

BEFORE AN EXPERT PANEL

FTAA-2512-1158

UNDER

the Fast-track Approvals Act 2024 (“**the FTAA**”)

IN THE MATTER

of an application by **Precinct Properties New Zealand Limited** for approvals under the FTAA for a listed project, The Downtown Carpark Redevelopment – Te Pūmanawa o Tāmaki (“**Application**”)

MEMORANDUM ON BEHALF OF MILLENIUM & COPTHORNE HOTELS NEW ZEALAND LIMITED

DATED: 16 JULY 2026

**ELLIS GOULD
LAWYERS
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May it please the Panel:

1. This memorandum is filed on behalf of Millennium & Copthorne Hotels New Zealand Limited (“**MCK**”) in response to the Panel’s invitation to comment on the draft decision and draft conditions circulated on 8 July 2026 (“**Invitation**”).
2. To avoid repetition, the memorandum cross references conditions proposed by MCK in the annotated schedule of conditions (“**the MCK Schedule**”) submitted on MCK’s behalf on 29 June 2026. That schedule was based on the suite of conditions previously submitted by the Applicant. The text comprised:
 - a. The **black** base text, being the Applicant’s version of the conditions supplied to the Panel on 21 May as part of its section 55 FTAA response. This wording is agreed by MCK other than where it has been amended.
 - b. The **blue** text, being amendments now proposed by the Applicant to address the RFI. This wording was agreed by MCK other than where amended. We understand that this wording was largely converted to black text in the condition set issued by the Panel, having essentially been adopted.
 - c. The **red highlighted** and annotated text, being additional amendments to the conditions proposed by MCK.
 - d. The **green highlighted** and annotated text, being additional amendments to the conditions proposed by MCK that could and may be addressed in a side agreement.
3. With regard to para 2(d) above, MCK and the Applicant are continuing to work towards a side agreement which ideally would address a number of the issues discussed below. The side agreement remains a work in progress, however, and, given the requirement for MCK to comment by today on the Panel’s proposed conditions, this memorandum has been prepared on the assumption that no such agreement will be entered into. MCK will advise the Panel in the event that a side agreement is entered into before your decision is issued and when doing so will indicate any conditions it no longer seeks to have included in the decision.

4. The balance of this memorandum addresses the outstanding conditions by topic.

Issue 1 – M Social Engagement Protocol

5. This issue concerns the following parts of the MCK Schedule:
 - a. The proposed definition of “MSEP” (page 3); and
 - b. The proposed “M Social Engagement Protocol” condition (page 7).
6. This issue is addressed in para 437 of the draft decision, which states, “*We do not impose MCK’s proposed separate M Social Engagement Protocol as a resource consent condition. ... However, many of the matters sought by MCK are boundary interface matters rather than resource management control for Auckland Council to administer and enforce.*” It is submitted that this analysis is wrong in law and that the relief sought by MCK comprises lawful and appropriate conditions under both the Resource Management Act (“**RMA**”) and the Fast-track Approvals Act (“**FTAA**”):
 - a. MCK’s proposed condition:
 - i. Requires a dedicated liaison person for all engagement with M Social, which reflects the uniquely sensitive nature of the interface between the two sites and potential for the M Social building and MCK site to be adversely affected during the construction phase.
 - ii. Requires regular meetings with M Social and its involvement in the preparation of management plans that will address directly the activities that have the greatest potential to generate damage to MCK’s site.
 - iii. Requires liaison through the construction phase to enable MCK and Precinct Properties to minimise potential effects (e.g.: structural impacts, excessive vibration, and excessive noise) on this uniquely sensitive site and hotel activity.

- iv. Requires a 24/7 complaints process which is entirely appropriate in the context of a 24-hour hotel operation.
 - b. All of the matters addressed in the proposed condition are methods of avoiding, mitigating or otherwise managing adverse effects that can be generated by the construction activities on Precinct Properties' uniquely sensitive neighbour. These issues are relevant in terms of the RMA and AUP provisions that are imported into the FTAA analysis. They are already lawfully and appropriately addressed in conditions 4 to 9 in the context of the CLG.
 - c. Therefore, the issue is not whether the matters contained in MCK's proposed protocol condition are lawfully addressed in conditions (they are); but whether they are warranted in the context of the uniquely sensitive interface between the proposed excavation and construction works on the common boundary and the structure and activity on the M Social site. For the reasons set out below, MCK submits that is the case.
7. As explained in the material that has to date been submitted on behalf of MCK, the M Social site is the most adversely affected neighbouring land. The protocol complements the CLG conditions and simply proposes a more rigorous and direct engagement process targeted to the key issues that concern the Applicant's site's most sensitive boundary. That is appropriate given:
- a. The long duration and severity of the financial implications for the M Social hotel operation that could arise from the construction works and resultant noise and disruption; and
 - b. The unique risks to the structural integrity of the M Social building, and hence to public health and safety, that could arise given the depth, scale and proximity of the proposed excavation and construction works.

8. This is an issue that could be addressed via a side agreement but in the absence of such an agreement they can and should be addressed via conditions of consent.

Issue 2 – Objectives of Management Plans

9. This issue concerns the following parts of the MCK Schedule: condition 164 (page 87), being the Panel's condition 163.
10. MCK sought an amendment to the objective of this condition, plus condition 39, to include reference to "... *compliance with consent conditions* ...". Such wording was adopted in condition 39 regarding the GSMCP but was not adopted for condition 164 (the Panel's conditions 163).
11. MCK remains of the view that the management plans' objectives should include reference to imposition of appropriate methods to achieve compliance with the relevant conditions of the consent, which in turn seek to avoid, mitigate or remedy adverse effects of the work. Given that the wording was accepted in the context of condition 39, MCK asks that it also be accepted for condition 164/163.

Issue 3 – Consultation requirements

12. This issue concerns the following parts of the MCK Schedule:
 - a. Proposed conditions 31(g) and (i) (pages 20 and 21); and
 - b. The proposed Structural Design Condition (page 39).
13. These conditions seek to impose additional engagement, reporting and liaison obligations on Precinct Properties in the context of the CNVMP (condition 31) and the structural design in the vicinity of the M Social boundary (page 39).
14. With regard to condition 31:
 - a. MCK considers it is appropriate that the CNVMP is consistent with the CLG expectations, and this should be stated in this condition.

- b. Re condition 31(g), MCK considers it desirable that the condition spells out the type of information to be passed to potentially affected receivers and the timeframe within which that can occur. To do otherwise invite debate about the adequacy of warnings provided by contractors, who are not involved in the current proceedings and will have conflicting obligations in terms of time and cost.
- c. Re condition 31(i), MCK acknowledges that the draft CNVMP contains a complaints procedure but is concerned that the procedure is not adequately robust and fails to provide the neighbouring landowners and occupiers with sufficient clarity as to the process that Precinct Properties will follow in the event that a complaint is made. Given the scale, complexity and expected duration of the proposed works, MCK considers it appropriate and necessary for the condition to state clearly the expectations placed on the consent holder.

15. With regard to the Structural Design Condition, the draft decision states at para 445 that, *"We also do not impose MCK's proposed structural design disclosure conditions. The issues raised are relevant to detailed design, construction methodology, building consent, engineering approval, peer review and any private arrangements between the parties. They are not appropriately framed as resource consent conditions in the form sought. Nothing in the resource consent removes any ordinary civil rights or obligations relating to land support, access, building code compliance or protection of adjoining property."* It is submitted that this analysis is wrong in law and that the proposed conditions are lawful and appropriate:

- a. The proximity of the two sites, the scale of the proposed excavation and construction works, and the uncertainties identified by MCK's geotechnical and structural engineering advisors are such that the detailed design and construction methodologies adopted along the common boundary will themselves have significant implications for the scale and nature of adverse effects that will be generated on the M Social site and hence the management measures that MCK will need to adopt and the mitigation measures that Precinct Properties should implement.

- b. In the circumstances, the current uncertainty as to the detailed design and construction methodologies to be adopted means that the effects of the proposal cannot be assessed accurately *unless* the resource consent conditions impose obligations on the consent holder that will ensure that potential adverse effects will be accurately identified, and appropriately mitigated and managed.
 - c. MCK as the affected party will have no input into the building consent process, the engineering approval process or peer reviews arranged by the consent holder. MCK considers those processes are no substitute for resource consent conditions that adequately address their concerns.
 - d. Nor is civil litigation by MCK relating to future failures in land support, building code compliance or protection of adjoining property an adequate substitute for resource consent conditions that adequately address their concerns. Such litigation will almost inevitably follow a structural failure and seek to recompense for damage caused. The preferable (and lawful) course is for resource consent conditions to be imposed that ensure that such structural failures do not occur at all, because appropriate design and construction measures are adopted.
 - e. All of the matters addressed in the proposed conditions are methods of avoiding, mitigating or otherwise managing adverse effects that can be generated by the construction activities on the Applicant's uniquely sensitive neighbour. These issues are relevant in terms of the RMA and Auckland Unitary Plan provisions that are imported into the FTAA analysis.
16. Contrary to Precinct Properties' position, the conditions are lawful under RMA and FTAA, and the management plans do not deal with these issues adequately. MCK therefore asks that the conditions be imposed.

Issue 4 – Continuous Monitoring

17. This issue concerns the following parts of the MCK Schedule:
- a. Condition 40(d) (page 26).

- b. Condition 70(ddd) (page 45).
 - c. Conditions 162(e) (condition 162(g) of the Panel's proposed conditions), 163, 164, 171, 172, 173 (pages 85-94).
 - d. Schedule B in condition 166 (page 90) which is condition 162(g) of the Panel's proposed conditions.
18. Continuous monitoring in respect of geotechnical and structural matters has been rejected by both Precinct Properties and the Panel. MCK remains of the view, for the reasons set out in earlier documentation, that the risk to its M Social site and building is sufficient to warrant continuous monitoring until such time as the basement excavation and construction is completed. Further, MCK considers:
- a. The cost of that monitoring is trivial in the context of the construction costs of the development;
 - b. The consequences of any geotechnical or structural failures will be very high; and
 - c. The cost-benefit of undertaking such monitoring is significantly positive.
19. In the circumstances MCK asks that these conditions be imposed.

Issue 5 – Number of Deformation Monitoring Stations

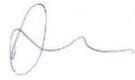
20. This issue concerns Schedule B to Condition 166 (page 90 of the MCK Schedule).
21. Schedule B in the Panel's condition 165 (condition 166 of the MCK Schedule) requires the consent holder to provide 8 (eight) building / structure deformation monitoring stations on the M Social site. MCK's consultants have recommended 24 sites. Contrary to the Panel's condition, Precinct Properties has offered 20 sites (see page 19 of Appendix One to the Joint Statement prepared by Precinct and dated 29 June 2026) as follows:

- a. 8 (eight) operating ground stations that would operate as part of the regular monitoring regime; and
 - b. An additional 12 stations that would provide supplementary information in the event of an Alert or Alarm trigger.
22. MCK asks that the condition be amended to include reference at least to the 12 additional stations that have been offered by Precinct Properties (i.e.: a total of 20 stations).

Issue 6 – Correction to new condition 71A

23. MCK understands that the cross-reference to “*condition 9A*” in the Panel’s new condition 71AA (line 2) should read “*condition 69A*”.

Dated this 16th day of July 2026



Douglas Allan – Counsel for Millennium & Copthorne Hotels New Zealand Limited