Jeremy Brabant
BARRISTER
ENVIRONMENTAL LAW

Level 7, 50 Albert Street
Auckland Central

PO Box 1502, Shortland St
Auckland, New Zealand

M. 021 494 506
E. jeremy@brabant.co.nz

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Environmental Protection Authority
Ashbourne Expert Consenting Panel

**Attention: Panel Chair - Sue Simons**
by email

Dear Sue

## FTAA-2507-1087 - Ashbourne Project – Legal Advice regarding regional significance and benefits/disbenefits

1. I refer to your instructions on 23 December 2025 to provide legal advice on matters arising from the Expert Panel's (**Panel**) consideration of the Ashbourne Project's[1] consent application (**Application**) lodged under the Fast-track Approvals Act 2024 (**FTAA**).

2. The Panel seeks advice regarding assessment of regional significance and the subject of benefits.

## Context – The Proposal

3. I have already provided advice to the Panel with respect to a different set of questions.[2] In that advice I set out a summary of the Project and relevant context. I do not repeat that here. The Application was lodged with the Environmental Protection Authority (**EPA**) on 23 July 2025 and deemed complete on 13 August 2025.

[1] The Project seeks approval of a proposed residential and retirement development of 530 new homes and 250 retirement units in Matamata, along with associated commercial development and infrastructure, and two new solar farms (**Project**).
[2] Advice dated 28 November 2025.

4. The Panel's questions responded to in this advice arise out of legal opinions set out in memoranda from counsel for Matamata-Piako District Council (**MPDC**) and counsel for Matamata Development Limited (**Applicant**).[3] I refer to these documents as the **MPDC Memo** and the **Applicant Memo** respectively.

## Question

5. In terms of the question put to me:

   (a) The Panel has asked: "Please address the 'regional significance' issue with particular regard to the 'disbenefits' of 'displacement' of residential development".

   (b) The Applicant's memorandum suggests that legal advice is obtained on: "whether displacement should be "accounted for" when considering whether the Proposal has "significant regional or national benefits"".

## Fast-track Decisions Referred to

6. Both the Applicant Memo and the MPDC Memo refer to other decisions of Expert Panels under the FTAA.

7. The Applicant Memo refers to the following:

   (a) Record of Decision of the Maitahi Village Expert Consenting Panel (**Maitahi Village Decision**).

   (b) Record of Decision of the Drury Metropolitan Centre Expert Consenting Panel (**Drury Metropolitan Centre Decision**).

   (c) Record of Decision of the Bledisloe North Whard and Ferguson North Berth Extension Expert Consenting Panel (**Wharf and Berth Extension Decision**).

   (d) Record of Decision of the Rangitoopuni Expert Consenting Panel (**Rangitoopuni Decision**).

8. The MPDC Memo refers to:

[3] Both dated 17 December 2025.

(a) The Drury Metropolitan Centre Decision, the Wharf and Berth Extension Decision and the Rangitoopuni Decision.

(b) Record of Decision of the Milldale Expert Consenting Panel (**Milldale Decision**).

(c) The draft decision for Waihi North.

(d) The draft decision for Delmore.

9. I note that:

(a) The draft decision for Waihi North has been overtaken by the final Record of Decision of the Waihi North Expert Consenting Panel (**Waihi North Decision**).[4]

(b) The Delmore application was withdrawn (on 11 September 2025) and therefore there remains only a draft decision.

(c) For completeness, at the time of writing there are three further final decisions not referred to by the Applicant or MPDC (one of which postdates the memorandums):

(i) Record of Decision of the Tekapo Power Scheme Expert Consenting Panel (**Tekapo Power Scheme Decision**).[5]

(ii) Record of Decision of the Drury Quarry Expansion Expert Consenting Panel (**Drury Quarry Decision**).[6]

(iii) Record of Decision of the Kings Quarry Expansion Expert Consenting Panel (**Kings Quarry Decision**).[7]

## Analysis

***FTAA***

10. The purpose of the FTAA "is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits".[8]

[4] Granted 18 December 2025.
[5] Granted 3 November 2025.
[6] Granted 11 December 2025.
[7] Granted 18 December 2025.
[8] FTAA, s 3.

11. As you know, the Panel must for each approval sought decide whether to grant the approval or decline the approval.[9] Relevantly (inter alia), section 81(2)(b) then requires a panel to apply the applicable clauses set out in subsection (3) which includes for a resource consent clauses 17 – 22 of Schedule 5 to the FTAA.

12. Clauses 17 – 22 of Schedule 5 to the FTAA includes at clause 17(1)(a) a requirement to take into account the purpose of the Act (giving the purpose the greatest weight).

13. Section 81(4) states "When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits".

***Applicant Memo***

14. The Applicant Memo identifies in paragraph 3 that the Economic Experts did not agree as between themselves on how to determine "regional significance". The memo goes on to consider this issue in detail at [13] – [23].

15. I agree as observed in [13] of the Applicant Memo that the phrases "regional or national benefits" and "significant regional or national benefits" are not defined in the FTAA.

16. At [14] the Applicant Memo identifies principles which might be derived from previous Panel decisions. I take no issue with the principles identified. In that respect, I would add:

    (a) The approach to the meaning of "significant" benefits is referred to (at [14](c) of the memo) as where they are "sufficiently great or important to be worthy of attention; noteworthy". In addition to the Panel in the Maitahi Village Decision adopting that measure, more recently so did the Panels in the Tekapo Power Scheme Decision and the Kings Quarry Decision.

    (b) The Waihi North Panel engaged with this issue noting in its decision at [842] that "significant" could be used in the sense of "game changing" but it could also have meanings along the lines of "worthy of note". At [843] the Panel in essence aligned itself with the latter approach when it commented that it was not particularly likely that any one mining project or housing project might produce game changing effects. Accordingly it found that "significance" is not to be determined by reference to

[9] FTAA, s 81(1).

whether implementation of the project will appreciably change national or regional gross domestic product or the annual tax revenue of the Government. Rather it is an indication of scale.

(c) The question of scale has a relationship to context. What might be large-scale in a regional context may not be large-scale in a national context (you will recall that relevant benefits may be national or regional). In that respect the Waihi North Decision determined at [845]:

"We do not see the word "regional" when used in relation to benefits as denoting the areas of a regional council constituted under the Local Government Act. Rather;

(a) we construe "regional" in a more general sense that, for our purposes, encompasses the area in and around Waihi which we will treat as the Hauraki District…"

17. I agree with the Applicant Memo at [17] – [18] that the criteria referred to by Mr Denne are not appropriate. The criteria are not set by the FTAA, and they introduce a gloss not consistent with the wording of the FTAA or the approach to assessing significance adopted in the Waihi North Decision.

18. The Applicant Memo at [19] engages with the question of economic analysis – there are differences of opinion as to whether a Cost-Benefit Analysis (**CBA**) or an Economic Impact Assessment (**EIA**) is required. The Applicant Memo refers to the Rangitoopuni Decision and Drury Metropolitan Centre Decision proceeding on the basis of an EIA. Recent decisions such as the Drury Quarry Decision, Kings Quarry Decision and Waihi North Decision also relied on an EIA.

19. The Waihi North Decision directly engages with the CBA vs EIA issue from [776] onwards, with lengthy assessment, much of it application specific. Ultimately the Panel relied upon the EIA (subject to various comments and some identified reservations) and did not require a CBA. This analysis by the Panel also included some specific consideration of the relevance of disbenefits.

20. In the Waihi North Decision, at [784] the Panel found:

We agree that **where economic benefits are relied on by an applicant, any economic disbenefits should be allowed for**, particularly if the benefits and disbenefits are of the kinds that have market

values against which they can be measured in money terms. But parting company with Dr Meade, **we do not accept that adverse environmental impacts must be monetised and factored directly into the assessment of economic benefits**. Instead, we are of the view that we can assess the benefits relied on by OGNZL separately from any adverse environment impacts. [my emphasis]

21. The Panel recorded this position was consistent with the language of s 85(3) FTAA, before going on to hold at [786]:

Two points come out of this:

(a) There is **no explicit requirement for either the "benefits" or "adverse impacts" to be quantified in monetary terms**. This is so even where the claimed benefits are economic in character (as new jobs are). And:

(b) **If adverse impacts have already been monetised and factored into the benefits assessment, there would not be much point in a weighting exercise of the kind required by s 85(3)**. [my emphasis]

22. Also relevant in the context of assessment of benefits are the following observations in the Waihi North Decision:

(a) In the context of discussing disbenefits which should be set off against economic benefits claimed at [792], the Panel rejected a proposition that there would be deferral of benefits associated with Waihi becoming a post – tourist destination for reasons which included that "More generally the line of argument developed in the unsolicited post–conference material **is speculative** (in that it is based on assumptions)".[10] [my emphasis]

(b) At [847] in the context of assessing the potential for job losses, the Panel stated "No other **material and tangible** economic disbenefits were identified in the assessment process we have conducted. So, we see no **relevant** economic disbenefits to set off against the benefits we have recognised…". [My emphasis]

23. Returning to the Applicant Memo at [20] – [23], the heart of the Applicant's opposition to accounting for possible displacement or a transfer of activity elsewhere is set out.

24. Commencing with paragraph [20], the quoted approach by Mr Heath identifies an apparent assessment approach which assumes that in order for significance to be established the

[10] The Panel went on to reject other propositions regarding future options as too speculative at [838] – [839].

proposal is required to "materially impact the level of economic activity within the region". That is not the correct approach to the assessment of significance, as identified in the Waihi North Decision.

25. Turning to paragraph [21], at a high level I agree that the proper approach to assessing "significant regional or national benefits" should not be one which prevents competition. Accepting that there arguably may be case specific nuance to that question related to the degree of effect, at a binary level the FTAA squarely anticipates increasing housing supply. It is likely inevitable that increasing housing supply will involve competition with existing supply (and potentially with enabled supply). Whilst theoretically a new development may affect existing or potential proposals to varying degrees, that is competition in action.

26. I acknowledge the potential to argue that if a new development prevents existing zoned land from being developed, then the net outcome may not be an increase in realised housing supply. The difficulty arising from this proposition is the spectre of existing zoned land being protected from the introduction of competition. That is particularly problematic when the future development of existing zoned land is necessarily subject to uncertainty. For that reason, as referred to later in this opinion, I am of the view that a Panel would need to have an extremely high degree of confidence that consenting new proposed residential development would have material and significant adverse effects on housing supply before it could determine that this was a disbenefit that effectively counted against approval of the project. The purpose of the FTAA is enabling not protectionist.

27. I also agree that support of or creation of competitive land and development markets is of itself a benefit (which does not require quantification in monetary terms).

28. However, the Applicant's Memo would appear to go too far at [21](c) when it suggests that if displacement was treated as negating or materially diminishing the significance of regional benefits, no housing development could ever meet the purpose of the Act unless it could demonstrate wholly new or isolated demand. As a bare proposition, that is an overstatement because it postulates that in every case the assessed displacement would be of a level sufficient to result in a finding that the proposal was not regionally significant. If displacement were to be taken account of, that would not always be the outcome - in other words there might be examples where displacement diminished the significance of regional benefits but fell short of an outcome where the proposal was no longer regionally significant.

29. I agree that an approach which required every proposal to demonstrate wholly new or isolated demand would not reflect a proper interpretation of the FTAA.

30. I agree with paragraph [23] to the extent that if displacement is held to be relevant to assessment of "significant regional or national benefits" it goes to the scale or extent of economic benefits. Displacement in that context is not an adverse effect of the proposal.

***MPDC Memo***

31. Turning then to the MPDC Memo, it acknowledges at [2.3] that significance is a matter of scale rather than transformative effects, and that cultural, social and environmental outcomes can satisfy the regional significance threshold. I agree.

32. However paragraph [2.3] then places reliance on what is described as the 'Delmore decision'. As noted earlier in this memorandum there is no final Delmore decision, only a draft. With respect, it does not carry the weight of finalised decisions which were the subject of comments from parties and then a final determination by the panel in question. For that reason, in my opinion it is of limited assistance.

33. Paragraph [2.3] and [2.4] refer to whether claimed benefits are "aspirational" or "credible" and note the need for "rigorous, evidence-based assessment" and for benefits to be "substantiated".

34. In summary, the standard of proof for factual matters in RMA cases (which in my view is appropriate to apply to the FTAA process) is the balance of probabilities, but for evaluative judgements about future risks and environmental effects, there is no rigid standard; the assessment is contextual and reflects the nature and potential impact of the effects under consideration.

35. I take the view that the approach to assessing assertions as to future benefit or disbenefit might be equated with the assessment of risks and future environmental effects (rather than purely existing facts).

36. If that were the case, then I observe there is no single, uniform standard of proof for evaluative judgements about future environmental effects; rather, each potential effect should be assessed in light of probability and impact, with the standard varying according to the gravity and consequences of the effect (see *Clifford Bay Marine Farms Ltd v Marlborough District Council* - most risk-related judgements do not have a fixed standard and should be analysed

contextually[11]; or *Director-General of Conservation v Marlborough District Council* - judgements about future risks and effects do not require a particular standard of proof, reflecting the unique evaluative nature of RMA proceedings[12]).

37. This suggests that assessment of benefits and disbenefits should be undertaken considering probability, impact and context.

38. Whilst considering the approach under the RMA to assessing future risks and environmental effects (what might be termed futurity assessment), I also observe that:

(a) In *Dye*[13], the Court of Appeal concluded that what is now s 104D(1)(a) and s 104(1) are both concerned with the impact of the particular activity on the environment. They are not concerned with the effect which allowing the activity might have on the fate of subsequent applications for resource consent.

(b) The definition of environment was addressed by the Court of Appeal in *Queenstown Lakes DC v Hawthorn Estate Ltd*[14] considered that the "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan. While it includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears that those resource consents will be implemented, the environment does not include the effects of resource consents that might be made in the future.

(c) The law as it relates to cumulative effects is that it is not legitimate to consider, as cumulative effects in relation to a particular application, any effects relating to possible future applications.[15]

39. While I accept the assessment under the FTAA is different to a 'standard' RMA application, nonetheless I consider the law above indicates that analysis in a consenting context should treat with care assertions as to future effects relating to unknown and/or possible future applications or developments. Assessment of disbenefits, particularly asserted displacement

[11] ENC Christchurch C131/2003, 22 September 2003; [2003] ELHNZ 398.
[12] ENC Christchurch C113/2004, 17 August 2004; [2004] ELHNZ 320.
[13] *Dye v Auckland RC* [2002] 1 NZLR 337; (2001) 7 ELRNZ 209; [2001] NZRMA 513 (CA).
[14] (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA).
[15] Rodney DC v Gould (2004) 11 ELRNZ 165; [2006] NZRMA 217 (HC).

effects on residential development, should not bring in such speculation by a side door without robust evidence in support.

40. It is also the case that the approach to assessing future benefit or disbenefit should not be approached in a manner which undermines the meaning and purpose of the FTAA.

41. If the correct approach, supported by MPDC, is that benefits need "rigorous, evidence-based assessment" and must be "substantiated", the same must go for disbenefits. There must be a reliable and supportable evidentiary basis for claimed disbenefit. This would align with findings in the Waihi North Decision already referred to above, where some asserted disbenefits were rejected on the basis they were speculative, and later the panel identified the absence of material and tangible economic disbenefits.

42. The point above has a relationship to the matters being assessed and considered in the context of benefit or disbenefit. To speak of a hypothetical housing project under the FTAA, the starting point is that the project is a committed offered proposal with particular parameters, outcomes, assessed levels of investment, anticipated timings and job creation. That gives a framework for the assessment of benefit. Disbenefit, unless it is relatively direct, is more problematic to assess. That is particularly so by reference to assertions about displacement, whether that be of employment or housing. To pick the latter example, assumptions as to future development of a given area within which housing is enabled by zoning (other than that which is permitted), is necessarily speculative. There are a wide range of factors on the public record which influence whether zoned land is ultimately developed (including matters such as land banking, multiple ownership affecting the ability for comprehensive development to be undertaken, the financial capacity and willingness of owners and so on).

43. Therefore, returning to [2.5] of the MPDC Memo:

    (a) With respect to [2.5](a), I understand whether displacement or a transfer of activity will occur is disputed between the economic witnesses. In my view an issue must arise as to whether the asserted disbenefits are speculative, or whether there is sufficient evidence to establish that they are material and tangible, but whether that is so is not for me to say.

    (b) With respect to [2.5](b), I understand there is disagreement between the economic experts regarding demand for housing in the area in question. The FTAA does not

require a proposed housing development to demonstrate that it will "stimulate significant additional demand". To the extent demand is relevant, the position is similar to that referred to above - the Panel will need to assess the propositions and determine whether they are speculative, or whether there is sufficient evidence to establish that they are material and tangible.

(c) With respect to [2.5](c), to the extent infrastructure costs and "broader implications" are raised by reference to the issue of disbenefit, again the Panel will need to assess the propositions and determine whether they are speculative, or whether there is sufficient evidence to establish that they are material and tangible.

44. Section 3 of the MPDC Memo analyses decisions under the FTAA. This opinion has already canvassed various decisions referred to.

45. At [3.1] – [3.2] the draft Waihi North decision is considered (the final decision was not available at the time MPDC prepared its memo). I have already set out relevant aspects of the (final) Waihi North Decision.

46. The MPDC Memo addresses the Milldale Decision, Drury Metropolitan Centre Decision, the Wharf and Berth Extension Decision and the Rangitoopuni Decision at [3.3] – [3.14].[16] I agree with the observations set out in those paragraphs.

47. The Delmore draft decision is discussed at [3.15] – [3.18]. I have already indicated that I place limited weight on that draft decision. I would add only that the Applicant in that case faced particular challenges by reference to water, wastewater and transport infrastructure constraints which in the Panel's draft decision were in summary not resolved to their satisfaction, and this had implications for assessment of benefit.

## My Opinion - Conclusion

48. Drawing on the analysis above, and responding to the Panel's question[17], my key conclusions are:

[16] I note for the record that I acted for the Applicants on Milldale and Rangitoopuni.

[17] Please address the 'regional significance' issue with particular regard to the 'disbenefits' of 'displacement' of residential development.

(a) "Regional or national benefits" and "significant regional or national benefits" are not defined in the FTAA.

(b) The meaning of "significant" benefits is where they are "sufficiently great or important to be worthy of attention; noteworthy".

(c) "Significance" is not to be determined by reference to whether implementation of the project will appreciably change regional gross domestic product rather it is an indication of scale.

(d) The question of scale has a relationship to context which is driven by the assessment in a particular application (in this case you might determine "regional" in a more general sense which, say, encompasses the area in and around Matamata – but that is a matter for the Panel).

(e) A CBA is not required. Reliance can be placed on an EIA, subject to case specific assessment which may result in identified reservations.

(f) Where economic benefits are relied on by an applicant, any economic disbenefits should be allowed for.

(g) Adverse environmental impacts do not need to be monetised and factored directly into the assessment of economic benefits.

(h) The above points have a relationship to avoiding "double counting". If adverse impacts were monetised and factored into the benefits assessment, there would not be much point in a weighting exercise of the kind required by s 85(3).

(i) Ultimately there is no explicit requirement for either the "benefits" or "adverse impacts" to be quantified in monetary terms. This is so even where the claimed benefits are economic in character.

(j) Support of or creation of competitive land and development markets is of itself a benefit (which does not require quantification in monetary terms).

(k) The proper approach to assessing "significant regional or national benefits" should not be one which prevents competition. The purpose of the FTAA is enabling not protectionist.

(l) If displacement of residential development is held to be relevant to assessment of "significant regional or national benefits" it goes to the scale or extent of economic benefits. Displacement in that context is not an adverse effect of the proposal.

(m) Assessment of benefits and disbenefits should be undertaken considering probability, impact and context.

(n) There must be a reliable and supportable evidentiary basis for claimed disbenefit. This would align with findings in the Waihi North Decision already referred to above, where some asserted disbenefits were rejected on the basis they were speculative, and later the panel identified the absence of material and tangible economic disbenefits.

49. Whether a reliable and supportable evidentiary basis can be established for asserted future displacement of residential development in the context of a benefits assessment would seem problematic as future applications for development are unknown and influenced by multiple factors – but that is a matter for the Panel to ultimately determine.

50. With respect to the Applicant's question, in my opinion:

(a) Displacement should be "accounted for" when considering whether a Proposal has "significant regional or national benefits" if economic benefits are relied on by an applicant, and displacement is determined to be an economic disbenefit (as opposed to being regarded as an adverse environmental impact).

(b) Whether displacement is in any given circumstance determined to be an economic disbenefit depends in part on whether that asserted displacement has a reliable and supportable evidentiary basis for it, represents a material and tangible economic disbenefit, and is otherwise not speculative.

(c) If displacement is not determined to be an economic disbenefit, then there is no requirement to 'account for it' in an assessment of significant regional or national benefits.

51. Please advise if I can assist the Panel further.

Yours faithfully

**Jeremy Brabant**