

Before the Expert Panel

FTAA-2505-1057

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| Under | Fast-track Approvals Act 2024 (FTAA) |
| In the matter of | Pound Road Industrial Development |
| Between | NTP DEVELOPMENT HOLDINGS LIMITED |
| | Applicant |

Memorandum to the Expert Panel in partial response to Minute 14

Date: 17 February 2026

Applicant's solicitors:

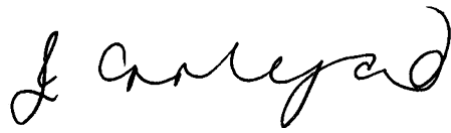
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May it please the Panel

- 1 The Applicant refers to Minute 14 regarding the Pound Road Industrial Development [FTAA-2505-1057] Application (**Application**).
- 2 In accordance with the directions contained in para [10](a) and [10](b) of Minute 14, the Applicant encloses a finalised legal memorandum on sections 83 and 84A and the purpose of the Fast-track Approvals Act 2024 (**FTAA**).
- 3 To assist the other parties and the Panel with their planning, the Applicant further wishes to indicate that it intends to file the further evidence required under paragraph [10](d) on 24 February 2026 and recommence processing of the Application on 25 February 2026.

Dated this 17 February 2026



Jo Appleyard / Tallulah Parker
Counsel for NTP Development Holdings Limited

**Memorandum to the Expert Panel in response to legal questions
associated with Transportation in Appendix 1 of Minute 11 and
Minute 14**

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| Under | Fast-track Approvals Act 2024 (FTAA) |
| In the matter of | Pound Road Industrial Development |
| Between | NTP DEVELOPMENT HOLDINGS LIMITED |
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Memorandum to the Expert Panel in response to legal questions associated with Transportation in Appendix 1 of Minute 11 and Minute 14

Date: 17 February 2026

Applicant's solicitors:

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May it please the Panel

- 1 This legal memorandum relates to the Pound Road Industrial Development [FTAA-2505-1057] Application (**Application**).
- 2 The purpose of this memorandum is to outline for the Panel the framework for addressing transportation matters on the Application under the Fast-track Approvals Act 2024 (**FTAA** or **Act**), including the proper interpretation of sections 81, 83 and 84A when setting conditions.
- 3 In particular, this legal memorandum addresses two questions identified by the Panel in its Appendix 1 to Minute 11, being:
 - (a) Whether the conditions requiring the Intersection Upgrades are lawful under the FTAA?
 - (b) What is the relevance and correct interpretation of s 84A in relation to the delivery, timing and funding of the Intersection Upgrades?
- 4 This memorandum also addresses additional questions raised by the Panel in Minute 14 regarding sections 83 and 84A.

The Purpose of the FTAA and Governing Statutory Tests

- 5 The purpose of the FTAA is *"to facilitate the delivery of infrastructure and development projects that provide significant regional or national benefits."*¹ To achieve that purpose, the FTAA creates a single, consolidated process for obtaining a suite of approvals that would otherwise require separate applications under multiple statutes.²
- 6 It is essential that the Panel keep firmly in mind that the FTAA establishes a distinct legal framework. It is intended to provide an alternative and more flexible approvals pathway, enabling projects that deliver significant regional or national benefit, particularly where such development may not have been anticipated under traditional planning instruments and any consent application may have been declined were it determined under the RMA.
- 7 The last point is important as it points to a very different regime to the RMA. Whether a project could have been consented under the RMA is not determinative, because the FTAA's purpose and decision-making criteria are deliberately different. The Panel's assessment and conclusions must therefore be undertaken strictly within the statutory framework and

¹ Fast-track Approvals Act 2024, s 3.

² Fast-track Approvals Act 2024, s 42.

decision-making criteria of the FTAA, rather than by reference to any RMA pathway. This policy decision applies just as much to condition setting as it does to the decision to grant or decline an approval.

Section 81 and Schedule 5 – the greatest weight to the purpose

- 8 Section 81 sets out how the Panel must decide the approvals sought under the Application. It is the core decision-making provision for all approvals under the fast-track process. Relevant to the Panel's consideration of transportation matters, section 81(2) provides that:

For the purpose of making the decision, the Panel—

...

(a) must consider the substantive application and any advice, report, comment, or other information received by the Panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:

(b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):

...

(d) must comply with section 83 in setting conditions:

...

(ea) may impose conditions under section 84A:

(f) may decline the approval only in accordance with section 85.

[Emphasis ours.]

- 9 Section 81(3) directs the Panel to the FTAA Schedules, which set out the specific decision-making criteria for each category of approval. Relevantly, s 81(3)(a) provides that, for an approval described in s 42(4)(a) (a resource consent), the applicable criteria are contained in clauses 17 to 22 of Schedule 5.

- 10 For the purposes of this Application, clauses 17 and 18 of Schedule 5 identify the factors the Panel must consider when determining a resource consent application, including those relevant to the setting of conditions (see clause 18). Importantly, clause 17(1) requires that, when applying these criteria, including "taking into account" relevant RMA provisions, the

Panel must give the greatest weight to the purpose of the FTAA.³ Section 81(4) further requires the Panel to consider the extent of the project's regional and national benefits when taking the purpose into account.

- 11 The Draft Decision of the Expert Consenting Panel for the Sunfield Application offers particularly helpful guidance on the meaning of the phrase "taking into account", noting that:⁴

The phrase "take into account" requires us to consider the matters so identified and give them genuine consideration; rather than mere lip service, such as by listing them and setting them aside. This can be best effected (and demonstrated) by considering them first in ways that are uninfluenced by the FTAA's purpose and secondly, only then carrying out the weighing exercise required by clause 17(1).

- 12 Overall, this framework provides a clear directive to the Panel that, in applying the FTAA, it must give the greatest weight to the Act's purpose: "*facilitating projects that deliver significant regional or national benefits*". Further, while the Panel must take some provisions of the RMA into account, those provisions are not explicitly determinative of its decision. They must instead be understood within the broader statutory purpose of the FTAA, which prioritises facilitating projects that deliver significant regional and national benefits.
- 13 The Act is an enabling direction that steers decision-making away from pre-emptive constraints that would reintroduce RMA-style delays and conditions that would render a project nugatory by preventing it from ever starting. The fast-track regime was enacted to reduce timeframes and duplication, and to improve workability, so that nationally or regionally significant development can proceed efficiently.
- 14 During the readings of the Fast-track Approvals Bill, Parliament specifically discussed at length the inefficiencies with the RMA that the FTAA was seeking to solve, including the ability for decision makers to impose "overly punitive conditions"⁵ that have rendered projects uneconomic to the extent that they may never be built.⁶ To address this issue, the FTAA deliberately

³ Fast-track Approvals Act 2024, Schedule 5 cl 17(1)(a).

⁴ Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [544] ; *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

⁵ (17 December 2024) 780 (Fast-track Approvals Bill – Third Reading, Hon Chris Bishop).

⁶ See for example (10 December 2024) 780 (Fast-track Approvals Bill – In Committee, Hon Chris Bishop discussing renewable energy projects that have been consented but have ever been built).

sets a different threshold for declining consents and for imposing conditions. As summarised by Hon Chris Bishop:⁷

the Government's view is that the status quo is unacceptable when it comes to speed, when it comes to condition setting, when it comes to environmental protections weighed against the economic interests. So we are disrupting that—we are quite explicit about that. We want more houses built more quickly, we want renewable energy built more quickly, we need more quarries, we need more mines, we need more infrastructure built. The status quo does not work; it fails New Zealand, and that is why we have fast track.

Section 85 – may decline only in cases of disproportionate adverse impacts

15 Against this backdrop, the circumstances in which the Panel may decline an approval are deliberately and significantly narrowed. Under s 81(2)(f), the Panel may decline an approval only in accordance with s 85.

16 Section 85(1) and (2) sets out a limited list of circumstances in which the Panel must decline an approval, and none of those mandatory-decline triggers applies here.

17 Otherwise under s 85(3):

A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—

(a) there are 1 or more adverse impacts in relation to the approval sought; and

(b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits the panel has considered under section 81(4), even after taking into account—

(i) any conditions that the Panel may set in relation to those adverse impacts; and

(ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

[Emphasis ours.]

18 A straightforward reading of section 85 makes it clear that a Panel may decline an approval only in the specific circumstances set out in that

⁷ (10 December 2024) 780 (Fast-track Approvals Bill – In Committee, Hon Chris Bishop).

section. Declining is permitted only where section 85(1) or 85(2) applies (both of which require a mandatory decline), or where section 85(3) applies. Under section 85(3), the Panel may decline only if both elements in subsections (a) and (b) are satisfied. Read together with section 81(2)(f), the position is unambiguous: outside these limited circumstances, the Panel has no power to decline consent.

- 19 The Panel's Draft Decision of the Expert Consenting Panel for the Sunfield Application provides some helpful commentary, stating that:⁸

Consistent with the approach adopted by other Panels, we see the exercise provided for by section 85(3) as requiring assessments:

(a) of the extent of the regional or national benefits of Sunfield;

(b) of the significance of adverse impacts; and

(c) whether the adverse impacts are "sufficiently significant" to be out of proportion to the regional or national benefits of Sunfield after allowing for, amongst other things, compensation that may be provided.

- 20 Importantly, there is no requirement to demonstrate that the adverse effect will be no more than minor or even that the adverse effects are not significant, as even a project with significant effects can proceed, provided the effects are not so significant as to tip the balance when measured in proportion to the project's benefits.

- 21 In the same vein, section 85(4) confirms that non-compliance with avoidance policies is not, on its own, determinative and does not mandate decline under the FTAA. In other statutory contexts, such "bottom line" provisions would ordinarily mandate refusal, but that approach does not apply under the FTAA.⁹

- 22 The FTAA clearly envisages an overall judgement or weighing approach to decision making. The Panel must weigh the adverse impacts against the regional or national benefits of the project when coming to its final decision.

⁸ Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [78].

⁹ *Environmental Defence Society Incorporated v The New Zealand King Salmon Company Limited & Ors* [2014] NZSC 38; [2014] 1 NZLR 593.

Section 83 – no more onerous than necessary

- 23 Section 83, in the context of section 81, imposes a mandatory limit on the Panel's condition-setting power. It provides that:

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

[Empasis ours.]

- 24 The provisions of the Act that confer the discretion in relation to approvals for resource consents relevant to this Application include clauses 17 and 18. Clause 18 of Schedule 5 further states that:

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

(a) a reference to a consent authority must be read as a reference to a panel; and

(b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

- 25 The Panel is therefore required to "take into account" relevant provisions under the RMA (i.e. sections 108 and 108A) when setting conditions. As stated in the Draft Decision of the Expert Consenting Panel for the Sunfield Application, these provisions provide that conditions must:¹⁰

(a) be for a resource management purpose, not an ulterior one;

(b) fairly and reasonably relate to the development authorised by the resource consent or designation; and

(c) not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.

- 26 This consideration is "subject to all necessary modifications," and such modifications would include those necessary to meet the purpose of the

¹⁰ Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [795]; *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

FTAA, as read in the context of section 81 and Clause 17 of Schedule 5. This reflects Parliament's intention to avoid over-engineered or punitive conditions that make projects uneconomic, so they don't proceed, or cause unnecessary delay and cost where the effects are not significant enough to warrant such delay or interruption, because they are not at a point of being out of proportion to the benefits of the project.

- 27 Significantly, under section 83, the Panel must be satisfied not only that any condition directly addresses an effect generated by the Application, but also that the condition is no more onerous than necessary, having regard to both the significance of that effect and the extent to which the condition would impact the Applicant's ability to deliver "*projects that deliver significant regional or national benefits.*" This adds a statutory limitation beyond the familiar RMA nexus principles, which are driven by achieving the purpose of a very different Act.
- 28 The FTAA therefore tightens the scope for condition-setting by requiring a dual inquiry—first, that the condition is directly connected to the Applicant's effects. Second, that it does not exceed what is necessary to manage those effects taking account and giving the most weight to the Act's purpose, i.e. in circumstances where a condition can impact the delivery of a project and/or impact a projects regional or national significance the Panel is limited to exercising its discretion to only to imposing conditions that address adverse impacts that are sufficiently significant to be disproportionate to the regional/ national benefits.
- 29 For clarity, section 83 is engaged only when the Panel is exercising its own discretion to set conditions because the Applicant opposes the imposition of suggested conditions (such as here where the Applicant opposes the conditions suggested by NZTA and CCC). Where conditions are agreed or proffered by the Applicant, they form part of the proposal the Panel is considering, the Panel is not required to undertake an analysis of whether every individual part of the proposal that has been agreed or proffered is not onerous. In that context, it is sufficient that the Applicant has already satisfied itself that its proposed conditions will not undermine the project's ability to deliver the significant regional and national benefits sought by the FTAA. But where the Panel is imposing conditions which are being actively objected to by the Applicant in the context of the statutory framework, the Panel is required to consider what impacts those conditions will have on the regional and national significance of the project.
- 30 This distinction is evident under s 85(3), which expressly separates the two categories of conditions that must be considered when assessing whether adverse impacts are out of proportion to the project's regional or national

benefits, being conditions that the Panel itself may impose under s 85(b)(i), and conditions or modifications that the Applicant may agree to or propose under s 85(b)(ii). This statutory separation underscores that applicant-proffered or agreed conditions form part of the proposal being assessed, whereas Panel-imposed conditions are an external constraint that the Panel must evaluate for their potential to generate, exacerbate, or fail to mitigate adverse impacts when undertaking a s 85 assessment.

Section 84A — infrastructure can be made adequate; obligations only on the Applicant.

31 Fast-track projects are, by definition, often out of sequence with long-term capital programmes. Parliament recently introduced section 84A to prevent outcomes in which fast-track development is effectively halted due to third-party (in)actions arising from infrastructure upgrades that are not yet sequenced or fully designed.¹¹ While section 84A enables the Panel to impose conditions that address these timing misalignments, any such condition must still comply with section 83; that is, conditions cannot be more onerous than necessary, taking account and giving the most weight to the Act's purpose.

32 Section 84A states that:

(1) The panel may set conditions to ensure that the infrastructure in the project area or other infrastructure the project will rely on is or can be made adequate to support—

(a) the project; or

(b) the stage of the project to which the application relates.

(2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.

(3) To avoid doubt, a condition set under this section may impose an obligation on the applicant only.

[Emphasis ours.]

33 Section 84A authorises the Panel to impose conditions to "ensure" that infrastructure "*is or can be made adequate*" to support the Application. In the context of the sentence the word is used in, "ensure" does not require certainty or completed design, but rather that the Panel is satisfied, having

¹¹ Hansard Debates, Tuesday, 9 December 2025 (Continued to Friday, 12 December 2025) – Volume 789.

considered the evidence, that infrastructure adequacy is a feasible and achievable possibility, not a speculative or fanciful one. This prospective framing allows approvals to be granted even where upgrades are not yet fully designed, funded, or constructed, provided the Panel can be confident that there are options that could make the infrastructure and adequacy can be achieved. This is an evidential enquiry.

- 34 Section 84A was introduced to make it clear that fast-track approvals should not be rendered ineffective or delayed by programmes, funding cycles, or internal processes of councils or infrastructure providers, and to avoid development becoming dependent on external agencies whose actions are outside the Applicant's control. In short, such conditions would be 'onerous' as they require the delivery of the project to be dependent on a third party which could render the project futile.
- 35 Building on this, section 84A(3) confirms that any such condition may place obligations only on the applicant, underscoring the established RMA principle that consent conditions cannot depend on third-party action and must remain within the Applicant's control.
- 36 The Legislative Statement (First Reading) for the Amendment Bill described section 84A (and related amendments) as:¹²

technical and machinery changes ... to improve system efficiency by reducing timeframes, duplication and unnecessary costs, improving clarity for system users, addressing ambiguities or errors and promoting consistency in the FTAA.

- 37 The Legislative Statement (Third Reading) further states that the Amendment Bill:¹³

clarifies expert panels can approve projects conditional on subsequent infrastructure provision. As amended, the Bill further clarifies these conditions can only impose obligations on the applicant, not a third party.

- 38 The Departmental Report reinforces this understanding with even more precision. It states that the policy intent behind introducing section 84A was:¹⁴

for conditions to be placed to facilitate the provision of subsequent infrastructure, by allowing the

¹² Legislative statement – Fast-track Approvals Amendment Bill (J.17) (First reading) at [4].

¹³ Legislative statement – Fast-track Approvals Amendment Bill (J.17) (Third reading) at [5].

¹⁴ Departmental Report on the Fast-track Approvals Amendment Bill at [194].

applicant and the relevant local authority or infrastructure provider to negotiate an agreement later (after approvals are granted). It was not to disrupt existing case law and provide a power to the Panel to impose a legal obligation or costs on a third-party.

- 39 Between the first¹⁵ and second¹⁶ readings of the Amendment Bill, the Government deliberately amended the clause from "*ensure that the infrastructure in the project area or other infrastructure the project will rely on is or will be made adequate*" (often an impossible task for the applicant) to "*is or can be made adequate*", deliberately shifting the threshold from the Panel needing absolute certainty to only needing to be satisfied as to feasibility. This change in wording confirms that the Panel is not required to be satisfied that upgrades are guaranteed, funded, or imminent—only to ensure that they are practically feasible.
- 40 Parliamentary debate on the Amendment Bill confirms that amendments, such as section 84A, were introduced to enhance the efficiency and workability of the FTAA system. Simon Court described the purpose of the amendments as establishing "*a more efficient process for fast-track approvals,*" one that avoids applicants having to prepare extensive technical material "*to demonstrate why every risk is managed down to the nth degree.*"
- 41 Taken together, these materials show that s 84A is designed to serve three key functions:
- (a) To allow approvals to be granted now, even where upgrades are not fully designed, funded or sequenced, provided the Panel is satisfied that infrastructure can be made adequate through conditions and/or later agreements, ensuring conditions are not more onerous than necessary in terms of section 83 of the FTAA.
 - (b) To ensure conditions bind only the Applicant, not councils, infrastructure providers, or other external agencies. Any condition that, in substance, makes development dependent on the timing, funding or discretion of a third party contradicts Parliament's stated intent to avoid projects rendered stagnant because they are contingent on third-party actions.
 - (c) To avoid front-loading burdens or recreating RMA-style preconditions, where developers were forced to wait for external

¹⁵ <https://www.legislation.govt.nz/bill/government/2025/0219/latest/LMS1535311.html>.

¹⁶ <https://www.legislation.govt.nz/act/public/2025/0078/latest/LMS1535311.html#LMS1535310>.

agencies before any progress could occur, impacting the Applicant's ability to deliver "*projects that deliver significant regional or national benefits.*" The wording of section 84A, especially the "can be made adequate" phrasing, is Parliament's chosen mechanism for preventing such delays.

42 Therefore, viewed in this statutory context of the FTAA and legislative history, section 84A functions primarily as a clarification of the principle embedded in section 83. It is properly understood as a forward-looking, enabling tool. It empowers the Panel to contemplate infrastructure adequacy through proportionate, applicant-focused conditions, without imposing pre-build or third-party-dependent hurdles that would undermine the fast-track regime's very purpose. In doing so, section 84A ensures that infrastructure need not be fully resolved at the point of decision, provided the Panel is satisfied that a pathway to delivery exists, even if it is not certain.

(a) Whether the conditions requiring the Intersection Upgrades are lawful under the FTAA?

43 The lawfulness of imposing the Intersection Upgrade as a precondition turns on whether the condition satisfies the statutory tests in sections 81, 83 and 84A of the FTAA. Taken together, these provisions limit the Panel to conditions that are:

- (a) Necessary and proportionate to managing the effects of the development in terms of the traditional condition setting RMA framework, and no more restrictive than required to meet the purpose of the FTAA (s 83);
- (b) Imposed only on the Applicant, without creating dependency on the actions, funding, or timing of third parties (s 84A); and
- (c) Consistent with the FTAA's purpose, to facilitate the delivery of infrastructure and development projects with significant regional or national benefits (s 81).

Necessary in accordance with the provisions of the FTAA (s 83)

44 Section 83 establishes that a condition must directly address an effect generated by the project and be no more onerous than necessary to address the reason for which it is set in accordance with the provision of the FTAA that confers the discretion (see clause 17 and 18 of Schedule 5). A condition is unlawful if a less restrictive measure facilitates the delivery of

infrastructure and development projects with significant regional or national benefits.

- 45 The Panel, in its Sunfield Draft Decision, undertook a similar assessment regarding the imposition and content of conditions. When considering a condition that restricted commencement of the first stage to ensure access to public transport, the Panel scrutinised whether such a restriction was appropriate in the circumstances, stating:¹⁷

The Panel is of the view that, while restricting the location of the initial stages of development as the Council proposes may make the use of public transport more attractive, the impact this would have on staging flexibility for the Applicant would be disproportionate and more onerous than necessary. The staging of development will be important to enable site preparation to be carried out in an efficient manner and to enable development to be staged in a way that is commercially advantageous.

- 46 On the evidence here, a time-based condition is the least restrictive lawful mechanism for managing the identified effects, as it provides a realistic window for allowing the upgrades to occur without jeopardising the viability of the Application by making the Intersection Upgrades an event that acts as a barrier to delivery. Requiring completion of the Intersection Upgrade before development could occur would create indefinite delay, undermine the development itself, and place the Applicant's progress at the mercy of third-party delivery timelines. Likewise, requiring the Applicant to fund the entire Intersection Upgrade would be disproportionate and inconsistent with RMA principles. It would not fairly or reasonably relate to the development's own effects, would undermine the Applicant's ability to deliver the project, and would improperly shift the cost of broader network growth onto a single developer. Such measures cannot be imposed under the FTAA.

Applicant-only obligations, not third-party dependency (s 84A)

- 47 Section 84A(3) prohibits conditions that are imposed on third parties and that make development dependent on third-party actions, including the completion of works, the securing of funding, or another agency's satisfaction.
- 48 A condition precedent requiring the Intersection Upgrades to be completed before the Applicant begins work would operate solely as a restriction on the Applicant, it would not, and could not, impose obligations on the designating or road-controlling authorities. The implementation of any

¹⁷Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [849].

consent would therefore hinge on a third-party action that NZTA has expressly stated the Panel cannot be certain will occur.

- 49 As noted by the Draft Decision of the Expert Consenting Panel for the Sunfield Application, in the context of wastewater infrastructure, absent the Applicant's agreement to the imposition of such conditions, their imposition would be unlawful on account of it frustrating the grant of consent.¹⁸

Consistent with the Act's purpose (s 81).

- 50 Section 81 requires the Panel to give the greatest weight to the FTAA's purpose of facilitating projects that deliver significant regional or national benefits. Requiring the Intersection Upgrade before stage 2 of the project risks undermining the project's viability and therefore does not give proper effect to that purpose.
- 51 The Applicant accepts that the Panel must assess the likelihood and scale of any adverse impacts that could arise if the Intersection Upgrades are not completed by 2031. Those counterfactual forms part of the effects assessment. However, section 85 requires more than just identifying the existence of an adverse effect. The Panel must then weigh any such effect against the project's regional and national benefits. It may decline approval only if it concludes that the adverse impacts, after considering all conditions, are so significant that they are out of proportion to those benefits.
- 52 Importantly, this weighing exercise must occur in the context of the conditions and modifications the Applicant itself has proposed or agreed, including its transport condition, which is specifically designed to address the potential risk associated with delayed upgrades without rendering the project futile. The crux of the statutory test is therefore proportionality: only adverse effects that remain sufficiently disproportionate after applying the Applicant's proposed conditions could justify declining consent or imposing a condition that would undermine the viability of a project that is otherwise capable of delivering significant regional and national benefit.

Finding on (a):

Conditions requiring the Infrastructure Upgrades as a precondition to development are unlawful under the FTAA because they are more onerous than necessary in terms of s 83, depend on third-party action contrary to s 84A, and risk undermining project viability in a way that is inconsistent with the purpose required to be given the greatest weight in the context of s 81.

¹⁸ Draft Decision by the Sunfield [FTAA-2503-1039] Expert Panel at [824].

(b) What is the relevance and correct interpretation of s 84A in relation to the delivery, timing and funding of the Intersection Upgrades?

53 Section 84A is designed to ensure that conditions remain within the Applicant's control and do not depend on the actions or timing of third parties, which could impact the delivery of the project. Its proper interpretation, therefore, supports time-based, Applicant-controlled mechanisms for managing infrastructure effects, rather than conditions requiring that the Intersection Upgrades be completed before development can proceed.

Delivery

54 Section 84A is concerned with whether infrastructure "can" be made adequate as development proceeds, not whether the Applicant will deliver the Intersection Upgrades itself. The Applicant cannot lawfully design, construct and deliver such upgrades without third-party approval (which it does not currently have), as only the designating and road-controlling authorities have this ability. The correct inquiry under s 84A is therefore whether the network can be delivered through Applicant-controlled measures—such as an offer by the Applicant to contribute proportionate contributions (via a mechanism to be determined in the future) and time-based staging. This is a question of feasibility, not a requirement for absolute certainty of the delivery.

Timing

55 A time-based condition will often be the best mechanism under s 84A because it relies on applicant-controlled triggers rather than third-party programmes. The timing proposed by the Applicant aligns with NZTA's stated intention to begin investigating the Hornby intersection improvements in 2025/26, and with the recognition in the 2024–27 National Land Transport Programme (**NLTP**) that this corridor requires safety and capacity upgrades. The timing is sufficient to allow for this initial planning, followed by the design, construction and delivery works required to complete an operational upgrade to the intersection.

56 Although the specific upgrade components depend on NZTA completing its business case, time-based staging reflects the realistic sequencing of when those investigations will occur and when network capacity solutions are expected to emerge, noting that funding has been allocated to this region, but it is dependent on the feasibility study. This avoids making development contingent on uncertain third-party delivery milestones.

57 There is broad agreement among the parties about the nature of the Intersection Upgrades and the relative ease with which it can be implemented.

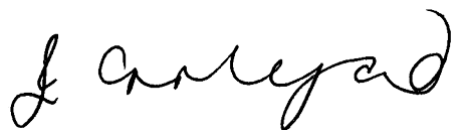
Funding

58 Any funding condition must apply only to the Applicant and must be limited to the Applicant's proportionate share of funding, reflecting the extent of the adverse effects generated by the project. NZTA has confirmed that the Hornby upgrades are not funded in the 2024–27 NLTP and that a business case will not begin until 2025/26, subject to funding approvals, leaving the timing of public funding uncertain. Because the Applicant cannot replace or guarantee NZTA funding, conditions that depend on external funding decisions would create third-party dependencies that the legislation seeks to avoid. A time-based condition allows the Applicant to make its proportionate contribution without relying on NZTA's funding cycle.

Finding on (b):

Section 84A requires conditions to be framed as applicant-only obligations and was implemented so that projects were not dependent on certainty for third-party delivery, timing, or funding. The correct approach is to use time-based staging and an offer by the Applicant for proportionate contributions when the evidence shows the infrastructure can be made adequate within the expected timeframe, recognising that completion ultimately depends on the relevant public agencies progressing their own programmes.

Dated this 17 February 2026



Jo Appleyard / Tallulah Parker
Counsel for NTP Development Holdings Limited