



TOWNPLANNING
GROUP

[6] LEGAL OPTIONS

QUEENSTOWN CABLE CAR



MEMORANDUM

Date: 30 October 2025

To: Ministry for the Environment

From: Wynn Williams and Janette Campbell (Barrister)

Queenstown Cable Car Project – Legal opinion on varying or cancelling conditions in consent notices under the Fast-track Approvals Act 2024

Introduction

1. The Queenstown Cable Car Project (**QCC Project**) is a mass rapid transit project by Southern Infrastructure (Cable Car) Limited (**SIL**) that will connect the Queenstown Town Centre with Frankton, Queenstown Airport, and Ladies Mile. SIL is seeking the QCC Project be referred into the Fast-track Approvals Act 2024 (**FTAA** or **Act**).
2. The QCC Project will cross multiple parcels of privately held land, several of which are subject to consent notices. Some of the conditions specified in the consent notices will need to be varied to enable the QCC project to proceed. SIL is currently engaging with landowners to secure the necessary legal interests and written approval to vary these consent notices.
3. This legal opinion sets out whether a consent condition specified in a consent notice can be varied or cancelled under the FTAA.

Executive Summary

4. We consider that a condition specified in a consent notice can be varied or cancelled under the FTAA. A variation to a consent notice condition falls within one of the approvals that can be sought under the Act, namely a “change or cancellation of a resource consent condition that would otherwise be applied for under Resource Management Act 1991 (**RMA**)”.¹
5. This interpretation is supported the text of the relevant sections, as well as the wider context and purpose of the Act. Parliament clearly intended the fast-track regime to operate as a genuine one-stop-shop, enabling all necessary consents, approvals and permits to be obtained through a single, coordinated process. Excluding changes to consent notice conditions from the scope of approvals under the FTAA would create procedural inefficiency and inconsistency with that purpose, undermining the Act’s objective of streamlining development and infrastructure delivery.
6. Our detailed analysis follows.

Relevant sections under the FTAA

7. A referral application must specify all the approvals that are proposed to be applied for under the fast-track approvals process under the FTAA.² The referral application need only provide a general level of detail about each proposed approval, sufficient to inform the Minister’s decision on the referral application.³
8. The FTAA provides a list of approvals that may be applied for. This list includes a change or cancellation of a resource consent condition where the applicant is also seeking a resource consent and where such a change is material to the implementation or delivery of the project. Relevantly, section 42(4) and (6) provide:

¹ FTAA, s 42(4)(b).

² FTAA, ss 13(2)(d) and 4.

³ FTAA, s 13(2)(d).

42 Authorised person may lodge substantive application for approvals

...

(4) A substantive application may seek 1 or more of the following matters (the approvals):

...

(a) a resource consent that would otherwise be applied for under the Resource Management Act 1991 (but see subsection (5));

(b) a change or cancellation of a resource consent condition that would otherwise be applied for under the Resource Management Act 1991 (but see subsection (6));

...

(6) A substantive application may seek an approval described in subsection (4)(b) only if—

(a) the substantive application also seeks an approval described in subsection (4)(a) or

(b) the change or cancellation is material to the implementation or delivery of the project.

...

9. The intention is plainly to allow changes to conditions on existing resource consents that would otherwise be secured through the section 127 process only where they form part of a larger and new application. Changes to the conditions on an existing resource consent cannot amount to a fast-track project on their own.

10. When assessing an application for a change or cancellation of a resource consent condition the panel must follow the criteria listed in Schedule 5 of the FTA, including:

23 Criteria for assessment of application for change or cancellation of condition

For the purposes of section 81, when considering an application for the change or cancellation of a condition, —

- (a) the panel must apply section 127(1) and (3) of the Resource Management Act 1991 as if—
 - (i) in section 127(3) of the Resource Management Act 1991, the reference to sections 88 to 121 of that Act were to the provisions of Part 6 of that Act that relate to decision making on a resource consent; and
 - (ii) the provisions of Part 6 of that Act were read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel; and
- (b) the panel must consider any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval; and
- (c) to avoid doubt, section 127(4) of the Resource Management Act 1991 does not apply.

General principles of statutory interpretation

11. Section 10 of the Legislation Act 2019 sets out the approach to interpreting an enactment:

- (1) The meaning of legislation must be ascertained from its text and in light of its purpose and its context.
- (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
- (3) The text of the legislation includes the indications provided in the legislation.

(4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

12. Section 10 essentially affirms the interpretative approach set out by the Supreme Court in *Commerce Commission v Fonterra Co-operative Group Ltd*. The Supreme Court in that case considered:⁴

It is necessary to bear in mind that s 5 of the Interpretation Act 1999 makes text and purpose the key drivers of statutory interpretation. The meaning of an enactment must be ascertained from its text and in light of its purpose. [...] In determining purpose the court must obviously have regard to both the immediate and general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

Analysis

13. We consider a condition specified in a consent notice can be varied or cancelled under the FTAA.

14. A variation to a condition in a consent notice falls within plain and ordinary meaning of one of the approvals that can be sought under the Act, namely a “change or cancellation of a resource consent condition that would otherwise be applied for under RMA” under section 42(4)(b).

15. Under the RMA, the term “resource consent” includes a subdivision consent.⁵ Under the RMA, a change to or cancellation of a subdivision consent condition would be applied for under section 221 of the RMA.

16. Section 221 provides that a consent notice is an instrument registered on a title to record subdivision consent conditions that must be complied with on a continuing basis by the subdividing owner and all subsequent owners after the deposit of a survey plan.⁶

17. This mechanism exists because subdivision consents are effectively complete once a survey plan is deposited. Consent notices are the only means of securing such ongoing obligations for the long term, after deposit of a survey plan. This is confirmed by the High Court in *Speargrass Holdings Ltd v Queenstown Lakes District Council*:⁷

The purpose of a consent notice is to ensure future land owners are bound by those obligations of a subdivision consent that are required to have ongoing effect. As the Council explains, this is because subdivision consents are effectively complete once implemented. They cannot be undone or revoked once titles issue. Other types of resource consent, however, are ongoing. For example, a land use consent can only be exercised while the current owner of the land is prepared to comply with the conditions of consent. This gives the consent authority enduring power to enforce performance of those conditions against subsequent land owners. However, in the case of a subdivision consent, it is the consent notice which provides a mechanism under the LTA to ensure those obligations can be enforced against subsequent owners

18. At any time after the deposit of the survey plan, the owner may apply to the Council to vary or cancel any condition specified in a consent notice.⁸ Sections 88 to 121 and 127(4) to 132 of the RMA apply to such an application, with all necessary modifications.⁹

19. We acknowledge that the criteria for assessing an application for a change or cancellation of condition under Schedule 5 of the FTAA does not specifically refer to section 221 and conditions specified in consent notices. However, this should not materially affect the Panel’s consideration. The Panel is directed to apply the provisions of Part 6 of the RMA that relate

⁴ *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36 at [22].

⁵ RMA, s 87(b).

⁶ RMA, s 221(1).

⁷ *Speargrass Holdings Ltd v Queenstown Lakes District Council* [2018] NZHC 1009 at [67].

⁸ RMA, s 221(3).

⁹ RMA, s 221(3A).

to decision making on a resource consent with all necessary modifications. This is consistent with the considerations for varying or cancelling conditions specified in consent notices under s221(3A) of the RMA.

20. The context of the provision supports such an approach. It would be anomalous if a project could seek to change the conditions of a land use consent, but no similar ability existed in relation to subdivision consents, because of their particular nature. This is especially the case given that land use consents also can contain consent notice requirements, which would be amenable to change under the FTAA.
21. This interpretation is consistent with the purpose of the FTAA, which is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.¹⁰
22. One of the ways the FTAA facilitates the delivery of the projects with significant regional or national benefits is due to it being a “one-stop-shop” where a wide range of relevant consents, approvals and permits can be obtained. During the final reading of the Bill the Minister for Regional Development highlighted this feature of the Bill:¹¹

“In some respects, it ought to have been called the "One-Stop Shop Bill", because the most important development contained in this bill is the attempt that it makes to conflate multiple consents into a singular process so that those New Zealand investors, those investors who are coming from overseas can join us in our efforts to boost not only our wealth but our resilience and can have confidence that there will be an outcome within a short and reasonable period of time.”
23. It would be contrary to this overarching objective of the legislation if all approvals otherwise sought under the RMA could be applied for under the FTAA, *except* the ability to vary or cancel a condition specified in a consent notice. This cannot have been Parliament’s intention.
24. It is noted that under section 221(3)(a) of the RMA only the “the owner” may apply to a territorial authority to vary or cancel any condition specified in a consent notice. Accordingly, we consider a substantive application under the FTAA that includes an application to vary a consent condition in a consent notice will need to be accompanied by (at least) the written agreement of the relevant landowner.

¹⁰ FTAA, s 3.

¹¹ Hansard, dated 17 December 2024.



MEMORANDUM

Date: 30 October 2025

To: Ministry for the Environment

From: Wynn Williams and Janette Campbell (Barrister)

Queenstown Cable Car Project - Legal opinion on the interpretation of information requirements under sections 13(4)(s) and 13(4)(t) of the Fast-track Approvals Act 2024

Introduction

1. The Queenstown Cable Car Project (**QCC Project**) is a mass rapid transit project by Southern Infrastructure (Cable Car) Limited (**SIL**) that will connect the Queenstown Town Centre with Frankton, Queenstown Airport, and Ladies Mile. SIL is seeking the QCC Project be referred into the Fast-track Approvals Act 2024 (**FTAA**).
2. Section 13 of the FTAA sets out the information that must be included in a referral application, including:
 - (a) a description of the applicant's legal interest (if any) in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work;¹ and
 - (b) an outline of the types of consents, certificates, designations, concessions, and other legal authorisations (other than contractual authorisations or the proposed approvals) that the applicant considers are needed to authorise the project.²
3. The QCC Project will cross multiple parcels of publicly and privately held land. SIL is currently engaging with landowners to secure the necessary legal interests. At the time the referral application is lodged, SIL will not yet be able to provide written confirmation of landowner agreements. SIL will also require other approvals to complete the QCC Project (for example, requiring authority approvals in relation to designated land). These approvals will not have been obtained at the time of lodgement, although SIL is actively engaging with the relevant requiring authorities in relation to them.
4. This legal opinion sets out our interpretation of what information is required to satisfy the requirements of sections 13(4)(s) and (t) of the FTAA.

Executive Summary

5. The information required to be included in a referral application by section 13(4)(s) and (t) is clear from the text of the sections. They are simply information requirements. They do not require the applicant to demonstrate it has a legal interest in the relevant land, nor do they require the applicant to have obtained all the necessary approvals and legal authorisations for the project to occur.
6. This interpretation is consistent with the legislative context and the purpose of the FTAA. It would run counter to the purpose of the FTAA if applicants were required, at the referral stage, to demonstrate they have secured all the relevant legal interests to undertake the project, and to have obtained all the other necessary approvals and authorisations. This would hinder the delivery of infrastructure and development projects compared to ordinary applications for resource consent under the Resource Management Act.
7. We consider that the QCC Project can be distinguished from Minister's recent decision to decline the referral application for the Hobsonville Retirement Village project. In that case, the application was declined in the absence of the Minister of Defence's approval as requiring authority in relation to Whenuapai Aerodrome designation. In the QCC Project case, there is

¹ FTAA, s 13(4)(s).

² FTAA, s 13(4)(t).

a pathway for SIL to obtain Queenstown Airport Corporation's (**QAC**) approval as requiring authority for Queenstown Airport's designation and SIL is actively engaging with QAC to achieve this.

8. Our detailed analysis follows.

Relevant sections under FTAA

9. Section 13(4)(s) and (t) of the FTAA set out the information that must be included in a referral application. This includes:

Information requirements

- (4) The information to be included in the referral application is as follows:
[...]

What is needed to complete project

- (s) a description of the applicant's legal interest (if any), or if the referral application is lodged by more than 1 person, the legal interest of any of those persons (if any), in the land on which the project will occur, including a statement of how that affects the applicant's ability to undertake the work;
 - (t) an outline of the types of consents, certificates, designations, concessions, and other legal authorisations (other than contractual authorisations or the proposed approvals) that the applicant considers are needed to authorise the project, including any that the applicant considers may be needed by someone other than the applicant;

10. The Secretary for the Environment is responsible for determining whether a referral application is complete and within scope. A referral application is complete and within scope if:³
 - (c) the application complies with the information requirements in section 13;
 - (d) the Secretary for the Environment considers that the project may be capable of satisfying the criteria in section 22 and does not appear to involve an ineligible activity; and
 - (e) any fee, charge, or levy payable under regulations in respect of the application is paid.
11. If the Secretary for the Environment decides the referral application is complete and within scope, he must provide the application to the Minister for Infrastructure⁴ for him to decide whether to refer the application into the FTAA regime.⁵

Correct interpretation of sections 13(4)(s) and (t) of the FTAA

General principles of statutory interpretation

12. Section 10 of the Legislation Act 2019 sets out the approach to interpreting legislation:
 - (1) The meaning of legislation must be ascertained from its text and in light of its purpose and its context.
 - (2) Subsection (1) applies whether or not the legislation's purpose is stated in the legislation.
 - (3) The text of the legislation includes the indications provided in the legislation.

³ FTAA, s 14(2).

⁴ FTAA, s 14(4).

⁵ FTAA, ss 21 and 22.

(4) Examples of those indications are preambles, a table of contents, headings, diagrams, graphics, examples and explanatory material, and the organisation and format of the legislation.

13. Section 10 essentially affirms the interpretative approach set out by the Supreme Court in *Commerce Commission v Fonterra Co-operative Group Ltd*. The Supreme Court in that case considered:⁶

It is necessary to bear in mind that s 5 of the Interpretation Act 1999 makes text and purpose the key drivers of statutory interpretation. The meaning of an enactment must be ascertained from its text and in light of its purpose. [...] In determining purpose the court must obviously have regard to both the immediate and general legislative context. Of relevance too may be the social, commercial or other objective of the enactment.

The text

14. In this case, the text of section 13(4)(s) and (t) is clear.

15. Section 13(4)(s) requires a description of the applicant's legal interest in the land (if any) and a statement of how that will affect the applicant's ability to undertake the work. This does not require the applicant to possess a legal interest in the relevant land. The legislation anticipates this may be the case by including the proviso "if any". If the applicant does not hold an appropriate interest in the relevant land, then the corresponding statement will indicate how the applicant intends to advance acquisition of it.

16. Section 13(4)(t) requires an outline of the other approvals or legal authorisations that the applicant considers will be necessary to enable the project to proceed. This does not require the applicant to have obtained all such authorisations at the time of referral; it merely requires an outline of those that will be required.

Legislative context

17. This interpretation is consistent with the subheading for the information requirements under section 13(4)(s) and (f) – "What is needed to complete the project." In other words, the information will provide an indication of what *will be* needed to complete the project, rather than providing these matters with the referral application.

18. The legislative context in which the Secretary for the Environment makes his decision on the completeness of the referral application is also informative.

19. When presenting its report on the Fast-track Approvals Bill to the House of Representatives, the Environment Committee noted that the Secretary's consideration of the referral application is intended to be a high-level check⁷ that is commensurate with the short time frame allowed (10 days from receipt).

20. This interpretation is also supported by the general legislative context of the referral application stage.

21. Applying for approvals under the FTAA is a two-stage process for those projects not already listed in Schedule 2 of the Act. The referral application stage is the first step, whose primary function is to ensure the project has significant regional or national benefits.⁸ Only if that threshold is met, is an applicant able to lodge a substantive application that will be assessed on its merits. The referral stage should not pre-empt the level of information required for the more fulsome substantive application stage.

22. Likewise, the information required for projects at the referral stage should be consistent with the information required for the projects listed under schedule 2. Many projects listed in Schedule 2 of the FTAA did not yet have confirmed legal interests in the relevant land nor did they hold all other relevant approvals or authorisations. For example, KiwiRail Holdings Limited applied to have its proposed Avondale-Southdown Rail Corridor included as a listed

⁶ *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36 at [22].

⁷ Final Report of the Environment Committee on the Fast-track Approvals Bill at page 7.

⁸ FTAA, s 21(1).

project in the FTAA (which is now listed under Schedule 2). This project involves the construction of a 13 km railway connecting Avondale and Westfield Junction via Onehunga. While KiwiRail owns a significant amount of the project land, KiwiRail's listed application notes that:⁹

Some additional land is required both within the current designation area and at the expanded boundaries of the original designation. It is anticipated this additional land will be acquired as the project progresses.

[...]

The individual registered owners of remaining land for the corridor are not currently scheduled due to additional design required to identify potentially affected parties. As design develops any additional land required will be clarified and usual engagement processes will take place.

23. It would be inconsistent and difficult to justify if listed projects were eligible for the fast-track process without having secured the relevant legal interests and authorisations, while referred projects were required to do so.

Purpose of the FTAA

24. Having examined the text and its context, section 10(1) of the Legislation Act requires examination of the legislative purpose.
25. The purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.¹⁰
26. It would run counter to this purpose if applicants were required, at the referral stage, to demonstrate they have secured all relevant legal interests and other necessary authorisations. Such a requirement would create an unnecessary barrier to the very projects the FTAA is intended to enable, delaying investment and undermining the objective of accelerating nationally and regionally significant development.
27. In many cases, an applicant needs the certainty of a pathway to regulatory approvals before they can secure the necessary legal interest in land, or requiring authority approvals. This sequencing is particularly the case for large scale transport infrastructure projects that cross multiple land parcels. Requiring all such interests and approvals to be secured in advance of referral would be impractical and would effectively preclude the participation of complex, multi-landowner projects in the fast-track process.
28. Finally, we note that the purpose of the FTAA is to enable projects that have struggled to progress through the existing RMA processes in a timely and commercially practicable manner, where delays or restrictive consent conditions have rendered otherwise viable projects uneconomic or unfinanceable. Even under the RMA, an applicant for a resource consent does not need to be the owner of land, or to have any interest in the land, in order to apply for consent.¹¹ It would be perverse for the FTAA to be interpreted as placing a higher hurdle on applicants than the RMA.

QCC Project distinguished from decision on Hobsonville Retirement Village Project

29. The Minister has recently declined a referral application for the Hobsonville Retirement Village project.¹²
30. The project involved the breach of the Obstacle Limitation Surfaces (**OLS**) under a Whenuapai Aerodrome designation in the Auckland Unitary Plan. The primary reason for the Minister's decision was that the application did not include approval from the Minister of Defence to breach the height restrictions imposed by the OLS. Without this approval, the

⁹ Fast-track Application FTA276 – Crosstown (Avondale-Southdown) Corridor at page 2.

¹⁰ FTAA, s 3.

¹¹ RMA, s 88.

¹² Section 28 notice of decision on referral application for the Hobsonville Retirement Village Project dated 15 September 2025.

Minister determined that the project could not lawfully proceed, and in the absence of this approval, he was not satisfied that the project would deliver significant regional or national benefits.

31. The project's breach of the OLS height restrictions was not identified in the referral application. This issue only emerged following receipt of comments on the application under section 17. Accordingly, this was not a live issue when MfE undertook its completeness check under section 14.¹³
32. It is possible that one of the route alignments for the QCC project will breach the OLS for the Queenstown Airport designation in the Queenstown Lakes District Plans. SIL is very alive to this issue and is currently engaging with QAC. SIL will either avoid any breach, or work to obtain the necessary approvals from QAC as requiring authority and from the Civil Aviation Authority as the regulatory agency.
33. The QCC Project can be distinguished from the situation in the Hobsonville Retirement Village project. It is apparent from the comments from both the Minister of Defence and the NZ Defence Force to the Minister for Infrastructure that the Minister of Defence would not approve this particular breach of the Whenuapai Aerodrome designation because of the potential impact on flight operations and safety.¹⁴ In contrast, there are pathways for SIL to avoid any breach, or minimise any breach to the point where both QAC and the CAA are able to authorise it.
34. SIL is acutely aware that QAC's approval is essential to enabling the QCC Project. However, the absence of this approval at the referral stage does not mean the referral application does not meet the information requirements of section 13(4)(t) for all of the reasons we have explained above. Nor does its absence mean the QCC Project is not capable of meeting the test under section 22 (either for MfE's completeness check under section 14(2)(b) or the Minister's decision under section 21(1)). In this case, there is a pathway to obtain QAC's approval if required and for the QCC project to ultimately proceed, delivering significant regional benefits.

¹³ MfE Stage 1 briefing for Hobsonville Retirement Village project.

¹⁴ MfE Stage 2 briefing for Hobsonville Retirement Village project dated 9 September 2025, page 3.