

Before the Expert Consenting Panel

In the matter of an application for approvals under section 42 of of the
Fast-track Approvals Act 2024 (“Act” or “FTAA”)

and

In the matter of Ashbourne

FTAA-2507-1087, a referred project under section 21 of
the FTAA

**MEMORANDUM OF COUNSEL ON BEHALF OF MATAMATA DEVELOPMENT
LIMITED**

17 December 2025



Bill Loutit / Chris Ryan
T: +64-9-358 2222
bill.loutit@simpsongrierson.com
chris.ryan@simpsongrierson.com
Private Bag 92518 Auckland

Counsel instructed
Phil Lang
Riverbank Chambers
T: 021 870 660
p.lang@xtra.co.nz

MAY IT PLEASE THE PANEL:

Introduction and background

1. This memorandum is filed on behalf of the applicant, Matamata Development Limited (**MDL**), to address matters arising from the minute of the Expert Consenting Panel (**Panel**) dated 3 December 2025 (**Minute**).

2. In the Minute the Panel:
 - (a) appointed Jeremy Brabant to provide advice on the application of the National Policy Statement for Highly Productive Land 2022 (**NPS-HPL**) to the Ashbourne project (the **Proposal**);

 - (b) directed expert conferencing between the relevant economics experts,¹ namely:
 - (i) Fraser Colegrave, on behalf of MDL;

 - (ii) Tim Heath, on behalf of the Matamata Piako District Council (**Council**); and

 - (iii) Tim Denne, the economist appointed to assist the Panel.²(together, **Economics Experts**).

3. The Economics Experts were directed to agree a response to six questions, including how to determine “regional significance”.³ In the joint witness statement of the Economics Experts dated 11 December 2025 (**Economics JWS**), the Economics Experts were not able to agree on an answer to that question.

1 Minute 4 of the Expert Panel dated 3 December 2025 (**Minute 4**) at [4].

2 Minute 4 at [2].

3 Minute 4 at [9(e)].

4. This memorandum is filed for the purposes of:
- (a) addressing the application of the advice provided to the Panel by Mr Brabant regarding the NPS-HPL to the Proposal;
 - (b) advising the Panel of amendments that MDL has made to the Proposal; and
 - (c) in the absence of an answer agreed between the Economics Experts, assisting the Panel with understanding how to determine “regional significance”.

Application of legal advice received by the Panel regarding the NPS-HPL

5. Mr Brabant’s advice to the Panel concludes that:
- (a) for the purposes of the transitional provisions in the NPS-HPL, a site-specific land productivity assessment or soil report cannot be used to re-categorise whether land is properly regarded as LUC 1, 2 or 3;⁴
 - (b) under the NPS-HPL, subdivision or development of LUC 1, 2 or 3 land must be avoided, unless one of the relevant exemptions applies;
 - (c) although the NPS-HPL is a relevant consideration for the Panel under section 81(2) of the Act, when considering it (and other matters that the Panel must consider under section 81(2)), the Panel must give greatest weight to the Act’s purpose;⁵ and

4 Advice to the Panel dated 28 November 2025 (**Brabant Advice**) at [9].

5 Brabant Advice at [17].

(d) the Act “could provide a way forward through or past the directives of the NPS-HPL if, where effective conflict arises between the NPS-HPL and the purpose of the [Act], the greatest weight is given to the purpose of the [Act]”.⁶

6. That conclusion is consistent with that set out in paragraph 21 of the 18 November 2025 memorandum of counsel on behalf of MDL.

7. When considering whether the Act provides the Proposal with “a way forward through or past the directives of the NPS-HPL”, MDL submits that any conflict between the NPS-HPL and the purpose of the Act is “outweighed” when greatest weight is given to the purpose of the Act. This is because:

(a) the solar farm component of the Proposal meets the exemption in clause 3.9(2) of the NPS-HPL, which means that the proposed use or development of highly productive land is *not* inappropriate;⁷

(b) if the Panel concludes, contrary to (a) above, that the Proposal does not fully meet the exemption in clause 3.9(2) of the NPS-HPL, the Proposal is consistent with and will serve the purpose of that exemption;

(c) where highly productive land is proposed to be used for solar farm activities, the land will continue to be used for highly productive purposes;⁸

(d) the ability to use the property for productive uses is limited due to the soil and hydrological characteristics and fragmentation of the remainder of the site;⁹ and

6 Brabant Advice at [18].

7 November 2025 Memorandum at [25].

8 November 2025 Memorandum at [27].

9 November 2025 Memorandum at [35].

- (e) the Total Economic Value of the Proposal’s various land uses – housing, retirement living, solar farm, and supporting commercial activities – far exceeds the long term agricultural output of the same land.¹⁰

Amendments that MDL has made to the Proposal

8. Notwithstanding the matters in paragraph 7 above, MDL’s response to the Minute amends the Proposal to further reduce the impact of the Proposal on highly productive land. In particular:

- (a) the subdivision of Lots 8 and 9 (to the south of the northern solar farm and adjoining Station Road) is no longer proposed, with this area to be incorporated into the solar farm lot as vacant land for grazing; and
- (b) MDL has volunteered to impose a Consent Notice condition requiring the 'Balance Lot' (Lot 2) to be used only for uses that are provided for under the Council’s District Plan as a permitted activity.

9. In MDL’s submission those amendments to the Proposal mean that, if the Panel considers that an “effective conflict arises between the NPS-HPL and the purpose of the [Act]”,¹¹ when greatest weight is given to the purpose of the Act, the approvals sought for the Proposal should be granted.

Relevance of “regional significance” to the Panel’s task

10. As the Panel will be aware, when it considers whether to grant the approvals sought for the Proposal, it must take into account the matters listed in clause 17(1) of Schedule 5.¹² Those matters include “the purpose

¹⁰ November 2025 Memorandum at [29].

¹¹ Brabant Advice at [18].

¹² In accordance with sections 81(2)(b) and (3)(a) of the Fast-track Approvals Act 2024 (FTAA).

of this Act”, with the Panel being required to give the greatest weight to that matter. The purpose of the Act is:

...to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

11. When having regard to that purpose, the Panel “must consider the extent of the project’s regional or national benefits”.¹³
12. The effect of those provisions is that, in the course of considering the Proposal, the Panel must “identify, and record, the Project’s regional or national benefits and the significance or otherwise of them”.¹⁴

Approach to assessing “regional or national benefits” of a substantive application under the Act

13. The phrases “regional or national benefits” and “significant regional or national benefits” are not defined in the Act. In the absence of a definition, other expert consenting panels have considered the meaning of those terms. As there is no agreement between the Economics Experts as to how to “regional significance” should be determined, MDL submits that the approach taken by those panels is likely to be of assistance to the Panel.
14. In particular, MDL considers that the following principles can be derived from previous Panel decisions:
 - (a) although not strictly relevant to the Proposal, the inclusion of a project in Schedule 2 of the Act as a “Listed project” is not determinative of whether it has “significant regional or national benefits”.¹⁵

13 FTAA, section 81(4).

14 Record of Decision of the Maitahi Village Expert Consenting Panel (**Maitahi Village Decision**) at [84].

15 Maitahi Village Decision at [85].

- (b) the scale or extent of the identified benefits is relevant to the Panel’s consideration of the approval, but not in the way of creating a bar on approval being granted.¹⁶ In other words:
- (i) if satisfied that the Proposal will have benefits, the Panel is not required to resolve differences in opinions between economic experts as to the extent of those benefits;¹⁷
 - (ii) even if the Panel was to determine that the Proposal did not have “significant regional or national benefits”, the purpose of the Act may nevertheless be achieved by facilitating the Proposal;¹⁸
- (c) benefits will be “significant” where they are “sufficiently great or important to be worthy of attention; noteworthy”;¹⁹
- (d) the matters listed in section 22(2)(a) of the Act, which the Minister may consider for the purposes of determining whether a project “would have significant regional or national benefits” such that a referral application should be accepted, “provides some useful guidance to a panel as to the nature of a project which falls within the purpose section of the FTAA”;²⁰ and
- (e) consistent with economic benefits being only one of the matters listed in section 22(2)(a),²¹ benefits are not to be assessed only in monetary terms.²²

16 Maitahi Village Decision at [88].

17 Record of Decision of the Drury Metropolitan Centre Expert Consenting Panel (**Drury Metropolitan Centre Decision**) at [112].

18 Maitahi Village Decision at [88].

19 Maitahi Village Decision at [516].

20 Maitahi Village Decision at [515]; Record of Decision of the Bledisloe North Wharf and Ferguson North Berth Extension Expert Consenting Panel (**Wharf and Berth Extension Decision**) at [285]; Drury Metropolitan Centre Decision at [271].

21 FTAA, section 22(2)(a)(iv).

22 Maitahi Village Decision at [528]. See for example the benefits listed in paragraph 293 of the Wharf and Berth Extension decision, which considered both the social and economic benefits of the project.

Guidance provided by section 22

15. As noted above, the criteria in section 22(2)(a) provide some guidance as to what the Panel may consider when assessing whether the Proposal has “significant regional or national benefits”. In considering those matters, in MDL’s submission it is relevant that Parliament did not intend for section 22(2) to be a high-bar to the Minister concluding that a project “would have significant regional or national benefits” such that a referral application should be accepted. The Environment Committee explained as follows (emphasis added):²³

Many submitters commented that the bill is not clear about which types of projects would be considered to have significant regional or national benefits. **We note that the policy intent of the bill is to provide an approvals pathway for a wide range of activities that could be considered to have such benefits.**

16. Under section 22 a matter relevant to the determination of whether a project would have significant regional or national benefits is whether it “will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020)”.²⁴ Other panels have considered the significance of the benefits arising from provision of additional housing supply. For example:

- (a) the Maitahi Village Expert Consenting Panel accepted that a 184 unit subdivision and a 228 unit retirement village provided significant benefits in terms of section 22(2)(a)(iii);²⁵ and
- (b) the Rangitooopuni project, which comprised a 208-lot countryside living subdivision and a 296 unit retirement village in Auckland, was found by the Rangitooopuni Expert Consenting Panel (**Rangitooopuni Panel**) to have significant regional benefits “in the

23 Fast-Track Approvals Bill (31-2), commentary.

24 FTAA, section 22(2)(a)(iii).

25 Maitahi Village Decision at [523] to [532].

provision of more retirement housing options”.²⁶ That conclusion was supported by observations from Mr Heath, who along with the applicant’s economist, considered that the scale of the retirement village component of the project was such that it “would be considered a significant regional contribution to that housing typology”.²⁷

Criteria for assessing significance identified by Mr Denne not appropriate

17. In his review of Mr Colgrave and Mr Heath’s economic analyses, Mr Denne refers to four criteria which he suggests might be used for assessing the significance of the “regional or national benefits” of substantive applications under the Act.²⁸ While Mr Denne suggests that those criteria “are consistent with an objective of maximising community welfare or wellbeing from the project”,²⁹ neither Mr Colgrave nor Mr Heath consider Mr Denne’s criteria to be determinative of significance.³⁰

18. Furthermore, other panels have declined to adopt those same criteria as means of assessing the significance of the “regional or national benefits” of projects. For example, Mr Denne’s four criteria were relied upon by James Stewart, an economist at Auckland Council, to suggest to the Rangitooopuni Panel that the project being considered by the panel did not have a significant regional or national benefit.³¹ The Rangitooopuni Panel declined to apply those criteria.³²

26 Record of Decision of the Rangitooopuni Expert Consenting Panel (**Rangitooopuni Decision**) at [279].

27 Rangitooopuni Decision at [278(b)].

28 *Ashbourne Development Fast Track Approvals Act Application; A Review of Economic Analyses* dated 28 November 2025 (**Denne Report**) at [3.2.3].

29 Economics JWS at [14].

30 Economics JWS at [4] and [11].

31 Rangitooopuni Decision at [275] and [276].

32 Rangitooopuni Decision at [279] and [280].

Benefits of the Proposal not required to be assessed using a cost-benefit analysis

19. As Mr Denne has suggested to the Panel,³³ other experts have suggested to other panels that a “comprehensive cost-benefit analysis” is required in order for a panel to be satisfied that the project “could demonstrate a regionally or nationally significant development”.³⁴ In response to those suggestions:

- (a) the Rangitooopuni Panel declined to require a “more far-reaching economic assessment” than the Economic Impact Assessment (EIA) it had before it;³⁵ and
- (b) the Drury Metropolitan Centre Expert Consenting Panel proceeded on the basis of the EIA prepared by Property Economics Limited on behalf of the applicant.³⁶

Possible displacement or a transfer of activity elsewhere not relevant

20. Mr Colgrave and Mr Heath have diverging views as to whether the Proposal is likely to have benefits of regional significance. Although Mr Heath acknowledges that the Proposal is of a scale that is regionally significant,³⁷ he considers that “once displacement is properly accounted for, the proposal is unlikely to materially impact the level of economic activity, within the region, than would occur in its absence”.³⁸

33 Economics JWS at [56] to [59].

34 Rangitooopuni Decision at [277]. See also: Drury Metropolitan Centre Decision at [104].

35 Rangitooopuni Decision at [279].

36 Drury Metropolitan Centre Decision at [101] and [112] and [113].

37 Economics JWS at [93].

38 Economics JWS at [94].

21. With respect, displacement should not, in MDL’s submission, be “properly accounted for” when considering whether the Proposal has “significant regional or national benefits”. This is because:

(a) the Act expressly treats increasing housing supply, addressing housing needs, and contributing to a well-functioning urban environment as benefits in their own right,³⁹ and those outcomes necessarily involve competition with existing or planned supply;

(b) under section 81(2) of the Act the Panel is required to consider the National Policy Statement on Urban Development (**NPS-UD**). Objective 2 of the NPS-UD directs that planning decisions support competitive land and development markets. Similarly, policy 1 of the NPS-UD suggests that a well-functioning urban environment is one that supports, and limits adverse effects on, the competitive operation of land and development markets. In MDL’s submission, that policy direction indicates that competition is itself a benefit, rather than displacing other benefits; and

(c) 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. We do not consider that would be consistent with Parliament’s intention in enacting the Act, given that “building housing developments that are affordable housing” was specifically identified during Parliament’s consideration of the Fast Track Approvals Bill as “the kind of stuff that this bill is aiming to solve”.⁴⁰

22. Consistent with that view, neither Mr Colgrave nor Mr Denne consider that it is necessary to account for displacement when assessing whether the Proposal has significant regional benefits.⁴¹ MDL notes for completeness

39 FTAA, section 22(2)(a)(iii).

40 (13 November 2024) 779 NZPD 7317 and 7318.

41 Denne Report at [2.4], second paragraph.

that Mr Colgrave and Mr Denne’s approach is similar to that which has been taken by Mr Heath in other applications. For example:

- (a) Mr Heath’s economic impact assessment for the Pohutukawa Business Park project appeared to take the position that transfer of activity from other locations to the locality of the proposal was a benefit, stating that:⁴²

The proposed retail activities could better accommodate a rapidly growing population in the market, ensuring that retail expenditure stays within the local area rather than flowing to other areas. By accommodating the evolving needs of the community, the retail development will increase local spending retention, which in turn will strengthen the economic self-sufficiency of the area...

- (b) Mr Heath’s economic impact assessment for the Dury Metropolitan Centre stated that the Act was not concerned by any possible redistribution of employment activity:⁴³

The review identifies that this is likely to be a zero-sum gain, as employment generated here will simply be a redistribution of activity. We disagree. Our understanding is that one of the factors that supported passage of the FTAA in Parliament was a concern that the construction sector is currently underemployed, so major projects need to be approved and implemented as soon as possible to act as an economic catalyst for the broader economy.

- 23.** If, notwithstanding MDL’s primary submission above, the Panel was to determine that displacement was relevant to whether the Proposal has “significant regional or national benefits”, displacement would only be relevant to the scale or extent of the economic benefits of the Proposal (with any displacement reducing the extent of those benefits). Any

42 Property Economics *Pohutukawa Business Park Fast Track Economic Impact Assessment* (June 2025) <https://www.fasttrack.govt.nz/__data/assets/pdf_file/0029/12899/Attachment-12-Economic-Impact-Assessment-Property-Economics.pdf> at pages 17 and 18.

43 Property Economics *Drury Economic Review Response* (25 August 2025) <https://www.fasttrack.govt.nz/__data/assets/pdf_file/0021/11289/Attachment-11-Economics-Response.pdf> at page 4.

displacement would not be a ground for refusing the approvals sought by MDL. As the Maitahi Village Panel held in its decision:⁴⁴

Plainly, the scale or extent of the identified benefits is relevant to the Panel's consideration of the approval, but not in the way of creating a bar on approval being granted. If the Legislature had intended that to be the case, it would have been much more explicit in the operative provisions of the legislation.

Economic Experts' position on other matters raised in the Minute

24. In addition to requesting that the Economics Expert reach agreement on including how to determine "regional significance", the Minute set out five other questions on which the Economics Experts were directed to agree answers.⁴⁵ **Appendix A** to this memorandum summarises the Economics Experts' position on each of those five questions. As will be apparent from that table, no agreement between all three of the three Economics Experts was reached on any of those matters.

Next Steps

25. As a result of the Economics Experts not being able to reach agreement on how to determine "regional significance", and disparate views expressed by each of the Economics Experts on that issue, MDL suggests that the Panel may be assisted in reaching a decision on the Proposal by obtaining independent legal advice on:

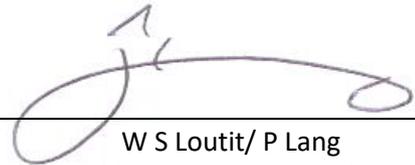
- (a) whether displacement should be "accounted for" when considering whether the Proposal has "significant regional or national benefits"; and

⁴⁴ Maitahi Village Decision at [88].

⁴⁵ Minute 4 at [9(e)].

- (b) any of the other legal issues addressed in this memorandum that the Panel considers to be unresolved.

DATED at Hamilton this 17th day of December 2025



W S Loutit/ P Lang
Counsel for Matamata Development
Limited

Appendix A

	MR COLGRAVE'S POSITION	MR HEATH'S POSITION	MR DENNE'S POSITION
Relevance of existing and proposed housing capacity to determination of 'regional significance'.	A proposed development can have regionally significant benefits absent any perceived acute shortfalls in housing capacity. ⁴⁶	Existing housing supply and capacity is critical, as it informs assessment of the relative significance of Ashbourne within its market context. ⁴⁷	Agrees with Mr Colgrave. ⁴⁸
Whether a cost benefit analysis (CBA) is required to assess benefits.	No CBA required. ⁴⁹		CBA required. ⁵⁰
An explanation of multipliers used by MDL.	Input-output (I-O) multipliers used to estimate the direct and indirect economic activity generated by development expenditure. ⁵¹	Use of those multipliers was appropriate. ⁵²	CBA required. ⁵³
Whether the proposal is of "regional significance".	Proposal is regionally significant. ⁵⁴	Proposal is of a scale that could be regarded as regionally significant, but its consequential economic impacts on the region are not. ⁵⁵	Difficult to identify the regional significance of the Proposal from the data provided. ⁵⁶

46 Planning JWS at [20].
47 Planning JWS at [26].
48 Economics JWS at [30].
49 Economics JWS at [33] and [53].
50 Economics JWS at [56] to [59].
51 Economics JWS at [65].
52 Economics JWS at [87] and [88].
53 Economics JWS at [90].
54 Economics JWS at [91].
55 Economics JWS at [93].
56 Economics JWS at [95].

	MR COLGRAVE'S POSITION	MR HEATH'S POSITION	MR DENNE'S POSITION
Viability regarding part or full payment of infrastructure costs.	No evidence that Proposal will be unable to fund the required infrastructure required. ⁵⁷	Concerns regarding an increased infrastructure burden for the Council through increased marginal costs. ⁵⁸	No evidence to conclude that Proposal will be viable if MDL is required to fund the infrastructure required. ⁵⁹

57 Economics JWS at [99].
58 Economics JWS at [100].
59 Economics JWS at [101].