

## MEMORANDUM

Date 23 September 2025

To: Waikanae North Developments Limited

Subject: Response to questions on stream classification, wetlands and scope

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### 1. EXECUTIVE SUMMARY

- 1.1 The Waikanae North Development (**Project**) is a listed project under the Fast-track Approvals Act 2024 (**FTAA**).
- 1.2 Waikanae North Developments Limited (**WNDL**) is currently preparing its substantive application under the FTAA.
- 1.3 WNDL has raised various legal questions in a memorandum from Building Block Planning dated 1 September 2025 (**Planning Memo**). In summary, my advice is:
- (a) The approval framework for resource consents under the FTAA contains four steps and is outlined below at section 2;
  - (b) There are both RMA and FTAA consenting pathways for reclaiming drains and wetlands;
  - (c) Building approximately 1,200 instead of approximately 1000 dwellings, an offsite stormwater weir and stormwater retention area are all within the scope of the Project; and
  - (d) There is no power to cancel a consent notice under the FTAA.
- 1.4 The Planning Memo has also asked about additional consent triggers for works around wetlands. That question would be best addressed through a detailed planning review.

### 2. FTAA FRAMEWORK<sup>1</sup>

- 2.1 The framework used to assess projects under the FTAA is:
- (a) Step 1 (clause 17(1)(b)): the panel must carry out its assessment under s 104 RMA, including taking into account the objectives and policies of Natural Resources Plan (**NRP**). "Take into account" requires the panel to "directly consider the matters so identified and give them genuine consideration".<sup>2</sup>
  - (b) Step 2 (clause 17(1)(a)): the panel must take into account the purpose of the FTAA. The panel must give the purpose of the FTAA more weight than the matters assessed under step 1.

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<sup>1</sup> For further commentary, see: *Bledisloe North Wharf and Fergusson North Berth Extension* [FTAA-2503-1028] 21 August 2025 (*Bledisloe*) at [116]-[124]; and *Maitahi Village* [draft decision] 5 August 2025.

<sup>2</sup> *Bledisloe* at [119].

- (c) Step 3 (s 85(3) and (4)): the panel may only decline an approval if the Project has an adverse impact, after taking into account mitigation required by the conditions. The adverse impact must be out of proportion to the project's regional or national benefits. This threshold will not be met solely because an adverse impact is inconsistent with or contrary to an objective or policy.
- (d) Step 4 (s 85): even if the panel may decline an approval under step 3, the panel retains an overall discretion to grant or decline an approval.

2.2 If the panel is satisfied under Step 1, then Steps 2-4 are not required.

### 3. DRAINS

3.1 The Project will include reclaiming drains that were built on existing farmland for the purpose of draining a wetland (**Project Drains**). WNDL has asked whether there is a consenting pathway enabling the Project Drains to be reclaimed. In summary:

- (a) There is an RMA consenting pathway. The Project Drains are drains, not rivers or streams. Even if the panel disagrees with that analysis, there is still a consenting pathway through the NRP.
- (b) There is a FTAA pathway based on the Project meeting the purpose of the FTAA.

#### **There is an RMA consenting pathway (step 1)**

*Project Drains are not rivers or streams – reclamation does not require resource consent*

3.2 The definition of 'drain' in the NRP is (emphasis added):

An open watercourse, designed and constructed for the purpose of land drainage of surface or subsurface water.

Note:

For the avoidance of doubt, channels or swales that only convey water during or immediately following rainfall events are not drains.

Many watercourses that are considered to be drains are natural watercourses that have been highly modified, often over many decades, and **include channels dug to drain natural wetlands**.

3.3 The Project Drains are within the NRP definition of 'drain' and are not rivers or streams:

- (a) The Project Drains fall squarely within the first paragraph of the definition of 'drain'.
- (b) Applying a purposive or contextual approach,<sup>3</sup> the bold text in the quotation above does not undermine (a) above because:
  - (i) It is a 'note' and drafted subserviently to the first paragraph.

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<sup>3</sup> This is the correct approach to interpreting planning documents. See: D Nolan *Environmental and Resource Management Law* (7th ed, LexisNexis, Wellington, 2020) at 4.7.

- (ii) It is internally inconsistent. A “natural watercourse that [has] been highly modified” and a “channel that has been dug to drain a wetland” are mutually exclusive. The first is an existing natural watercourse that has been artificially modified; the second has been created entirely artificially.
  - (iii) The Project Drains do not fall within the definition of “highly modified river or stream” that applies in Rules R134, R135 and R136 of the NRP.<sup>4</sup> As above, that definition relies on modifications being made to an *existing* river or stream.
- (c) There is no definition of rivers or streams in the NRP. However, the Project Drains do not fall within the RMA definition of a river, which explicitly excludes artificial watercourses such as farm drainage canals.<sup>5</sup>
- 3.4 The NRP refers to highly modified streams being identified on GWRC’s GIS viewer. It would be helpful for the substantive application for the Project to refer to that information (and if necessary reject it on the bases above).
- 3.5 The Council’s ‘Watercourse Types’ Guidance Note emphasises the nature of the source of flow as being determinative of whether a watercourse is a river or stream, or an artificial watercourse or drain.<sup>6</sup> The Guidance Note does not affect the analysis above because:
- (a) It is worded equivocally;<sup>7</sup>
  - (b) The High Court has rejected the approach followed in the Guidance Note;<sup>8</sup> and
  - (c) It is non-statutory and must be treated within caution, if not actively set aside.<sup>9</sup>
- 3.6 Therefore, the Project Drains (as defined above) are drains under the NRP. They are not rivers or streams under the NRP or the RMA.
- Even if the Project Drains are rivers or streams, there is an RMA consenting pathway*
- 3.7 We understand that the project ecologists are undertaking an additional assessment of the source of flow of some of the larger channels that flow from the eastern edge of the project site. This section of the advice deals with the situation where these are assessed to be highly modified streams.
- 3.8 In terms of assessing objectives and policies of the NRP, *East West Link (EWL)* requires:

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<sup>4</sup> “For the purposes of Rules R134, R135 and R136 only, means a river or stream that has been modified and challenged for the purpose of land drainage of surface or subsurface water and has the following characteristics: ...”

<sup>5</sup> RMA, s 2, river.

<sup>6</sup> Greater Wellington Regional Council (Te Pane Matua Taiao) *Watercourse Types – How to determine whether a watercourse is a river, ephemeral watercourse, highly modified river or stream, or artificial watercourse* (May 2021) <<https://www.gw.govt.nz/assets/Documents/2022/04/Watercourse-categorisation-guidance-document-v2.pdf>> at 2.6 and 2.6.1.

<sup>7</sup> The footnote to the heading of section 2.6 states that source of flow is a “good indicator of whether a watercourse is artificial or not”.

<sup>8</sup> See, for example: *Carruthers v Otago Regional Council* [2013] NZHC 632 at [28].

<sup>9</sup> *Federated Farmers of New Zealand v Northland Regional Council* [2022] NZEnvC 16 at [29].

- (a) The relevant provisions be read as a whole to understand their true intent;<sup>10</sup>
- (b) Directive policies have greater potency than other non- or less directive policies;<sup>11</sup>
- (c) Words need to be given their proper meanings;<sup>12</sup>
- (d) Objectives and policies must be given a fair appraisal, read as a whole;<sup>13</sup>
- (e) Do not put objectives and policies “in a blender” so that stronger policies are weakened, and vice versa;<sup>14</sup> and
- (f) Offsetting may be deployed in meeting ‘avoid’-type policies depending on the particular context.<sup>15</sup>

3.9 Policies P31 and P110 are most relevant. P110 requires reclamation of streams to be avoided. P31 functions as an exception to P110. P31 states that the adverse effects on biodiversity, aquatic ecosystem health and mahinga kai must be managed by applying an effects management hierarchy (avoid, avoid where practicable, minimise, remedy – without offsetting or compensating in this particular case). If it is not possible to remedy the effects, then the activity must be avoided.

3.10 P38 is also an exception to P110. However, P38 has not been assessed in this advice as it is not clear whether the Project Drains are part of the coastal environment. P38 is assessed below in respect of wetland reclamation. Policy 7 of the National Policy Statement for Freshwater Management does not materially add to P31 and P110.

3.11 The RMA consenting pathway is as follows:

- (a) “Avoid” means avoid material harm (after taking conditions into account).<sup>16</sup> The Project Drains have low ecological value and reclaiming them causes “no [ecological] concerns”.<sup>17</sup> On that basis, there are no relevant RMA effects.
- (b) If reclaiming the Project Drains will cause material harm, then steps must be taken to minimise or remedy those adverse effects. P31 and P110 are explicit in not allowing offsetting or compensation, meaning that any steps to minimise or remedy adverse effects must be mitigatory and directed at the “point of impact”.<sup>18</sup>
- (c) It may be possible to balance P31 and P110 against provisions of the regional policy statement and / or district plan that encourage urban development. A detailed planning review of those provisions is required.<sup>19</sup> The *EWL* pathway in this case

<sup>10</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v NZTA* [2024] NZSC 26 (*EWL*) at [63].

<sup>11</sup> *EWL* at [72].

<sup>12</sup> *EWL* at [75] and [77].

<sup>13</sup> *EWL* at [79].

<sup>14</sup> *EWL* at [80].

<sup>15</sup> *EWL* at [176].

<sup>16</sup> *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, [2023] 1 NZLR 205 (*Port Otago*) at [283]-[284].

<sup>17</sup> Planning Memo.

<sup>18</sup> *Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1346, [2013] NZRMA 293 at [74].

<sup>19</sup> That detailed planning review will need to be cognisant of the fact that the Project is for urban development on rurally-zoned land. The Project may be unlikely to find the same level of support in the planning framework as, say, the motorway in *EWL*, the port in *Port Otago*, or

would be to argue that offsetting is allowed based on the Project robustly demonstrating net positive biodiversity effects and therefore complying with the intent of P31 and P110. This would need to be done according to a very high standard of expert ecological advice.

- (d) In any case, the approach in *EWL* is somewhat superseded by steps 2-4 of the FTAA, applied below.

#### **There is an FTAA consenting pathway (steps 2-4)**

- 3.12 In the event the panel finds reclamation of the Project Drains was contrary to or inconsistent with the NRP, then, consent can still be granted depending on the expert information in support of the Project:
- (a) The Project will have significant regional economic and other benefits (step 2);
  - (b) P31 and P110 should be put to one side because the Project will have net positive biodiversity effects (step 3); and
  - (c) The Panel should exercise its residual discretion to approve the Project (step 4).
- 3.13 Consenting risk can be mitigated by strong evidence supporting the Project's benefits and the assessment of net positive biodiversity outcomes.

#### **4. WETLANDS**

- 4.1 The Project will involve reclaiming wetlands including dune slack wetlands (**Project Wetlands**). WNDL has asked whether there is a consenting pathway enabling the Project Wetlands to be reclaimed under the RMA and the FTAA. In summary:
- (a) There is a consenting pathway through P31, P38 and P110 of the NRP.
  - (b) There is an FTAA pathway based on the Project meeting the purpose of the Act.

#### **There is an RMA consenting pathway (step 1)**

- 4.2 P110 requires reclamation of wetlands to be avoided. P31 and P38 are exceptions to P110. P31 is explained above at paragraph 3.9. For P38, adverse effects on indigenous biodiversity values that meet the criteria in Policy 11(a) of the NZCPS must be avoided.<sup>20</sup>
- 4.3 The Planning Memo states that P37 and P48 are also relevant. It is not immediately apparent whether the Project Wetlands are outstanding water bodies, or that they are located on land with significant mana whenua values. This should be the subject of further planning review.
- 4.4 Policy 6 of the NPS-FM states:

There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

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the landfill in *Te Rūnanga O Ngāti Whātua v Auckland Council* [2024] NZHC 3794 (Dome Valley) – all of which were considered to be critical infrastructure.

<sup>20</sup> The Planning Memo states Policy 11(a) NZCPS applies, particularly to the dune slack wetland.

4.5 Policy 6 is highly directive in its approach. However, it is a policy, not a rule.<sup>21</sup> The panel will therefore retain some discretion as to how it is applied. In this particular case, Policy 6 is open to an interpretation that allows some loss of wetlands provided overall the extent and values of wetlands are not lost.<sup>22</sup>

4.6 The RMA consenting pathway for reclaiming the Project Wetlands is similar to paragraph 3.11 above. However, P38 of the NRP applies to the dune slack wetland. P38 requires adverse effects on **coastal indigenous biodiversity** be avoided. Offsetting is allowed provided it complies with paragraph 176 of *EWL*. Compensation is not allowed.

**There is a FTAA consenting pathway (steps 2-4)**

4.7 See paragraph 3.12 and 3.13 above.

**5. SCOPE**

5.1 The Project's description in Schedule 2 of the FTAA is for approximately 1,000 residential dwellings at 169-171 Peka Peka Road, Kapiti. The application to be lodged proposes approximately 1,200 residential dwellings at this address.

5.2 The High Court in *Ngāti Kuku Hapu Trust v Port of Tauranga* applied orthodox statutory interpretation principles to Schedule 2 of the FTAA.<sup>23</sup> It is also relevant that:

(a) The FTAA definition of a project includes "any activity that is involved in, or supports and is subsidiary to, a project..."; and

(b) Allowing flexibility within the FTAA is consistent with its purpose.

5.3 In the Delmore Project, legal advice for the applicant, Auckland Council and the Panel all drew on established RMA principles on the issue of scope:

(a) The scale and intensity of the activity, and the character of effects, must not be significantly different from the original resource consent application; and

(b) There must be no prejudice to other parties or the public at large as a result of the changes.

5.4 Applying those principles:

(a) 1,200 dwellings is within the scope. Schedule 2's use of "approximately" provides flexibility. In addition, the footprint of the Project is remaining the same and so (presumably) are the environmental effects. I understand from further discussions with WNDL that interfaces with neighbouring properties were identified in the application to be a listed project and these interfaces have not changed. The opportunity for affected parties to comment has not yet begun.

(b) An offsite stormwater weir and stormwater detention area are within scope. They are subsidiary to the Project. No party would be prejudiced by their inclusion because the opportunity for affected parties to comment has not yet begun.

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<sup>21</sup> *EWL* at [100].

<sup>22</sup> *EWL* at [99]-[112].

<sup>23</sup> *Ngāti Kuku Hapu Trust v Port of Tauranga* [2025] NZHC 2453.

## **6. CANCELLATION OF A CONSENT NOTICE**

- 6.1 The FTAA explicitly provides for the cancellation of consent conditions under s 127 RMA, but not the cancellation of consent notices under s 221 RMA.
- 6.2 Adding words to a statute is very rarely a legitimate approach to statutory interpretation.<sup>24</sup> It is likely the panel would adopt the plain words of the FTAA and determine that it did not have scope to cancel the consent notice.
- 6.3 WNDL should develop and implement a plan for cancelling the consent notice outside the FTAA.

**Patrick Senior**

**23 September 2025**

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<sup>24</sup> *Ngāti Kuku Hapū Trust v Port of Tauranga* [2025] NZHC 2453 at [56]-[57].

12 November 2025

Andrew Beatson  
Director  
Waikanae North Developments Ltd  
**WELLINGTON**

Dear Andrew

**ECONOMIC ASSESSMENT - FAST-TRACK APPROVALS ACT 2024**

**Introduction**

1. Waikanae North Developments Ltd (**WNDL**) is proposing a significant residential development north of Waikanae, providing approximately 1,200 dwellings. **WNDL** is a listed project referred to in Schedule 2 of the Fast-track Approvals Act 2024 (**FTAA**).
2. Prior to lodging its substantive application, **WNDL** has been engaging with the local authority, Kapiti Coast District Council (**KCDC**) to identify at an early stage and to work through any issues with **KCDC** staff. This is entirely appropriate and is expected by the Environmental Protection Authority and the Panel Convenors.
3. As part of that pre-lodgment discussion, **KCDC** obtained an economic assessment from Formative (Derek Foy) that peer reviewed an economic assessment provided to **WNDL** by UE (Adam Thompson).
4. A number of discrete legal issues have arisen from those economic assessments in respect of which you have sought my advice. There is overlap between some of these issues, so I have grouped these issues under the following questions:
  - a. What is the **FTAA**'s purpose, and how is that purpose relevant to the interpretation of the **FTAA**'s provisions governing how substantive applications should be assessed by an Expert Panel?
  - b. How are regional or national benefits of a listed project relevant to a Panel's assessment of a substantive application, and what is the scope of the phrase "regional or national benefits" in this context?
  - c. How should the benefits of the **WNDL** proposal be assessed? In particular, when undertaking an economic analysis in respect of listed project comprising a large-scale housing development should the assessment of benefits be limited to "the project", or should other sources of housing supply be considered (ie other potential large developments and infill housing) such that the benefits of the project would be effectively diluted?

## Purpose of the FTAA

5. The purpose of the FTAA is “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits”.
6. The purpose of legislation has a crucial role in how its provisions are interpreted and applied (Legislation Act 2019, s 10(1)). It is notable that the FTAA’s purpose refers to facilitating the “*delivery*” of development projects. In other words, in the context of housing projects, the fact that *other* land might be *zoned* for development or that infill housing might be *enabled* by the relevant zone rules in a district is insufficient to achieve the purpose of the FTAA. The clear focus on the FTAA is on the *delivery* of that potential – ie translating the potential for housing into actual houses.
7. This clear purpose is quite different from the purpose of the RMA and the objectives of other national policy statements (eg, NPS-Urban Development (**NPS-UD**)). The RMA has a purpose of promoting “sustainable management”, while the NPS-UD’s objectives focus is on *enabling* well-functioning urban environments, rather than *delivering* projects.
8. An express intention of the NPS-UD is to ensure that there is sufficient zoned land available for residential use, for example. However, as I emphasised earlier, the FTAA goes beyond that and is focussed (in this case) on the delivery of housing. A traditional RMA/NPS-UD economic analysis of capacity is therefore inappropriate when assessing the national or regional benefits of a substantive application under the FTAA. I return to this point below.
9. In the *Maitahi Village* decision, at [51] and [52] the Expert Panel contextualised the importance of the FTA’s purpose and the national and regional benefits in this way (footnotes omitted):

Counsel for the Applicant posited that the FTAA reflects the intent of Government to address challenges such as infrastructure deficits, housing shortages and energy needs by accelerating project approvals. The Panel observes that the purpose of the FTAA and its relevant context is conveniently summarised in the Legislative Statement outlining the Parliamentary intention for decision making by expert panels as follows:

The purpose and provisions of the Bill will take primacy over other legislation in decision-making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified.

Further reference will be made later in the decision to the statutory provisions dealing with the primacy of the purpose of the FTAA. The topic of significant regional and national benefits will also be discussed, as well as the way the Panel is called upon to approach the adjectival elements of the significance of such benefits.

## National and regional benefits

10. The FTAA’s purpose refers to the delivery of projects with significant regional or national benefits.
11. When assessing a substantive application, these benefits are relevant under:
  - a. Section 81(4), which states that 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”

- b. Section 85(3), which allows an Expert Panel to decline an application if adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under [section 81\(4\)](#), even after taking into account the ameliorating effect of conditions.
12. The reference in s 81(4) to “benefits” is notable for its lack of reference to the qualifier “significant” – in other words, while the extent of the project's benefits is a relevant factor, there is no requirement in s 81(4) – or anywhere else in the provisions relating to the assessment of a substantive application – for an applicant to establish those benefits are significant. That threshold test is applied at the point a project seeks a referral approval to become eligible to make a substantive application under the FTAA (refer criteria for assessing referral application at s 22(1)(a), FTAA).
13. In short, there is no requirement for an Expert Panel, when assessing a substantive application, to need to be satisfied that any project will have significant regional or national benefits – rather under both s 81(4) and 85(3), the Expert Panel need only understand the extent of the benefits of a project, so that it can determine whether or not any residual adverse effects are out of proportion to those benefits.
14. So, what does the phrase regional and national benefits encompass?
15. The Expert Panel in the *Maitahi Village* decision observed at [515]:
- This list of factors which may be taken into account by the Minister in assessing the criteria for accepting a referral application [s 22(2)(a), FTAA] provides some useful guidance to a panel as to the nature of a project which falls within the purpose section of the FTAA.
16. As to the meaning of “significant”, the Expert Panel adopted the following working definition:
- For present purposes, the Panel is content to use the meaning as “sufficiently great or important to be worthy of attention; noteworthy” as a working definition.
17. In terms of the factual context of the *Maitahi Village* proposal, the Expert Panel noted at [517]:
- Any factual assessment of regional or national benefits, particularly in relation to infrastructure or development projects, will be informed by related economic and social factors. The relevant regional context will therefore be important. Because this is a housing and building project, the needs of the Nelson City and the surrounding area are central to the factual assessment.
18. And then at [521]:
- Of the 25,000 houses to be provided in the next 30 years, the FDS identifies 900 to be provided by *Maitahi* and *Bayview*. Placed in the context of the development of the region for the next 30 years, the Panel concludes that the Project has considerable regional significance for contributing to growth.
19. The Expert Panel made the following findings that are relevant to the correct assessment of the WNDL proposal:
- a. The use of s 22(2)(a), FTAA, as a guide to its assessment of national and regional benefits (at [529])

- b. That the proposal will contribute to the supply or housing and enabling a well-functioning urban environment (at 530]):

For example, s 22(2)(a)(iii) refers to the issue of increasing the supply of housing addressing housing needs, or contributing to a well-functioning urban environment (within the meaning of policy 1 of the NPS-UD). It is undeniable that the Project will increase the supply of housing given that it is primarily a housing development. In determining whether the Project will contribute to a well-functioning urban environment, the Panel has been guided by Policy 1 of the NPS-UD which sets out the meaning of a “well-functioning urban environments” as follows [definition omitted]

- c. Further (at [531]):

The Panel has considered each of the clauses in the above definition. The proximity of the Site to the Nelson CBD and the variety of housing types means it will meet the needs of not only different households, but a range of demographics. ... The development will have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport, given the proximity to the Nelson CBD and existing recreational opportunities.

- d. And (at [532])

The development will support a competitive housing market by adding to the housing stock and offering a variety of housing types to complement existing developments.

- e. In assessing benefits, the Panel considered matters beyond economic matters, including recognition of cultural values (at [531]), biking and walking trails (at [532]), development of natural resources and remediation of contaminated land (at [534]), reduction of risks from natural hazards (at [535]), and being consistent with local or regional planning documents (at [536]).

- f. In conclusion, the Expert Panel determined (at [537] – [538]) (emphasis added):

Having considered all of the information before it, the Panel considers that the above benefits are indeed regionally significant and clearly meet the definition outlined in the purpose provision of the FTAA. The Panel also finds that many aspects of the Project meet the criteria described in s 22 FTAA as set out above, even though this section relates to a different context of accepting a referral application.

Moreover, the Panel is satisfied that the evidence presented of regional and related benefits is credible and the arguments in support of the significance of such regional and related benefits are persuasive. The Panel finds on the facts that, **in the context of the needs of the Nelson region, these benefits are very significant.** ...

20. The substantive economic assessment was discussed in the decision at [342]-[356]. Importantly, in accepting that there very significant benefits in relation to the needs of the Nelson region, the Expert Panel did not accept comments made by the opponents to the proposal (refer [356] and [527]). Those comments not accepted by the Expert Panel included arguments that while there will be some construction jobs, they will not meet the definition of regionally significant; that the assessment does not take into construction jobs available in other subdivisions; that existing plan

enabled capacity exceeds demand; and that affordability is improving without the need for major subdivisions increasing supply (at [346]-[347],[526]).<sup>1</sup>

21. The Expert Panel’s assessment of the extent of benefits is contained in Part L of its decision. Relevant to the WNDL proposal are the following comments (emphasis added):

- a. At [819], as to the meaning of extent and the need to assess non-financial metrics:

The word “extent” is not defined in s 4 of the FTA. The dictionary definition refers variously to terms such as “assessment” or “assessed value” or degree, size, magnitude, dimensions or breadth of the thing being measured. This is the approach the Panel has taken to its evaluative task, **bearing in mind that not all benefits are able to be calculated in precise financial or monetary terms. Sometimes expression of quantification or value in absolute terms may simply not be possible. The context in which any regional or national benefits occur will undoubtedly be relevant.**

- b. At [820]:

In terms of extent, the Panel accepts the evidence in the updated economic report of an impact on GDP of around \$340 million and an impact on employment activity of some 2700 FTEs. The Panel considers these numbers are robust and credible, particularly having regard to the economic and social needs of the Nelson region. **In economic terms the consequential benefits described in the reports show material gains to the Nelson City and its surrounding region to a high degree. Employee opportunities and the construction industry will receive a material boost.**

- c. In respect of the importance of the delivery of housing by a motivated developer able to start now, see [821]:

The Panel is also satisfied that the Project will result in an increase in housing supply. As to the extent of this benefit, the Panel assesses that its value to the region will be significant or material, particularly given the housing needs described in the Nelson - Tasman Future Development Strategy 2022. **The Maitahi Village development will have an immediate impact on housing supply to a large extent. Given the economic conditions nationally, the willingness of a motivated developer to start project work now is a positive benefit, albeit one that is difficult to quantify in monetary terms. Such benefit extends to housing across a range of typologies with additional choice and location features soon to become available to residents. These benefits are material and real.**

- d. In terms of the proposal’s effect on housing affordability, see [823]:

With respect to housing affordability, the Panel accepts as credible the proposition that the development will increase the availability of housing (of various types) with a consequential impact on affordability. **While the extent of any improvement in affordability can be difficult to assess, because of the vagaries of market conditions, nevertheless the Panel assesses this benefit as being likely to be positive and meaningful.**

- e. As regards wider amenity benefits, see [825]:

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<sup>1</sup> Many of these matters raised by the opponents to the Maitahi Village project, which were not accepted by the Expert Panel, were also raised by the Formative report on the WNDL development.

With reference to the amenities that will result from the development, these are referred to in various parts of the decision, including Part F and Part G. They include improved opportunities for the wider community to enjoy enhanced recreation both onsite and in the neighbouring areas. There will be improved traffic safety for residents and the wider community. This benefit is also related to greater linkages to multi-modal transport options for the wider community. It is axiomatic that such benefits are difficult to quantify. However, the Panel assesses them as being real, meaningful and positive for the community.

22. For completeness, I have also reviewed the draft decision of the expert panel in the Delmore proposal. That decision did not undertake a detailed analysis of the benefits of the proposal in the same manner as *Maitahi Village*, and its main conclusion appeared to be that a cost benefit analysis should be undertaken rather than an economic impact analysis, and that it would be “imprudent” to suggest that the benefits were such as to justify the approval in advance of supporting infrastructure.
23. There was, with respect, limited legal analysis supporting the finding that a cost-benefit analysis was required by the FTAA. Furthermore, in this case, I understand there is no issue with the potential servicing of the site displacing other planned development, which was the primary concern in *Delmore*, and nor is there any concern about funding for infrastructure needing to be redirected by KCDC to service the WNDL proposal. In my opinion, the *Maitahi Village* framework for assessment of benefits should be preferred.
24. Having provided that wider contextual framework, I turn now to the competing economic assessments that have been undertaken for the WNDL proposal.

#### **Assessment of benefits of WNDL proposal**

25. A core thrust of the Formative peer review is to assert that the regional benefits of the WNDL project should be, effectively, discounted because housing “could” be developed elsewhere in the district through other housing developments, or through infill housing. This base premise therefore flows into other arguments, including that construction employment opportunities could also be provided by other developments, and that affordable housing could be provided in other locations.
26. In my opinion this approach is fundamentally contrary to the purpose of the FTAA and contrary to the approach taken in the *Maitahi Village* decision referred to above. Such an approach is therefore legally flawed.
27. My reasons follow:
  - a. It would be contrary to, and would undermine the purpose of the FTAA, if the benefits of any project could be discounted by reference to some other future or potential project(s). The purpose of the FTAA is on the “delivery” of housing projects – not the zoning of land or the promulgation of rules enabling infill housing. The fact that other land might be zoned for development does not “deliver” housing. Nor does the fact that infill housing might be enabled by the relevant district plan rules “deliver” housing.
  - b. Procedurally, taking that approach would impose an unreasonable burden on an Expert Panel. It would be (literally) impossible for an Expert Panel to assess the “extent” of any project’s benefits if it was required to assess the likelihood of other housing projects delivering housing. Any assessment would be simply

too speculative and if an Expert Panel relied on any such speculation its decision would, inevitably, be overturned on appeal.

- c. Whatever approach is taken for housing developments would also need to be taken for every assessment of benefits of every other project under the FTAA. So, in the context of a quarry proposal, an economist taking the Formative approach might argue that the expansion of quarry at Drury enabling an additional 250M tonnes of aggregate was not necessarily a regional benefit because any of the other quarries within the Special Purpose Quarry Zones in Auckland could be expanded instead. In the context of a waste to energy plant proposal, an economist might argue that a new landfill could be established elsewhere in the region thereby meaning that there would be no “need” for the waste to energy plant and therefore its establishment would not be a regional benefit. In the case of a renewable energy project, it might be argued that there is a sufficient pipeline of projects planned or consented in New Zealand, so that no particular new proposal needs to be added to the “stack” of generation projects that might be implemented. The difficulties with the Formative approach become immediately apparent when applied in this wider context.
- d. To the extent that employment opportunities are considered to be a benefit arising from any project, a Formative-type assessment could always argue that there is no benefit because those people might be employed doing some other job – whether that is on some other (unspecified and uncertain) housing project, or a commercial development, or some entirely different job altogether. If this approach was taken, an applicant would never be able to demonstrate that its project would lead to employment benefits.
- e. If the benefits of a housing development are discounted because of an argument that there is currently no “need” for housing, then, again, that would undermine the purpose of the FTAA. The purpose of the housing developments currently listed in Schedule 2 are designed to get “ahead of the demand curve” and ensure that houses are constructed and are on the market (ie that they are delivered). A business-as-usual approach to the supply of land for housing and built houses will not only drive down prices (the existence of zoned land has proven entirely ineffective at reducing prices). The benefits of a proposal having an immediate impact on housing supply was expressly recognised in the *Maitahi Village* decision at [821].
- f. Delivering additional houses available will attract new people to the district. The proposal is therefore clearly “additive” in that sense.

### Conclusion

- 28. I agree that, under the FTAA, it is appropriate for an applicant’s assessment of benefits to be tested and that the extent of a proposal’s benefits should be assessed by an expert panel. It is essential however that any such assessment of a housing project:
  - a. Focusses on the costs and benefits of *the project*, rather than attempting to assess how those costs and benefits might compare to some *other* housing projects;

- b. Assesses the benefits of providing the housing to be delivered by *the* project, and does not discount those benefits because housing could be provided by *other projects* or through *other methods* (ie infill housing);
  - c. Assesses the benefits arising from the provision of infrastructure to be constructed as part of the project, including recognising the catalyst effect that providing such infrastructure will have on wider development opportunities and overall network resilience;
  - d. Assesses the benefits arising from employment opportunities associated with the project, and does not discount those benefits by assuming that other employment opportunities might exist; and
  - e. Must be assessed within the specific factual context of the proposal, which in this case includes the Waikanae / Kapiti Coast district.
29. Please contact me if you have any questions about this advice.

Yours sincerely



**Bal Matheson KC**