedule 2 listing. The FTAA framework does not require a substantive application to be identical to the listed project. While the existing provisions present some interpretive tension on this point (as addressed below), on balance we consider several factors support the conclusion that this application falls within an acceptable range of the Schedule 2 description.

   (b) While the Panel must consider the benefits and impacts of the substantive application as lodged, we tend to the view that the Panel is not precluded from considering the potential benefits that may flow from future development of the superlots. However, the Panel should carefully consider what weight to give such benefits given their contingent and uncertain nature. Relevant factors may include whether the evidence demonstrates that superlot development is reasonably likely to occur, and over what timeframe.

   (c) The Applicant maintains that even considering only the 1,438 dwellings proposed for immediate land use consent, the development would deliver substantial economic benefits. Whether these benefits are regionally significant is ultimately a matter for the Panel's evaluative judgment.

10. In relation to **Topic 2**, we advise as follows:

   (a) There is no express statutory requirement under s 81(4) – or the FTAA generally – to consider one or more counterfactuals. However, when a Panel identifies the benefits that a project will deliver, it is implicitly asking what the position would be without the project. The Panel may therefore find explicit consideration of counterfactuals to be a useful evaluative tool, and will need to consider the Structure Plan counterfactual advanced by the Jardines even if it ultimately decides not to adopt it.

(b) Whether to apply one or more counterfactual scenarios, and if so the appropriate selection, will be a matter for the Panel's evaluative judgment. Both the 'current zoning' and 'Structure Plan' counterfactuals have strengths and limitations. Nonetheless, a ‘current zoning’ counterfactual reflects the current planning status of the land and, to that extent, provides a clear base against which to measure the proposal's benefits. We discuss the considerations relevant to each option in the **Analysis** below.

(c) The Jardines argue that if a Structure Plan counterfactual is adopted, the primary benefit is temporal (acceleration of development) rather than enablement of development that would not otherwise occur. This characterisation, if accepted, has implications for how benefits are assessed.

(d) We note, as one possibility, that following its assessment the Panel may ultimately determine that the proposal delivers regionally significant benefits irrespective of the counterfactual(s) considered.

ANALYSIS

11. We address the **Topic 1** and **Topic 2** questions below in more detail.

Topic 1 – Questions relating to reduction in project scope

12. The Panel has noted several matters of background in relation to **Topic 1**.

13. First, the Panel notes that s 81 of the FTAA refers to consideration of the “substantive application”, and it is that proposal – rather than the listed project – that the Panel must determine. We agree that s 81 of the FTAA generally refers to consideration of the substantive application, and we agree it is that proposal that the Panel must determine. However, we note that:

(a) Certain subsections (e.g. s 81(4)) use the term “project” rather than “substantive application”. For a listed project, s 4 of the FTAA defines "project" as "the project as described in Schedule 2", rather than the project as described in the substantive application.

(b) This presents a rather curious interpretive tension when a substantive application potentially seeks to deliver only part of a Schedule 2 project. Section 81(4) requires the Panel to consider “the extent of the project's regional or national benefits” – but if “project” means the full Schedule 2 description (approximately 2,800 residential allotments and commercial development), how should the Panel assess those benefits when the substantive application seeks consent for only a portion of that project?

(c) Noting that s 4(1) of the FTAA states “unless the context otherwise requires” prior to the definitions, it may be that we should interpret the reference to the project in s 81(4) as the project for which approvals are sought in the substantive application. However, it is not entirely clear.

14. Second, the Panel notes that the FTAA does not currently provide for staging of listed projects (unlike s 81(5), which expressly contemplates staging for referred projects). This is correct – and is something the recently introduced Fast-track Approvals Amendment Bill seeks to address.[3] Section 42(1)(a) allows the authorised persons for a listed project to lodge with the EPA one substantive application for the project, while s 42(1)(b) enables referred (but not listed) projects to be lodged in stages. For the sake of clarity, however, this does not in our opinion prevent a single substantive application being lodged for a listed project which itself proposes phases / stages of development. The issue is that s 42 does not permit separate substantive applications for each individual stage of a listed project.

15. Third, the Panel records that the project is effectively being progressed in stages, with the creation of super lots intended for future medium-density, high-density, and commercial development. Commercial and housing development within these future stages / super lots will require further consents – whether as subsequent fast-track referral projects, plan change(s), and/or resource consent applications.

Question 1

16. The Panel's first question is as follows:

> *Is it legally permissible to reduce the scope and scale of the project from that described in the Schedule 2 listing, given that the FTAA does not provide for staging of listed projects?*

17. As noted, both JPROA and JPG raise issues relating to the reduced scope of the proposal, compared with the Schedule 2 listing.[4] For example, JPROA contends that the substantive application is significantly reduced in scope and scale compared to the listed application. JPROA characterises the proposal's benefits as having been "misrepresented",[5] noting for instance that:

    (a) The Schedule 2 listing states the project is to *"Develop approximately 2,800 residential allotments, an approximately 1,100 square metre commercial retail precinct, and associated features"*;

    (b) Whereas the substantive application seeks approvals for 1,438 standalone residential dwellings, with subdivision consent creating 22 medium density superlots, 14 high density superlots, and 3 commercial superlots, but no land use consent for development of buildings on any of these superlots.

18. In their legal analysis, counsel for JPROA advance several propositions about the FTAA framework, with which we generally agree:

    (a) The phrase "substantive application" means *"an application under section 42 for 1 or more approvals for a listed project or a referred project"*.[6]

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[3] Refer to clause 19 of the Bill.
[4] Memorandum of counsel for JPROA, paragraph 9.
[5] Memorandum of counsel for JPROA, Appendix 2, paragraphs 9-16.
[6] FTAA, s 4.

(b) Section 46(2) of the FTAA states that a substantive application complies with subsection (2) (i.e. is complete and within scope) if it complies with ss 42, 43 and 44 FTAA, relates solely to a listed or referred project, and does not involve an ineligible activity in s 5.[7]

(c) Sections 5, 42, 43, 44 and 46 do not require a substantive application to be identical to or contain all of the components of a listed or referred project.

(d) The FTAA provides a process for a substantive application for a referred project to be lodged in stages. It does not provide a process for a substantive application for a listed project to be lodged in stages (although, as stated earlier, this does not in our opinion prevent a single substantive application being lodged for a listed project, which itself proposes phases or stages of development).

(e) There is High Court authority for the position that a substantive application cannot expand the scope of a listed application.[8] However, counsel note that the issue of whether a substantive application can ***reduce*** the scope of a listed application is untested.

19. In relation to (e) above, while we are not aware of any Court having explicitly considered this point, we are aware of two early decisions under the FTAA approving projects involving residential superlots:

- *Milldale* (Auckland), which we expand on briefly below; and
- *Maitahi Village* (Nelson), which involved a combination of a retirement village and commercial site, as well as a subdivision to create (among others) 184 residential allotments – including one large superlot for future development.

20. In *Milldale*:

(a) The application sought to provide capacity for approximately 1,155 detached and terraced dwellings and supporting commercial services.

(b) In addition to seeking consent for 168 terraced dwellings and 623 vacant residential lots, the application proposed 28 residential superlots providing capacity for 364 further dwellings, and one neighbourhood centre superlot (with the superlots to be further developed through future consenting processes).

(c) The economic assessment supporting the application quantified benefits based on the total residential capacity enabled by the subdivision (i.e. 1,100+ dwellings), including the units anticipated on the superlots,[9] even though those superlots would require subsequent resource consent processes (for subdivision and potentially also for land use).

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[7] FTAA, s 46. Subsection (2) also refers to payment of any fees, charges, or levies under regulations.
[8] *Ngāti Kuku Hapū Trust v Environmental Protection Agency* NZHC 2046; *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2453. NB: The Court's decision uses "Agency", which should be "Authority".
[9] See the *Milldale* decision, paragraphs 187.2 and 187.5.

(d) The expert panel approved the project and appears to have accepted the benefits assessment that included the superlot capacity.

21. The specific issue raised by JPROA relating to superlots does not appear to have been raised with the *Milldale* and *Maitahi Village* Panels, and such decisions, while they may be persuasive, are of course not binding on the Panel. However, the decisions do demonstrate – the *Milldale* decision in particular – how expert panels have, in the early operation of the FTAA, interpreted and applied the statutory framework in practice as it relates to superlots.

22. For its part, the Applicant makes several points on this issue:

(a) The Applicant contends that the proposal is consistent with how the "referral application" was generally described (reference is made by the Applicant in this regard to s 13(2)(d), which we observe relates to referral applications – not listed projects).

(b) It is said that the approach of only seeking subdivision consent for the superlots (and not land use consent) was *"seen as a pragmatic approach so to provide the full picture of what is anticipated across the entire site and to allow the assessment of the servicing of the full development at this initial stage"*.[10]

(c) The Applicant explains this approach was taken *"due to the impracticality for detailed land use consents to be sought through the FTAA process for large numbers of apartments, terraced houses and commercial buildings"* which *"[t]ypically...require detailed analysis of urban design and traffic and parking matters to ensure high quality outcomes"*.[11]

(d) Land use consents for development of the superlots will follow through subsequent processes. The Applicant indicates that QLDC has stated it intends to commence a plan variation for the Structure Plan within one year of its adoption, though it is also open to the Applicant to apply for a private plan change or separate fast-track applications. The Applicant maintains that *"it is a reasonable expectation that land use consents will follow on for the superlots"*.

We address the Applicant's 'fall-back' position (i.e. were the application to be considered only on the basis of 1,438 low density lots) in answering Questions 2 and 3 below.

23. On balance, we consider that the Panel may lawfully consider and determine the Homestead Bay application notwithstanding that it represents a reduced scope of the listed project, for the following reasons:

(a) The current FTAA framework expects a single comprehensive application per listed project, but it does not prohibit an applicant from seeking consent for only a portion of the project.

[10] Applicant's response to comment dated 4 November 2025, paragraph 9.
[11] Ibid.

(b) As counsel for JPROA acknowledge, the framework does not require a substantive application to be identical to or contain all of the components of a listed or referred project.

(c) We anticipate there may be sound reasons why, following detailed design and further assessment, a reconfigured or reduced proposal – compared with the original listed project – may be appropriate (acknowledging that any reduction in scope and scale may have implications for the assessment of the proposal's benefits).

(d) Several factors have led us to the conclusion that the present application falls within an acceptable range of the Schedule 2 listing:

i. The geographical location and general character of development remain consistent with Schedule 2;

ii. The approximate number of residential allotments is arguably within the range contemplated by Schedule 2, if the superlot capacity is counted. While Schedule 2 refers to "approximately 2,800 residential allotments", the substantive application creates 1,438 lots with immediate land use consent, plus 36 superlots with identified capacity for approximately 1,093 additional dwellings. This totals approximately 2,531 potential dwellings, representing approximately 90% of the Schedule 2 figure. The qualifier "approximately" signals some flexibility rather than a fixed target (we note in passing that the original listing application itself referred to "up to" 2800 residential lots being provided[12]);

iii. The commercial component is included via 3 commercial superlots, consistent with Schedule 2's reference to "an approximately 1,100 square metre commercial retail precinct", albeit again with detailed land use consent deferred (see paragraph 38(d) below for discussion of an apparent numerical discrepancy in relation to the commercial component);

iv. The Applicant has provided a reasonably coherent rationale for the superlot-based approach – namely, the practical difficulties in seeking detailed land use consents for complex medium/high density buildings through the FTAA process, while still establishing the comprehensive street network and servicing infrastructure for the full anticipated development. We understand that the existing NZone skydiving activity (leased until 2031) has also been a factor driving this decision.[13]

(e) We are also mindful that an interpretation requiring stricter adherence to the Schedule 2 description in all cases could produce perverse outcomes – for instance, preventing applicants from making sensible reductions in scope in response to comments or expert advice, contrary to the established and

[12] https://environment.govt.nz/assets/what-government-is-doing/Fast-track-listed/Homestead-Bay/063.04-AEE-Homestead-Bay-fast-track-application.pdf.
[13] AEE, page 40.

constructive practice under the Resource Management Act 1991 where applications commonly evolve through the consenting process.[14]

24. Having stated our view above, we acknowledge that:

(a) The existing FTAA provisions are not a model of clarity on this point, and there is a degree of interpretive tension, as noted earlier; and

(b) Our conclusion involves giving some 'credit' for future development capacity on the superlots, despite the absence of an application for land use consent for buildings on those lots. This is consistent with the approach taken by the *Milldale* panel. However, it does not follow that all benefits from that future capacity should be given full weight in the s 81(4) assessment – a matter we address in response to the Panel's second and third questions below.

Questions 2 and 3

25. The next two questions are related and are accordingly discussed together:

> *What is the extent of "the proposal" that the Panel may consider under s81 of the FTAA?*
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> *Assuming such a reduction is permissible, is the Panel limited to assessing the benefits, effects, and impacts of the portion of the development that is being delivered and consented under the substantive application — namely, the creation of 1,438 residential lots and associated land use consents and infrastructure — while excluding the future development of the superlots not currently being delivered?*

26. JPROA argues that the Panel can only have regard to the benefits and effects of the proposed 1,438 residential units (and not e.g. any benefits arising from future development of the superlots).[15] There is some logic to this submission, in the sense that, at a basic level, the Panel must consider the benefits and adverse impacts of the application before it – i.e. it must consider the substantive application as lodged, subject to any amendments or refinements that may arise during the process.

27. However, the suggestion that the Panel cannot consider the potential benefits associated with future capacity on the superlots may overstate the position.

28. Section 81(4) requires the Panel to *"consider the extent of the project's regional or national benefits"*. We have already commented above on the interpretive tension arising from the definition of "project" in s 4 of the FTAA.[16] The key question is how the Panel should assess benefits from subdivision creating superlots, when the future development of those superlots will require further consenting processes not part of the current application.

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[14] We refer, for instance, to the comments by Asher J in *Collins v Northland Regional Council* [2013] NZHC 3039 at [26] and [27].
[15] Memorandum of counsel for JPROA, paragraph 11.
[16] Which, for the purposes of listed projects, defines the term by reference to "the project as described in Schedule 2".

29. It is not uncommon for subdivision applications to create development capacity that will be realised through future / subsequent consent applications. For example:

    (a) Further land use consents may be required for dwellings in the case of vacant lot subdivisions (e.g. the recent *Drury Metropolitan Centre* decision, which approved 292 vacant lots, provides an example of this – with future buildings still requiring resource consent on at least a restricted discretionary activity basis); or

    (b) Further subdivision and land use applications in the case of superlots (see the *Milldale* example).

30. While the benefits of a substantive application seeking both subdivision and land use consents, without reliance on further consenting processes, are more certain (and potentially more compelling), we consider the question may be better framed – not as whether superlot capacity dependent on subsequent consents can ever be considered – but rather what weight should be given to benefits from such subdivision. A number of factors may be relevant to such an assessment, which we discuss below at paragraph 35.

31. This approach is consistent with how the *Milldale* Panel appears to have approached the matter. In that case, the economic assessment quantified benefits based on the total residential capacity enabled by the subdivision (i.e. 1,100+ dwellings), including units anticipated on superlots, even though those superlots would require subsequent resource consent processes before any buildings could be constructed. The Panel approved the project and appears to have accepted that benefits assessment (although the project's benefits were not disputed[17]).

32. The Applicant has explained their approach as pragmatic, with future consents to follow through various pathways. However, we recognise that this creates a degree of uncertainty as to when and the manner in which the superlot development will occur, particularly where we understand discretionary resource consent as a minimum is required under the current District Plan (and potentially a plan change or separate fast-track process), and parts of the site are presently zoned rural.

33. As noted, the Applicant's position is that it is a *"reasonable expectation that land use consents will follow on for the superlots"*. In response to comments questioning whether only the benefits of the 1,438 standalone lots should be assessed, the Applicant commissioned Urban Economics to provide alternative economic figures based solely on the 1,438 dwellings. We understand that Urban Economics identify benefits as follows in relation to this scenario:

    (a) Construction activity generating approximately $400m in GDP and supporting approximately 2,400 FTE jobs;

    (b) Direct construction sector impact of $187m GDP supporting 1,150 FTE jobs;

    (c) Indirect construction impact on primary industries of $88m GDP supporting 540 FTE jobs;

[17] *Milldale* decision, at [188].

(d) Total ongoing household expenditure of $63.1m per annum, generating $37m GDP per annum and supporting 300 FTE jobs.

34. The Applicant maintains that even considering only the 1,438 low density lots, *"it would still have a substantial economic benefit"* and notes the development would *"still be larger than all other Queenstown Lakes District housing related fast track developments"*, listed or referred.[18]

35. In our view, the Panel is not precluded from considering benefits that may flow from future development of the superlots. However, in assessing such benefits, the Panel may wish to consider a range of factors, including:

(a) Whether these benefits are contingent and uncertain, requiring further approvals with no guaranteed timeframe or outcome;

(b) What weight (if any reduced weight is appropriate) should be given to benefits from future superlot development compared to the direct benefits flowing from the 1,438 dwellings that are proposed to be the subject of land use consent;

(c) Whether the evidence provides a sufficient basis to conclude that the superlot development is reasonably likely to occur, and if so, over what timeframe;

(d) Whether any economic assessments that treat contingent future development as equivalent to consented development in quantifying benefits provide an appropriate basis for the assessment;

(e) The degree of uncertainty introduced by factors such as the need for discretionary resource consent, a separate fast-track application, and/or a private plan change, and any absence of committed delivery timeframes.

36. Should the Panel reach the view – following such an assessment – that some of the claimed benefits are uncertain, the Panel may consider that uncertainty could appropriately be reflected in the weight given to those benefits (rather than the alternative of simply treating them as inadmissible). This approach allows the Panel to make a realistic assessment of what the project will actually deliver, while still recognising the potential value of enabled development capacity.

37. As noted, the Applicant maintains that even on the reduced basis of 1,438 dwellings, the development would still be larger than all other Queenstown Lakes District housing-related fast-track developments and would deliver substantial economic benefits. It would potentially be open to the Panel (subject to undertaking the required assessment) to find that there is sufficient evidence to support a finding of regionally significant benefits, even ***excluding*** the benefits associated with future development of the superlots.

38. We make several final observations in relation to **Topic 1**:

(a) One potential option available to the Applicant, should it wish to provide greater certainty about the superlot development, would be to amend the substantive application to seek further consents now in relation to the superlots. However, we

[18] Applicant's response to comments, paragraphs 11-12.

acknowledge this may be impractical given the statutory timeframes under the FTAA and the practical factors (such as the existing skydiving lease arrangements) that have informed the Applicant's superlot approach. We also note that whether such an amendment would be within scope is a question we have not addressed in this advice.

(b) While we have not considered this in any depth, as a further possible option, the Applicant could explore potential additional conditions designed to make outcomes for development of the superlots more certain.

(c) We also note that there may, depending upon the timing and ultimate content of the current Fast-Track Approvals Amendment Bill (including any transitional provisions), be an opportunity for the Applicant to seek an Order in Council to amend the project description in Schedule 2 to better reflect its substantive application, prior to a decision by the Panel.[19]

(d) Finally, we note that there is an apparent numerical discrepancy in relation to the commercial component. Schedule 2 refers to *"an approximately 1,100 square metre commercial retail precinct"*, whereas the substantive application proposes commercial superlots allowing for future development of *"around 11,000m² of retail floorspace"* – a tenfold increase. There appears to have been an inconsistency in this regard in the original listing application material, with the application form[20] referring to "1,100m^2", while the AEE referred to "11,000m^2". If the Panel considers this discrepancy warrants clarification, it may wish to seek further comment from the Applicant.

Topic 2 – Questions relating to consideration of counterfactuals

Question 4

39. The Panel's fourth question is as follows:

> *Is there a statutory requirement under s81(4) of the Fast-track Approvals Act 2020 (FTAA) to assess the regional benefits of a proposal against a counterfactual scenario?*

40. Counsel for the Jardines submits that *"[w]hen considering whether there are any significant regional or national benefits the Panel must do so against the relevant counterfactual"*.[21]

41. From our review of s 81 of the FTAA (and the FTAA generally), the statute is silent on the consideration of 'counterfactual' scenarios.[22]

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[19] See clause 54 of the amendment Bill.
[20] https://environment.govt.nz/assets/what-government-is-doing/Fast-track-listed/Homestead-Bay/063.01-response-ANON-URZ4-5FJN-8_Redacted.pdf.
[21] Comments on behalf of the Jardines dated 28 October 2025, paragraph 3.6.
[22] Save to note, merely for completeness, that the permitted baseline (which could be described as a type of counterfactual) may apply on a discretionary basis in the usual way: clause 17 of Schedule 5 to the FTAA.

42. We have also reviewed the 'early' FTAA jurisprudence in this regard.[23] All Panels have (unsurprisingly, in light of the requirements of ss 3, 81 and 85 of the FTAA) given specific consideration to the various proposals' benefits – encompassing both:

(a) whether the contended benefits are "significant regional or national benefits"; and

(b) an evaluation of the extent of those benefits.[24]

43. The *Bledisloe North Wharf and Drury Metropolitan Centre* decisions both refer briefly to counterfactuals:

(a) In the *Bledisloe North Wharf* decision, there was no question as to there being significant regional and national benefits. In terms of methodology, the Panel noted:[25]

> Despite some misgivings about the methodology, the Council's Economist and Chief Economist state the Projects are likely to make a positive contribution to regional and national economy and deliver a net benefit to society **assuming that the counterfactual would mean the Port would eventually face capacity constraints resulting in displacement of container/vehicle trade to Tauranga located further from the primary import market**. Prior studies applying a cost-benefit analysis finding society to be materially worse off if vehicle imports are moved away from Auckland and shifting of container trade to an alternative location would be unlikely to result in a net benefit to society than if the activity remained at the Port.

This passage aside, the Panel did not explicitly explore or adopt a counterfactual methodology.

(b) In the *Drury Metropolitan Centre* decision, the Panel noted that the Council's economic reviewer considered that a: [26]

> … more robust cost-benefit analysis is required, following Treasury guidance, to provide a clear picture of the Project's net economic value, and to compare a full range of incremental costs and benefits **against a clearly defined counterfactual.**

The Panel also recorded the Applicant's economics expert's view in response that it did *"not consider that there is a realistic counterfactual to be measured against"*, noting that the activities proposed were envisaged by and consistent with the scale anticipated for the zone.[27] While the Panel summarised these differing positions, it did not itself adopt or rely upon a counterfactual methodology, instead

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[23] At the time of writing, we are aware of final decisions on the *Bledisloe North Wharf and Fergusson North Berth Extension* Project, *Drury Metropolitan Centre* Project, *Maitahi Village* Project, *Milldale* Project, and *Tekapo Power Scheme* Project, and draft decisions on the *Delmore* and *Rangitoopuni* Projects.

[24] Which the *Maitahi Village* Panel, chaired by the Honourable Lyn Stevens CNZM KC, noted at paragraph 818 is a different inquiry, which seeks to place a measurement on, or provide a quantification of, the benefits as found.

[25] *Bledisloe North Wharf* decision, at [294].

[26] *Drury Metropolitan Centre* decision, at [104].

[27] *Drury Metropolitan Centre* decision, at [106].

> proceeding to its conclusions without resolving any methodological disagreements.[28]

44. For completeness, we are aware that issues relating to appropriate counterfactuals have been raised in the context of the live *Waihi North* Project. We understand that the Panel, chaired by Sir William Young KNZM KC, is due to issue its final decision by 18 December 2025.

45. Beyond the above passages, we are not aware of any FTAA Panel having directly addressed this issue, or having ***explicitly*** adopted or relied upon a counterfactual methodology. We have emphasised the word "explicitly", as while we have not located any instances of Panels in early FTAA decisions expressly applying counterfactual scenarios, the reality is that when a Panel identifies the benefits that a project will deliver, it is implicitly asking what the position would be *without* the project. We note in this regard that the Applicant's economics consultants (Urban Economics) provide a comparison with what they call the 'Base Case' scenario (i.e. a comparison with the existing rural activity).[29]

46. Beyond this, while there may be no express statutory obligation under section 81(4) (or the FTAA generally) to consider one or more counterfactuals, we acknowledge that a Panel may find the consideration of specified counterfactuals (i.e. what would happen if the project did not proceed) to be a useful evaluative tool. In this instance, as addressed further below, a specific counterfactual has been advanced by the Jardines relating to the Structure Plan, which the Panel will need to consider in its deliberations (even if it ultimately decides it is not assisted by that counterfactual). [30]

Question 5

47. This takes us to the Panel's fifth question:

> *If so, what is the appropriate counterfactual? Specifically, should it be:*
>
> *i. The current Rural zoning of the application site; or*
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> *ii. A form of future urban development envisaged under a Structure Plan approved by the QLDC under the Local Government Act 2002, noting that the Structure Plan itself does not yet have statutory effect?*

48. Counsel for the Jardines submits that the *"relevant counterfactual is development occurring under the Structure Plan"*.[31] This is a reference Te Tapuae Southern Corridor Structure Plan.

49. QLDC summarises its position in relation to the status of the Structure Plan in its comments as follows:[32]

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[28] *Drury Metropolitan Centre* decision, at [112].
[29] Economic Assessment, Urban Economics, dated 11 April 2026, pages 19-20.
[30] Section 81(2)(a) of the FTAA.
[31] Comments on behalf of the Jardines dated 28 October 2025, paragraph 3.7.
[32] Comments by Queenstown-Lakes District Council dated 28 October 2025, Appendix 1, paragraph 3.

> The TTSC Structure Plan was formally adopted by QLDC on 4 September 2025 and can and should be regarded as a relevant other matter under section 104(1)(c) of the Resource Management Act 1991 (RMA). The Structure Plan reflects QLDC's most up-to-date strategic direction for this area including the effects on the wider community which was canvased through technical assessments and engagement with the community, through the consultation process. This means the Structure Plan should be given appropriate weight in the assessment of the Proposal under the Fast-track Approvals Act 2024 (FTA).

50. As noted, the Panel may find it helpful to consider one or more counterfactuals (beyond the *status quo* or 'Base Case') in its assessment of the proposal's benefits. Further, the Panel will need to consider the counterfactual posited by the Jardines, even if it ultimately decides not to adopt it as a counterfactual.

51. We note that the Jardines advance a particular argument about the nature of the benefits when assessed against a Structure Plan counterfactual. The submission is that the primary regional benefit is not that it will enable the development (which they argue is already planned under the Structure Plan), but rather the *speed* at which it would be delivered. This characterisation, if accepted, has implications for the benefits assessment. It suggests that the relevant question under s 81(4) may be: "to what extent does the project accelerate regionally beneficial outcomes that would otherwise occur?" rather than simply "what benefits does the project deliver?". The Panel may wish to consider whether this temporal framing is appropriate, and if so, what weight should be given to acceleration benefits.

52. Whether to apply one or more counterfactual scenarios, and if so the appropriate selection of counterfactual, will ultimately be a matter for the Panel's evaluative judgment. However, we make several observations below:

Current zoning counterfactual

(a) The application site currently has split zoning – comprising areas zoned Jacks Point Resort Zone and areas zoned Rural Zone. The Rural zoned portion (which we understand to coincide with the proposed superlot areas) is identified as an "Indicative Future Expansion Area" in Chapter 4 (Urban Development) of the Proposed District Plan. In addition, the Structure Plan has recently been adopted, with QLDC signalling an apparent intention in its comments to implement it via a change to the District Plan in the near future.

(b) Nonetheless, a 'current zoning' counterfactual reflects the current planning status of the land and the operative zoning. As we understand matters, it is equivalent to the Urban Economics 'Base Case' referred to above – i.e. a comparison with existing rural activities. To that extent, it provides a clear base against which to measure the proposal's benefits.

Structure Plan counterfactual

(c) As noted, the Jardines contend that the *"relevant counterfactual is development occurring under the Structure Plan"*.

(d) Supporting this proposition, we note that the Structure Plan was formally adopted by the Council on 4 September 2025 following extensive technical assessment and community consultation. It represents the Council's considered view of appropriate future development in the Te Tapuae Southern Corridor, including for the application site specifically. The Structure Plan envisages for the Homestead Bay area a total of approximately 2,675–3,660 residential units (comprising a mix of low, medium, and high-density housing) plus a local commercial centre – broadly comparable in scale to the application.

(e) The 'flip side' is that the Structure Plan does not yet have statutory effect in any RMA planning instrument (it is, as QLDC note in their comments, a section 104(1)(c) consideration). While current indications are that QLDC intends to seek to implement it fairly promptly, there is presently a degree of temporal uncertainty, and while there may be some confidence as to the outcome of a Schedule 1 RMA process, the precise outcome is not guaranteed.

(f) The Panel may wish to balance the above factors in considering whether a Structure Plan counterfactual assists the Panel in its evaluative task.

Concluding remarks

(g) We note, as one possibility, that the Panel may ultimately determine that the proposal will deliver regionally significant benefits, irrespective of the counterfactual(s) considered.

(h) We also observe that the Applicant has not directly addressed the Jardines' proposed counterfactual in its response to comments. The Panel may wish to seek clarification from the Applicant as to its position in that regard, including further comments from the Applicant's economist. The option of seeking independent economic advice is also open to the Panel.

Yours faithfully
BROOKFIELDS

Matt Allan
Partner

[redacted]