

**Before the Fast-track Expert Consenting Panel**

**FTAA-2503-1038**

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

**And**

**In the Matter** of an application for resource consents and an archaeological authority by Fulton Hogan Land Development Limited – Milldale stages 4C and 10 to 13

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**Memorandum of Counsel on behalf Fulton Hogan Land Development Limited  
Responding to Minute 3 of the Expert Panel**

**Dated 25 July 2025**

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## May it please the Panel:

### Introduction

1. This memorandum is presented on behalf of the Applicant, Fulton Hogan Land Development Limited (**FHLD**). It responds to Minute 3 of the Expert Panel dated 15 July 2025.
2. Specifically this memorandum addresses one aspect (in part) of Minute 3, namely the request that FHLD:

*Provide additional detail regarding the rationale for the proposed density of development within Stage 4C. This should include consideration of efficiency (including efficient use of resources), saleability, and the relevant AUP objectives and policies (within the Regional Policy Statement and the Terrace Housing and Apartment Buildings zone).*

3. The response to this request includes expert comments from planning, economic and urban design experts. I do not repeat any of the detail of the proposal or summarise the other responses to this request.
4. Details of the Proposal are set out in the Stage 4C Assessment of Environmental Effects (**AEE**) and the relevant supporting documents.
5. The design typology of the proposed 168 dwellings in Stage 4C is addressed in section 4.2.1.1 of the AEE. In summary:
  - a. A range of two-storey terraced housing styles are proposed;
  - b. Dwellings will range from 2 to 4.5 bedrooms; and
  - c. Dwelling size will range from between 75m<sup>2</sup> to 205m<sup>2</sup> GFA.

## Legal Comment

6. The urban design report<sup>1</sup> identifies the key urban design outcomes associated with the THAB zone, noting with respect to built form that the zone anticipates providing for urban residential living at higher densities in a variety of forms including terraced housing and apartments with quality on-site amenity.<sup>2</sup>
7. With reference to the typologies, the urban design report states:<sup>3</sup>
  - a. The predominately two-storeyed terraced homes of three to four bedrooms should be considered within the wider context of Milldale which has traditionally been limited to large, single-storey detached dwellings.
  - b. The more intensive terraced proposals in close proximity to commercial amenities and open space.
8. The above considerations were factored into the type of housing considered to be effective and appropriate in this location. These matters are enlarged upon in the planning, economic and urban design responses to the request for additional detail regarding the rationale for the proposed density of development within Stage 4C.
9. The RMA and the zone and precinct within which the subject site sits are enabling. There is the theoretical potential for a zone and precinct to be extremely directive and restrictive, perhaps even prescriptive, in the outcomes possible, but in all respects which matter by reference to any inference of under-density, that is not the case here.
10. Turning to the relevant zone, one might start at the beginning. The site is subject to the Terrace Housing and Apartment Buildings Zone. At the risk of belabouring the point, I have underlined the words “Terrace Housing and”.

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<sup>1</sup> Dated 25 February 2025.

<sup>2</sup> Urban Design Report, section 3.4.

<sup>3</sup> Section 5.3.

Such an outcome is directly anticipated - as the saying goes, the zone does exactly what it says on the tin.

11. The zone description records that it provides for urban residential living in the form of Terrace Housing and Apartments. It refers to buildings being “enabled” up to five, six or seven storeys in identified Height Variation Control areas. The THAB zone does not contain minimum density requirements, nor does it require a particular height and/or housing typology to be achieved. Rather, the construction of all new dwellings within the zone require restricted discretionary resource consent and must be determined on its merits, having regard to the zone’s objectives and policies.
12. The objectives (H6.2) anticipate land subject to the zone being “efficiently used to provide high-density urban living” and development is “in keeping” with the planned urban built character of “predominantly” five, six or seven story buildings in a variety of forms.
13. The policies (H6.3) expressly “enable a variety of housing types at high densities including terrace housing” [my emphasis]. The height, bulk, form and appearance of development is required to achieve a high-density urban built character of “predominantly” five, six or seven story buildings. In identified locations greater building height is enabled.
14. The urban design response from Mr Wallace forming part of the response package to comments addresses the use of terraced house typologies and identifies with reference to relevant data and examples that the proposed development will achieve a density of persons per hectare which I submit qualifies as high density residential.
15. Furthermore Mr Wallace’s consideration extends to a range of real world matters. A key point is that density should not be considered in a contextual vacuum. That relates to the necessity for a real world assessment. Any development must take account of a range of factors which inform an appropriate design outcome, including natural and local amenity, ground conditions, servicing, land values and maturity of the housing market in the area. Some of these factors are squarely identified as relevant and necessary considerations in other objectives and policies, and/or in other parts of the

plan. A blinkered approach emphasising density above all else would be inappropriate.

16. The maturity of the housing market is inescapably relevant in a non-command economy. Whilst the concept of “making it so” might appeal from a hypothetical perspective, a real-world assessment engages considerations discussed by Mr Wallace. Fundamentally there needs to be demand for the form of housing constructed, and in general terms a pattern of development along a continuum can be expected where early housing development is in the form of terraced and semi-detached housing, with more intensive apartment buildings being established later in time.
17. Returning to the relevant objectives and policies, Mr Wallace has established that what is proposed is high-density urban living. References to planned urban built character use the qualifier “predominantly” prior to referring to five, six or seven story buildings. The objective and policy referring to this planned urban built character do not require every development to achieve these heights or be an apartment typology, nor is it correct to interpret those provisions as anticipating these outcomes will be immediately achieved - a real-world assessment taking account of market realities would acknowledge that this shift will occur over likely a long period of time.
18. While policy H6.3 (2) does include the term “require” (which is directive terminology) it is followed by the qualifier “predominantly”.
19. The methods in the AUP, which are deemed to give effect to the higher order objectives and policies, provide for the outcomes sought in this application.
20. The evidence establishes that the proposal will achieve a high-density outcome. Expert informed opinion and assessment is before you from the Applicant addressing relevant urban design considerations. The proposal will appropriately develop the land in the context of the current market. Furthermore there will be substantial housing choice on offer within the wider Milldale development and north-Auckland catchment, with typologies ranging from detached, duplex to attached, and dwellings with varying numbers of bedrooms.

21. The proposal aligns with outcomes sought by and enabled by the THAB zone.

A handwritten signature in blue ink, appearing to be 'J. Brabant', written in a cursive style.

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**Jeremy Brabant**  
Counsel for Fulton Hogan Land Development Limited

25 July 2025