

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**

4 AUGUST 2026

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MAY IT PLEASE THE PANEL:

Introduction

1. On 29 June 2026, the Expert Panel ("**Panel**") released Minute 2, which identified the parties who were invited to comment on the Application and outlined initial questions from the Panel for the Applicant. Minute 2 directed the Applicant to incorporate its reply to the Panel's questions into its response to comments from invited parties.
2. On 17 July 2026, the Panel released Minute 3, issuing invitations to parties who, due to an administrative error by the Environmental Protection Authority, did not receive the initial invitation to comment until 16 July 2026. Comments from these parties are due on 13 August 2026.
3. On 4 August 2026, shortly before filing this response, the Panel released Minute 4, advising the Applicant that several late submissions had been received and inviting the Applicant to comment (by 13 August) on whether it has any objection to the Panel accepting those late comments. The Applicant is considering this Minute and will respond separately.
4. This memorandum responds to comments received on or around 28 July 2026 and the Panel's initial questions for the Applicant in Minute 2. The Applicant will provide a subsequent response to any comments received on 13 August 2026 that are accepted by the Panel.

Overview of comments received

5. In total, comments were received and accepted from 15 parties:
 - (a) Auckland Council ("**Council**");
 - (b) five Ministers, being the Minister of Climate Change; Minister for Infrastructure; Minister for Economic Growth; Minister for Māori Crown Relations Te Arawhiti and Minister for Māori Development; and Minister for Building and Construction; and
 - (c) a small number of residents from the apartment complex at 30 Madden Street.¹

¹ This included seven comments from John Dennehy, Delia King (Tino Management Limited), JM Courtney Trustees Limited, Tim and Jenny Ellis, Anthony Quirk, The Martin Kunz Living Trust, Sandra Cameron and Hamish Caithness, and two late comments accepted by the Panel from Richard Greissman and Robert and Robyn Pryor.

6. All Ministers expressed support for the Application, noting the potential of the Application (in a strategically significant waterfront location) to deliver regional economic benefits through construction activity and increased housing supply in a location where apartment construction growth has declined significantly in recent years despite projected household growth.²
7. Council is also generally supportive of the Application. It is important to highlight that several of Council's technical experts expressed full support for the Application (subject to conditions).³ This is a product of productive engagement between the Applicant and Council that occurred both prior to lodgement of the Application and continued up until Council provided its comments on 28 July 2026. As part of this response, relevant plans and information from that engagement process have been provided to the Panel. The Applicant appreciates Council's constructive engagement which has enabled matters to be significantly narrowed and / or resolved.
8. While Council has raised various matters in their comments, these are limited to a small number of disciplines and the Applicant considers many of Council's concerns relate to matters of detail or differences of professional opinion. In particular, the Applicant considers Council's alleged "key information gaps" are a product of differing expert opinions on technical matters or misinterpretation of information in the Application and are not genuine information gaps for the reasons set out in this memorandum and related attachments.
9. The key concerns from residents of 30 Madden Street relate to the urban design, visual and landscape effects of the Application, particularly in relation to the Tower Building. While the Panel will be well of aware of the legal framework in which it is operating, we consider it is important to highlight (as an introductory comment) that consideration of these effects in the context of the FTAA is fundamentally different to the Resource Management Act 1991 ("**RMA**"). In undertaking its assessment of the Application, the Panel is required to:
 - (a) give the greatest weight to the purpose of the FTAA, before considering the relevant provisions of the RMA that direct decision making on a resource consent application (including the effects of the Application under section 104 of the RMA);⁴ and

² Letter from Minister for Economic Growth dated 27 July 2026, page 2.

³ Council's Wind, Construction and Operational Noise, Contamination, Lighting, Earthworks, Geotechnical, Groundwater, Healthy Waters, and Coastal Erosion and Waste experts expressed full support, subject to conditions.

⁴ Fast-track Approvals Act 2024, s 81.

- (b) the Panel may only decline an application if it considers the adverse impacts are sufficiently significant to be out of proportion to an application's regional or national benefits.⁵

10. In our submission, those (and any other adverse) impacts of the Application do not outweigh (or even come close to outweighing) the regionally significant benefits of the Project such that the Application should be granted on the conditions set out in **Attachment A2**.

Roadmap for response to comments

11. The Applicant and its expert team have carefully considered the first tranche of comments from invited parties and the Panel's questions, and have provided a comprehensive response in this memorandum and the following attachments:
 - (a) **Attachment A1:** Response to Council's proposed conditions;
 - (b) **Attachment A2:** Applicant's proposed conditions (shown in red underline and strikethrough);
 - (c) **Attachment B:** Response to Panel questions for the Applicant;
 - (d) **Attachment C:** Economic memorandum;
 - (e) **Attachment D:** Transport memorandum;
 - (f) **Attachment E:** Planning memorandum;
 - (g) **Attachment F:** Urban design, visual and landscape memorandum; and
 - (h) **Attachment G:** Coastal hazards memorandum.
12. We respond below to the legal matters raised in the first tranche of comments received from invited parties by way of key themes in light of the statutory assessment the Panel must undertake when assessing the Application.

⁵ Fast-track Approvals Act 2024, s 85(3).

Assessing benefits under the FTAA

Balance of section 22 of the FTAA

13. Three residents of 30 Madden Street consider the Application does not have regionally significant benefits and have raised the lack of affordable housing provided by the Application with reference to section 22 of the FTAA.⁶
14. While section 22(2)(a) of the FTAA sets out a range of matters for the Minister to consider when assessing a *referral* application, previous Expert Panels have considered that section 22(2) provides useful guidance as to the meaning of "significant" in the purpose of the FTAA.⁷
15. However, the provision of "affordable housing" is not a consideration under section 22 of the FTAA. Rather, a consideration under section 22(2)(iii) of the FTAA is whether the Application will result an increase of housing supply, address housing needs, or contribute to a well-functioning urban environment. When considering section 22(2)(a)(iii), the Expert Panel in *Maitahi Village* outlined any assessment of regional or national benefits will be informed by the relevant regional context, such as the demand for housing is a particular location.⁸
16. As detailed in the Economic Impact Assessment ("**EIA**") submitted as part of the substantive application,⁹ the provision of apartments in this strategic location represents an increase of housing supply that contributes to overall market functioning in a central city location where there is demand for apartment living. By adding new housing capacity, the Application will improve housing choice and reduce reliance on existing housing stock. Council's economist agrees that the economic benefits of the Application are likely to be positive based on the scale of the development proposed and its strategic location within the city centre.¹⁰
17. When deciding whether to grant an approval, the Panel must consider the Minister's reasons for accepting a referral application.¹¹ It is of relevance here

⁶ Richard Greissman, Robert and Robyn Prior and The Martin Kunz Living Trust.

⁷ Final Decision of the Expert Panel for Waihi North dated 18 December 2025 at [841] and Final Decision of the Expert Panel for Maitahi Village dated 18 September 2025 at [515].

⁸ Final Decision of the Expert Panel for Maitahi Village dated 18 September 2025 at [517]-[538].

⁹ 188 Beaumont Street, Substantive Application, Appendix 16 at [7.1].

¹⁰ Auckland Council Specialist Memo, Annexure 2: Economics dated 17 July 2026, section 3.

¹¹ Fast-tracks Approvals Act 2024, s 81(2)(aaa).

that the Minister considered that the Application would increase the supply of housing, address housing needs, and contribute to a well-functioning urban environment.¹²

18. In addition to an increase in housing supply and housing choice, the benefits of this Application also include:
 - (a) increased economic activity and employment with an estimated \$416 million direct economic contribution into the Auckland economy and 3,400 FTE-years of employment generated over a five-year development period;
 - (b) supporting Orams Marine to remain internationally competitive, with wider economic impacts and benefits to the region as a result;
 - (c) redevelopment of an existing car-park with a high-quality, mixed use landmark building that activates key public interfaces, improves public access to the waterfront, and enhances the public realm of Wynyard Quarter;
 - (d) intensifying land use in a unique and strategic City Centre location, which utilises this land more efficiently;
 - (e) more efficient use of existing infrastructure such as transport, parks and three waters infrastructure; and
 - (f) catalysing additional development in the City Centre by increasing the local resident population which in turn facilitates further demand and investment in Wynyard Quarter and the City Centre.
19. Taken together, it is our submission that the benefits of the Application are regionally significant.

Cost-benefit analysis is not required

20. Auckland Council's economist tentatively supports the Application and considers the economic benefits of the Application are likely to be positive.¹³ Notwithstanding that conclusion, and while concluding a full cost-benefit analysis ("**CBA**") is not necessary to show the likely benefit of a project,

¹² Notice of decision on application for referral of the 188 Beaumont Street project under the FTAA dated 19 December 2025.

¹³ Auckland Council Specialist Memo, Annexure 2: Economics dated 17 July 2026, section 3.

Dr Martin considers that aspects of a CBA, such as quantifying the benefits, is critical to be able to say whether a project is beneficial.¹⁴

21. There is a difference of professional opinion between the Council's and the Applicant's economists as to the interpretation of the FTAA and the appropriate methodology for demonstrating the benefits of a project. From a technical perspective, Mr Heath (on behalf of the Applicant) has confirmed in his memorandum at **Attachment C** that a CBA is neither necessary nor appropriate in this context.
22. The use of a CBA, or a CBA framework, is not a novel issue raised by Council in this Application. In previous fast-track applications, parties invited to comment on applications have frequently requested applicants undertake a CBA to assess the benefits of a proposal.¹⁵
23. From a legal perspective, there is no statutory requirement under the FTAA for a CBA to be undertaken when assessing the benefits of a project. As the Panel will be aware, under section 81(3)(a) of the FTAA, the Panel must consider the purpose of the FTAA which includes the delivery of development projects with significant regional or national benefits.¹⁶ Section 81(4) of the FTAA requires that the Panel considers the extent of the project's regional or national benefits. "Regional or national benefits" are not defined in the FTAA and the legislative framework does not limit these benefits to economic benefits only nor does it require a CBA.
24. While previous fast-track decisions are not binding on this Panel, in our submission, the comprehensive body of decisions that have developed under the FTAA provides useful guidance. In particular, various Expert Panels have routinely rejected the need to undertake a full CBA when assessing the benefits of a particular project and have accepted economic impact assessments (as has been produced by the Applicant here) as an appropriate and sufficient basis to assess a project's benefits.¹⁷

¹⁴ Auckland Council Specialist Memo, Annexure 2: Economics dated 17 July 2026, section 5.

¹⁵ For example, see the Final Decision of the Expert Panel for Waihi North dated 18 December 2025 at [777]-[779] and the Final Decision of the Expert Panel for Maitahi Village dated 18 September 2025 at [347].

¹⁶ Fast-track Approvals Act 2024, s 3.

¹⁷ Final Decision of the Expert Panel for Waihi North dated 18 December 2025 at [785]-[787]; Final of the Expert Panel for Maitahi Village dated 18 September 2025 at [342]-[356]; Final Decision of the Expert Panel for The Point Mission Bay dated 12 June 2026 at [324.10]; Draft Decision of the Expert Panel for The Downtown Carpark Redevelopment – Te Pūmanawa o Tāmaki dated 8 July 2026 at [267]-[268].

25. Accordingly, it is our submission that, the EIA provides an appropriate basis for assessing the Application's benefits.

Approach to assessing effects

Building height infringement does not restrict ability to obtain consent

26. Auckland Council's policy planner noted that the three proposed buildings in the Application infringe the permitted maximum height standards under the Auckland Unitary Plan ("**AUP**").¹⁸ Concerns over the permitted building height infringement were also raised by the 30 Madden Street residents, with a common sentiment that development of the Tower Building should be confined to the permitted 62m height under the AUP.¹⁹ Responses to comments from the Council and residents at 30 Madden Street regarding height are addressed in detail in the urban design, visual and landscape memorandum at **Attachment F** and the planning memorandum at **Attachment E**.
27. From a legal perspective, there is no presumption in the RMA, AUP or FTAA that development should comply with permitted standards or only infringe them to a very small degree.²⁰ Height standards are not an absolute limit, but a threshold for a permitted activity by which an applicant (as is the case here) can seek resource consent to infringe.
28. The RMA, AUP and FTAA provide a framework that enables resource consent to be sought to infringe standards:
- (a) The RMA provides that no person may use land in a manner that contravenes a district rule (such as the height standards applicable to the Wynyard Precinct in the AUP) unless the use is expressly allowed by a resource consent.²¹ That is, the purpose of the consenting process under the RMA is to provide a framework for assessing activities that otherwise do not comply with plan

¹⁸ Auckland Council Specialist Memo, Annexure 1: Policy Planning dated 16 July 2026 at [38]-[39].

¹⁹ Delia King (Tino Management Limited), J M Courtney Trustees Limited, Tim and Jenny Ellis, Anthony Quirk, The Martin Kunz Living Trust, Sandra Cameron and Hamish Caithness, Richard Greissman and Robert and Robyn Pryor.

²⁰ Final Decision of the Expert Panel for The Point Mission Bay dated 12 June 2026 at [102.2].

²¹ Resource Management Act 1991, s 9(3)(a), imported into the fast-track regime under the Fast-Track Approvals Act 2024, Schedule 5.

provisions. The FTAA allows applicants to seek approval for resource consents that would otherwise be sought under the RMA.

- (b) Rule C.1.9 of the AUP expressly provides that resource consent (as a restricted discretionary activity) can be sought for activities which do not comply with one or more of the standards applying to that activity. The AUP therefore contemplates resource consents being sought for proposals that infringe standards.

- 29. While the Application seeks resource consent to infringe the height standards, the assessments provided in the Application conclude that the adverse effects of the Application (including any urban design, visual and landscape effects from the height of Tower Building) are minor overall.
- 30. The Applicant wishes to clarify that while the Assessment of Environmental Effects submitted as part of the substantive application concluded the adverse effects of the Application were no more than minor overall (and more than minor only for visual amenity effects for the nearest residential receiver), subsequent assessment has determined that all effects (including amenity effects on the nearest residential receiver) are minor at most. As explained in the urban design, visual and landscape memorandum at **Attachment F**, further work has been undertaken to analyse the effects on these receivers and as a result of this further analysis, the adverse effects are now considered to be minor effects.

Comparative assessment and future marker buildings

- 31. Auckland Council's urban designers consider there are two information gaps in the Application relating to the absence of comparative shading and daylight assessments.²² They conclude that a comparative daylight and shading assessment showing the extent of shading generated by the Application relative to an AUP plan-enabled building, and an assessment of effects on daylight access to streets, public places and nearby sites, is required to quantify these effects. Two residents of 30 Madden have also provided their own comparative assessments of the Application against the AUP enabled height standards.²³

²² Auckland Council Specialist Memo, Annexure 3: Urban Design dated 23 July 2026, section 6.

²³ Robert and Robyn Pryor and Richard Greissman.

32. In our submission, there is no information gap in the Application. There is no requirement under the RMA (nor is it appropriate) to provide comparative assessments of the Project against a hypothetical compliant scheme.
33. The Environment Court has previously rejected evidence of a compliant development as being unhelpful and irrelevant to the matters the Court was required to determine in the context of an application for a restricted discretionary consent.²⁴ This approach to comparative assessments has been endorsed under the FTAA, where the Expert Panel in relation to *The Point Mission Bay* application declined to undertake a comparison of the proposal's neighbourhood character and landscape visual effects against those of a hypothetical compliant scheme.²⁵
34. The correct legal basis for the Panel's assessment of urban design, visual and landscape effects is to consider these effects against the existing environment (not by reference to a comparative compliant scheme). The "environment" includes its current and future state as it might be modified by permitted activities and resource consents which have been granted and are likely to be implemented.²⁶ As the applicable provisions in the AUP require (among other things) restricted discretionary resource consent for any new buildings in the Wynyard Precinct,²⁷ any potential new buildings (where resource consent has not been obtained) do not form part of the existing environment. On that basis, a comparative compliant development assessment is unhelpful and inappropriate here.
35. In a similar vein, Auckland Council's urban designers stated that the adjacent site to the east of the Project at 37-55 Madden Street, currently used as a car park but enabled as a "future marker building", should be considered in determining the potential unintended effects arising from the proposed degree of height and bulk exceedances.²⁸ The Council's own landscape expert acknowledges that 37-55 Madden Street is currently used as a car park with no unimplemented consents.²⁹

²⁴ *Panuku Development Auckland Ltd v Auckland Council* [2020] NZEnvC 024 at [72]-[73]. See also *Drive Holdings Limited v Auckland Council* [2021] NZEnvC 159 at [84].

²⁵ Final Decision of the Expert Panel for *The Point Mission Bay* dated 12 June 2026 at [102].

²⁶ *Queenstown-Lakes District Council v Hawthorn Estate Limited* [2006] ELHNZ 226 (CA) at [84].

²⁷ Auckland Unitary Plan, I214. Wynyard Precinct, Table I214.4.2. Activity table – development at (A51).

²⁸ Auckland Council Specialist Memo, Annexure 3: Urban Design dated 23 July 2026 at [5.4].

²⁹ Auckland Council Specialist Memo, Annexure 4: Landscape dated 7 July 2026 at [5.15].

36. As reiterated above, the Panel should not assess the effects of the Application on hypothetical future developments which do not form part of the existing environment. As resource consent is required for all new buildings in the Wynyard Precinct, these future buildings do not form part of the existing environment, and it is entirely unknown what any development proposed on that Site may look like in the future. The assessment of effects (as was correctly conducted in the Urban Design and Landscape Assessment ("UDLA") provided as part of the substantive application)³⁰ is against the existing environment, which means the appropriate basis for the Panel to conduct its assessment of the effects of the Application is against what is there today – that is a carpark.
37. The UDLA considers and assesses the actual and potential urban design, landscape and visual effects and considers any adverse effects are overall low and that there are a range of positive effects of the Application, including that it enhances the character and amenity of this part of the Precinct and the waterfront.³¹

None of the circumstances in section 85(3) of the FTAA apply

38. Council's planners allege there are four adverse impacts that require particular consideration under section 85(3) of the FTAA.³² Some of the residents of 30 Madden Street also raise concerns with urban design, visual and landscape effects and consider the effects are not outweighed by the benefits of the Application.³³
39. As the Panel will be aware, section 85(3) of the FTAA provides very limited discretion to decline an application, including if the Panel considers the adverse impacts³⁴ are significantly sufficient to be out of proportion to the Application's regional or national benefits (after considering conditions or modifications proposed).³⁵

³⁰ 188 Beaumont Street, Substantive Application, Appendix 15.

³¹ 188 Beaumont Street, Substantive Application, Appendix 15.

³² Memorandum of Strategic and Planning Matters for Auckland Council dated 28 July 2026, pages 53-57. The points raised by Council were the loss of land for marine and port-related development opportunities; urban design, visual and landscape effects and transport effects.

³³ The Martin Kunz Family Trust, Robert and Robyn Pryor, Richard Greissman and Sandra Camerson and Hamish Caithness.

³⁴ Fast-track Approvals Act 2024, s 85(5) provides that an adverse impact means any matter considered by the Panel in complying with section 81(2) that weighs against granting the approval.

³⁵ Final Decision of the Expert Panel for Maitahi Village Expert Panel dated 18 September 2025 at [61].

40. When undertaking the proportionality assessment under section 85(3) of the FTAA, it is important to highlight that the threshold is "sufficiently significant" to be out of proportion.³⁶ The Expert Panel in *Southland Wind Farm* held that adverse effects that merely outweigh or are greater than the regional or national benefits do not trigger the discretion to decline.³⁷ Further, 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.³⁸ In our submission, this creates a high threshold.
41. Council provides an assessment against section 83(5) of the FTAA and ultimately concludes it is likely these adverse effects are not significantly out of proportion to the Application's identified benefits.³⁹ In our submission, that is very clearly the conclusion here and the threshold in section 85(3) of the FTAA is not even close to being met by this Application.
42. The benefits of the Application have been comprehensively assessed in the substantive application and are summarised above. In our submission, it has been clearly demonstrated that the Application has significant regional benefits.
43. The potential adverse impacts of this Application primarily relate to urban design, visual and landscape effects. These effects have been robustly assessed in the UDLA and the urban design, visual and landscape memorandum at **Attachment F** and are appropriately mitigated by the intentional design elements of the Application, such that the adverse effects are considered minor.
44. For completeness, we also note the Council's planner considers the Application is contrary to with some of the relevant objectives and policies of the AUP.⁴⁰ While the Applicant disagrees with this conclusion as set out in planning memorandum at **Attachment E**, even if the Panel were to conclude the Application is inconsistent with the relevant objectives and policies on this point, section 85(4) of the FTAA expressly provides that a finding that an

³⁶ Final Decision of the Southland Wind Farm Expert Panel dated 2 April 2026 at [62]-[63].

³⁷ Final Decision of the Southland Wind Farm Expert Panel dated 2 April 2026 at [62]-[63].

³⁸ Final Decision of the Ayrburn Screen Hub Expert Panel dated 14 April 2026 at [112].

³⁹ Memorandum of Strategic and Planning Matters for Auckland Council dated 28 July 2026 at [253].

⁴⁰ Auckland Council Specialist Memo, Annexure 1: Policy Planning dated 16 July 2026 at [31] and [44].

application is inconsistent or contrary to relevant planning provisions *alone* cannot be the basis for the Panel declining the Application under section 85(3) of the FTAA.

45. Either individually or collectively, it is our submission that it cannot reasonably be concluded that the adverse impacts of the Application outweigh the significant benefits and it is not open to the Panel to decline the Application on that (or any other) basis.

Requirement for easement over publicly accessible space

46. Council's parks planning expert recommended that an easement be registered as a formal legal mechanism to secure public access across the 7m setback measured from the western boundary of Lot 1.⁴¹ Two residents from 30 Madden Street also expressed concern that the proposed 7m setback may not guarantee long term, unrestricted public use.⁴² In our submission, a condition requiring a public access easement is not necessary or appropriate in the context of this Application.
47. The Environment Court has previously found an easement was not required over a public access corridor in circumstances where the proposed conditions of consent appropriately provided for this outcome, including the requirement for the development to proceed in general accordance the plans referenced in the conditions of the consent where those plans clearly identified the public access corridor.⁴³
48. Similarly, in the context of this Application, it is our submission that the provision of public open space adjacent to the coastal marine is clearly provided for in the Application documents, including through the plans submitted as part of the substantive application which the Applicant must comply with under its proposed Condition 34.⁴⁴ On that basis, a legal instrument is unnecessary.

Next steps

49. The Applicant acknowledges the helpful suggestion of Council that further expert conferencing on the urban design, landscape and public realm matters

⁴¹ Auckland Council Specialist Memo, Annexure 5: Parks Planning dated 13 July 2026, section 7.

⁴² Sandra Cameron and Hamish Caithness and Robert and Robyn Pryor.

⁴³ *Woolworths New Zealand Limited v Christchurch City Council* [2021] EnvC 133 at [142]-[144].

⁴⁴ Resource Management Act 1991, s 108AA.

would be beneficial.⁴⁵ Significant consultation, engagement and communication between the Applicant and Council has already occurred, particularly on the design of the Application. Therefore, the Applicant does not consider that further conferencing would be beneficial on urban design, landscape and public realm matters.

Conclusion

50. The Applicant has carefully considered and responded to the comments received and the Panel's questions on the Application. The Applicant's responses confirm that the Project provides significant regional benefit for Auckland and that potential adverse effects of the Project are appropriately managed subject to the conditions proposed in **Attachment A2**.

DATED: 4 August 2026



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⁴⁵ Memorandum of Strategic and Planning Matters for Auckland Council dated 28 July 2026 at [255].