

IN THE MATTER

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

AND

IN THE MATTER

of an application for approvals by Vineway Limited to subdivide and develop 109 hectares of Future Urban Zone land into approximately 1,250 residential dwellings and associated features such as parks, including delivery of the State Highway 1 Grand Drive interchange and Wainui area connection - Project FTAA-2502-1015 – Delmore (**Application**)

**SECOND MEMORANDUM OF COUNSEL FOR AUCKLAND COUNCIL,
AUCKLAND TRANSPORT, AND WATERCARE SERVICES LIMITED**

Dated: 2 July 2025

Matthew Allan
Partner
allan@brookfields.co.nz
Telephone No. 09 979 2128
P O Box 240
DX CP24134
AUCKLAND

BROOKFIELDS
LAWYERS

1. INTRODUCTION

- 1.1 While relating to a different statutory framework – the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**Covid Act**) – counsel wish to draw the Panel's attention to the Court of Appeal decision in *Glenpanel Development Ltd v Expert Consenting Panel*.¹
- 1.2 Counsel have reflected on this case's potential relevance to the FTAA framework since finalising the Council family's Memorandum of Legal Comments dated 25 June 2025, and consider it may assist the Panel to comment very briefly. Given that this memorandum is provided outside the formal timetable, counsel have kept commentary to a minimum. The Applicant may obviously wish to provide its own comments on the decision's relevance to the present Application.

2. THE GLENPANEL DECISION

- 2.1 The Court of Appeal's decision arose from an appeal concerning an expert consenting panel's decision under the Covid Act to decline a housing development application in Queenstown's Ladies Mile area. The panel declined consent for several reasons, including due to the application being assessed as contrary to objectives and policies in the Proposed District Plan.
- 2.2 The Court of Appeal allowed the appeal and directed the panel to reconsider its decision. The Court's reasoning broadly addressed two matters:
 - (a) First, that the Supreme Court's recent decision in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency (East West Link decision)*² required a more nuanced approach to the application of the requirements of section 104D(1)(b) when assessing applications, given the substantive nature of wider planning instruments, and that panels should consider whether applications could be granted as exceptions that give effect to broader planning intentions.³
 - (b) Second, that the "very purpose of the [Covid] Act was to 'fast track' projects that would otherwise take a longer time to be consented

¹ *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154.

² *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

³ *Glenpanel*, at [33], [38] and [39].

*under a conventional RMA approach" and that the regime "encompasses bringing forward projects that would otherwise likely be granted under the RMA in the future."*⁴

2.3 The Court noted in relation to both of these matters that:

[45] Bringing forward projects in this way does not mean applications should be granted, however. The considerations referred to in cl 31 of sch 6 and arising under pt 2 of the RMA remain relevant. So environmental effects remain part of the required consideration. Moreover, the more nuanced approach does not dictate an outcome. By its nature the fast tracking may involve greater uncertainties. ...

[46] ... uncertainties connected with where and how the urban development would take place, including uncertainties about exactly how such urbanisation would occur, would properly be taken into account by the Panel. ...

3. BRIEF OBSERVATIONS CONCERNING THE DECISION

3.1 Counsel offer the following brief observations as to the relevance of *Glenpanel* to the FTAA framework and the Application.

3.2 First, in relation to the Court's comments about a 'nuanced approach' arising from the *East West Link* decision (and whether applications could be granted as exceptions that give effect to broader planning intentions):

(a) Counsel note that the discussion of the *East West Link* decision in *Glenpanel* arose in the context of section 104D(1)(b) of the RMA. Section 104D applies under the Covid Act, but does not apply under the FTAA. The FTAA instead prescribes a distinct evaluative framework, including a proportionality assessment under section 85(3), and section 85(4)'s express direction that plan inconsistency alone is not a sufficient reason to decline.

(b) In any event:

(i) The Council family's assessment has been undertaken in accordance with the bespoke requirements of the FTAA (which differ from those of the Covid Act), including the

⁴ At [43].

proportionality assessment under section 85(3) and the requirement in section 85(4).

- (ii) Mr Pope advises that the discussion in the *Glenpanel* decision does not alter his analysis or recommendations in Section D of the Council's planning memorandum dated 25 June 2025, with the recommendation of decline being based on his assessment of a number of identified 'adverse impacts' (e.g. concerning infrastructure, ecology etc), which remain regardless of how planning documents are interpreted.

3.3 Second, in relation to the Court's observations about the purpose of the Covid Act to bring forward projects:

- (a) While those comments reflect an emphasis on facilitating development – which may resonate with the FTAA's own purpose – the practical impact in the present context is limited, given the FTAA's more specific framework, including the direction to give "greatest weight" to its purpose, and section 85(4)'s express prohibition on declining approval solely due to plan inconsistency or contrariness.
- (b) In this sense, even if some analogy can be drawn, the Court's comments do not 'shift the needle', given the explicit weighting framework under the FTAA paired with the effect of section 85(4).

3.4 For completeness, counsel confirm that the discussion of the legal framework in the Council family's Memorandum of Legal Comments dated 25 June 2025 remains unchanged. Counsel trust that this brief further memorandum is of assistance.

DATED the 2nd day of July 2025



Matt Allan / Rowan Ashton / Michelle Hooper
Counsel for Auckland Council family