

Before the Expert Panel

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*under:* the Fast-track Approvals Act 2024

*in the matter of:* Pound Road Industrial Development

*applicant:* **NTP Development Holdings Limited**

*and*

*commentor:* **New Zealand Transport Agency Waka Kotahi**

Legal submissions in response to Minute 14 on behalf of  
NZ Transport Agency Waka Kotahi

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## **LEGAL SUBMISSIONS IN RESPONSE TO MINUTE 14 ON BEHALF OF NEW ZEALAND TRANSPORT AGENCY WAKA KOTAHI**

- 1 These submissions have been prepared on behalf of the New Zealand Transport Agency Waka Kotahi (*NZTA*) in relation to the application by NTP Development Holdings Limited (*Applicant*) for the Pound Road Industrial Development (*Project*) (FTAA-2505-1057) (*Application*).
- 2 These submissions address the legal issues raised in Minute 14, and respond to the Applicant's memorandum dated 17 February 2026 addressing Minute 14 (*Applicant's Memorandum*).
- 3 In summary, we consider the Panel can legally impose a 'condition precedent' in order to manage the adverse transportation impacts of the Project (i.e. so the Project could not proceed past a certain point or date until the Pound Road / Waterloo Road and Pound Road / SH1 intersection upgrades (*Upgrades*) are constructed). The Panel will need to determine whether a condition precedent is necessary on the information before it.

### **SECTION 84A ENABLES THE PANEL TO IMPOSE A CONDITION PRECEDENT ADDRESSING TRANSPORT INFRASTRUCTURE**

- 4 Section 84A of the Fast Track Approvals Act 2024 (*FTAA*) is:
  - 84A Conditions relating to infrastructure
    - (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 added)

- 5 Section 84A was inserted into the FTAA on 17 December 2025.<sup>1</sup> Section 84A has been applied in one decision under the FTAA to date.<sup>2</sup> That decision was made on the particular facts of that case<sup>3</sup>,

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<sup>1</sup> Fast-track Approvals Amendment Act 2025, s41.

<sup>2</sup> Record of Decision of the Expert Consenting Panel for Homestead Bay, 18 February 2026. The Panel in the Kings Quarry Expansion – Stages 2 and 3 decision referenced s 84A but provided no substantive discussion (at [132]).

<sup>3</sup> An application for a mixed-use development in Queenstown including roading and improvements to State Highway 6 (SH6) as supporting infrastructure. NZTA suggested a 'hold point' for development of the project, and thereafter a condition

and does not establish a precedent. There is no case law on the interpretation of Section 84A.

6 Accordingly, a statutory interpretation exercise is required. In these submissions, we consider:<sup>4</sup>

6.1 The text of Section 84A and its legislative history; and

6.2 The purpose of the FTAA.<sup>5</sup>

**Approvals can be granted if adequate supporting infrastructure is not available**

7 The Applicant says that section 84A was intended to “*allow approvals to be granted now, even where upgrades are not fully designed, funded or sequenced*”. We agree with that proposition.

8 Section 84A was added to the FTAA in response to the *Delmore Draft Decision* (which indicated that the application in that situation would be declined because of a lack of water supply and wastewater infrastructure to support the proposal).<sup>6</sup> The Hon Chris Bishop stated:<sup>7</sup>

...if the infrastructure’s not there, then, as the Delmore decision finds, that is an adverse effect that can be taken into account, although, however, we have also made the amendments around conditional infrastructure, conditional approvals based on the infrastructure. That’s also a direct response to Delmore.

9 In practice, a condition precedent is a key tool to enable approvals to be granted ahead of supporting infrastructure as intended by Section 84A.

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to manage cumulative effects on the wider corridor linked to timing of wider network improvements. The context is distinguishable from this application, as the applicant in that case was delivering a new SH6 roundabout and staged intersection works. The proposed ‘hold point’ concerned corridor-wide works that the Panel found were beyond the scale of the application’s effects (Homestead Bay decision, at [238]-[239]). In this case, NZTA’s position is that the Pound Road/SH1 intersection upgrade is required to address the effects of the Project, and is not otherwise required.

<sup>4</sup> Legislation Act 2019, s10(1): *The meaning of legislation must be ascertained from its text and in the light of its purpose and its context.*

<sup>5</sup> Fast-track Approvals Act 2024 (FTAA), s 3. The purpose of the FTAA is “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits”.

<sup>6</sup> [Delmore \(draft\) Decision, released on 29 August 2025](#), at [14]. Following the draft decision, on 11 September 2025 the Delmore application was withdrawn by the applicant.

<sup>7</sup> [\(9 December 2025\) 789 NZPD](#) (Fast-track Approvals Amendment Bill – Committee of the Whole House).

**Conditions cannot require a third party to provide adequate supporting infrastructure**

10 It is clear from the text of section 84A(3) that conditions can only impose obligations on the applicant, and cannot require NZTA (or any other third party) to fund, design, consent, or construct infrastructure.<sup>8</sup> Section 84A(3) was intentionally added during the Parliamentary process to provide that clarity.<sup>9</sup>

11 A condition precedent is an obligation on the applicant, not a third party.

**Conditions can prevent a project from proceeding until adequate supporting infrastructure is available**

12 The Applicant also says that section 84A was intended to “*avoid front-loading burdens or recreating RMA-style preconditions, where developers were forced to wait for external agencies before any progress could occur*”. We disagree. As noted by Hon Chris Bishop:<sup>10</sup>

[The Bill] proposes that applications can be granted conditionally without planned future infrastructure, such as roads and services being completed...

13 In our submission, section 84A is clearly intended to explicitly enable a condition precedent to manage impacts associated with a lack of infrastructure.

*The text of Section 84A(1)*

14 Section 84A(1) enables conditions “*to ensure that the infrastructure ... the project will rely on is or can be made adequate to support ... the project*”.

15 The Applicant says 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 considered the evidence, that infrastructure adequacy is a feasible and achievable possibility, not a speculative or fanciful one*”.<sup>11</sup>

16 In our submission, that interpretation is directly contrary to the plain meaning of the word ‘ensure’ and case law consideration of its meaning. The word ‘ensure’ is a very strong verb. It means “*to make sure or certain, guarantee, secure*”.<sup>12</sup> In the context of a District Plan provision using the word ‘ensure’ the Environment Court

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<sup>8</sup> FTAA, s84A(3).

<sup>9</sup> See paragraph 16 below.

<sup>10</sup> (6 November 2025) 787 NZPD (Fast Track Approvals Amendment Bill – [First Reading](#))

<sup>11</sup> Applicant Memorandum, paragraph 33.

<sup>12</sup> <https://www.collinsdictionary.com/dictionary/english/ensure>

has held it means “to make certain”.<sup>13</sup> In essence, the Applicant is seeking that ‘ensure’ is interpreted to mean ‘make possible’.

17 The Applicant appears to rely on the fact that, during the Parliamentary process, section 84A(1) was amended from “*infrastructure the project will rely on is or will be made adequate*” to “*is or can be made adequate*”. The Applicant says this change “*deliberately shift[ed] the threshold from the Panel needing absolute certainty to only needing to be satisfied as to feasibility*”.<sup>14</sup> We disagree.

18 In our submission, the change in language reflects the fact that a third party will undertake the infrastructure works, yet conditions can only be imposed on the applicant. The legislative history supports that interpretation:

18.1 The Ministry for the Environment Departmental Report explains the intent of section 84A and the changes made to it through the legislative process:<sup>15</sup>

The policy intent of this proposal is for conditions to be placed to facilitate the provision of subsequent infrastructure, by allowing the 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. The questions raised by submitters show that the current drafting is ambiguous and could be clarified...

18.2 The Final Report of the Environment Select Committee said:<sup>16</sup>

Clause 46 would insert new section 84A, which would enable a panel to impose a condition to ensure that the infrastructure in the project area, or that a project will rely on, will be made adequate. The Government intends to clarify that these conditions could only be placed on the approval holder, not on third-party infrastructure providers.

18.3 We have not found any evidence in the legislative history that the amendment to section 84A(1) was intended to achieve any other purpose. The Applicant’s Memorandum does not identify any part of the legislative history supporting their

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<sup>13</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] ELHNZ 258 (Env Ct) at [46].

<sup>14</sup> Applicant Memorandum, paragraph 39.

<sup>15</sup> Ministry for the Environment ([Departmental Report, Fast-track Approvals Amendment Bill](#)), at [194] and [200].

<sup>16</sup> Environment Committee, [Select Committee Report: Fast-track Approvals Amendment Bill](#), page 11.

interpretation, and points only to general debate on the intent of the Amendment Act overall.<sup>17</sup>

- 19 In conclusion, we submit that, on a plain interpretation of its text, section 84A(1) enables the Panel to set a condition that will secure – with certainty – a particular outcome (including a condition precedent).

*The legislative history*

- 20 RMA case law confirms that a condition precedent is lawful (with some exceptions – including that a condition precedent would frustrate the consent).<sup>18</sup> As a result, we have reviewed the legislative history to confirm whether section 84A was intended to codify that RMA case law (as we interpret the text of the provision), or require a narrower approach (as the Applicant contends).
- 21 The Panel conveners' submission on the Fast-track Approvals Amendment Bill requested:<sup>19</sup>

... that the Committee clarify the drafting of this provision to be clearer as to the nature of this proposed power. In particular whether: ... (b) It is intended to provide the power to impose a condition deferring the implementation of the consent until such time as adequate infrastructure is being provided by a third party (and if so, under what constraints in terms of timing etc)? The panel conveners consider that ... is ... unnecessary in respect of resource consents that would otherwise be issued under the RMA because the power to impose such conditions already exists.

- 22 We have not found anything in the legislative documents that specifically responds to that query. However, as noted at paragraph 8 above, section 84A is a response to the *Delmore Draft Decision*. In that case, connections to the public water supply network were not anticipated to be available until 2038 at the earliest and there was no spare capacity within the public wastewater network to service the Delmore development.<sup>20</sup> The Applicant did not propose private water supply and wastewater infrastructure.<sup>21</sup> The Panel considered whether it should grant consent with pre-conditions (albeit in relation to transport infrastructure). It concluded:<sup>22</sup>

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<sup>17</sup> Applicant Memorandum, paragraph 40.

<sup>18</sup> *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254; *Director-General of Conservation v Marlborough District Council* (2004) ELRNZ 254; *Hindeman v Waitaki District Council* [2010] NZEnvC 51; *Laidlaw College Inc v Auckland City Council* [2011] ELHNZ 293.

<sup>19</sup> Ministry for the Environment ([Departmental Report, Fast-track Approvals Amendment Bill](#)), at [192].

<sup>20</sup> Delmore Draft Decision, paragraph 308 and 347.

<sup>21</sup> Delmore Draft Decision, paragraphs 294 and 314-317.

<sup>22</sup> Delmore Draft Decision, paragraph 367.

It is the Panel's view that to grant a consent with significant pre-conditions is not genuinely granting a consent at all. The Panel does not have adequate information available to provide it with certainty that it can impose appropriate conditions to mitigate potential adverse effects noted by the Council.

- 23 Accordingly, the Delmore Panel appears to have been concerned that imposing a condition precedent would frustrate the grant of consent because there was no certainty that public infrastructure required to service any of the proposed development would be delivered. In our submission, this history supports our view that section 84A enables a Panel to impose a condition precedent and, in fact, section 84A may go beyond codifying RMA case law, and enable a condition precedent where it might otherwise be seen as frustrating the grant of consent. The Applicant has not explained how its interpretation (which seeks a narrower approach than RMA case law) is consistent with this background to section 84A.
- 24 The Application is somewhat different from the circumstances in Delmore where no development could proceed without a water supply and wastewater solution. All parties agree that Stage 1 of the Project can proceed without the Upgrades in place.<sup>23</sup> Therefore, a condition precedent will only relate to part of the Project, not the whole. Nevertheless, in our submission, the intent of Section 84A is to provide the Panel with comfort that it can impose a condition precedent in order to grant approvals.

*The purpose of the FTAA*

- 25 Our interpretation of section 84A is consistent with the purpose of the FTAA. As demonstrated by the *Delmore Draft Decision*, there are circumstances in which an application may be declined due to the adverse impacts associated with inadequate supporting infrastructure. In our submission, it is clearly more consistent with "*facilitat[ing] the delivery of infrastructure and development projects*" to grant approvals subject to condition precedent, than to decline those approvals.

**THE PANEL MUST CONSIDER WHETHER THE TRANSPORT EVIDENCE SUPPORTS THE IMPOSITION OF A CONDITION PRECEDENT ADDRESSING TRANSPORT INFRASTRUCTURE**

- 26 The Panel will also need to consider the tests in sections 81, 83 and 85 of the FTAA when determining whether to impose a condition precedent on the Project addressing transport infrastructure.

**Section 81**

- 27 When setting conditions, the Panel must take into account the FTAA's purpose of facilitating projects that deliver significant regional or national benefits. It must give that purpose "*the greatest weight*" compared to the RMA provisions that direct decision-making on a

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<sup>23</sup> Minute 14, paragraph 6(a)(ii) and (iii).

consent application, and other relevant legislation.<sup>24</sup> However, as noted above, in some cases it will be consistent with the FTAA's purpose to impose a condition precedent.

### **Section 83**

28 Section 83 of the FTAA provides:<sup>25</sup>

*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.*

29 We consider Section 83 means the Panel must chose the least onerous condition that will appropriately manage the impact. That requirement means the Panel must consider the evidence on the adverse impacts of the Project and determine whether a condition precedent is necessary to manage them, or whether a less onerous condition (such as the Applicant's time-based condition) will suffice.

30 The Applicant says that a condition precedent would "create indefinite delay, undermine the development itself, and place the Applicant's progress at the mercy of third-party delivery timelines".<sup>26</sup> However, those points are unrelated to whether such a condition is necessary to manage the adverse transport impacts of the Project.

31 NZTA's position is that the Applicant's time-based condition does not address the relevant impacts.<sup>27</sup> It considers the Pound Road/SH1 intersection upgrade is required to address the effects of the Project.<sup>28</sup> Therefore, although the time-based condition *could* result in adequate supporting infrastructure being in place before relevant development stages, it does not *ensure* that result *can* be achieved. Accordingly, a condition precedent is the least onerous condition that will address the relevant impacts of the Project.

### **Section 85**

32 The Panel may only decline an approval if its "adverse impacts [with conditions] are sufficiently significant to be out of proportion to the project's regional or national benefits".<sup>29</sup> We agree with the Applicant that this test means a condition only needs to be imposed

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<sup>24</sup> FTAA, Schedule 5, clause 17(1).

<sup>25</sup> FTAA, s 83.

<sup>26</sup> Applicant Memorandum, paragraph 46.

<sup>27</sup> [Memorandum of New Zealand Transport Agency Waka Kotahi on the Pound Road Christchurch Industrial Subdivision Project](#), dated 20 January 2026, paragraph 3.6.

<sup>28</sup> [Memorandum of New Zealand Transport Agency Waka Kotahi on the Pound Road Christchurch Industrial Subdivision Project](#), dated 4 November 2025, paragraphs 3.12 and 3.14.

<sup>29</sup> FTAA, s85(3) (assuming that none of the mandatory tests for declining an approval in s85(1) or (2) apply).

where, without the condition, the impacts of the project would be out of proportion to its benefits.

33 The Applicant says that a condition precedent “*risks undermining the project's viability and therefore does not give proper effect to that purpose*”.<sup>30</sup> In our submission, that approach is incorrect, as follows:

33.1 If the adverse effects of the Project would be disproportionate to its benefits, the Panel has the power to decline the approval. In that context, the Applicant will be unable to proceed with the Project – that outcome clearly would not “*facilitate the delivery of infrastructure and development projects*”.

33.2 The Panel could instead choose to impose a condition to ensure the adverse effects of the Application will not be disproportionate to its benefits. The Applicant can then determine whether to proceed with the Application with that condition in place. In that context, the Applicant will at least have the option to proceed.

34 Accordingly, in our submission, a condition that impacts the financial viability of the Project is more consistent with the purpose of the FTAA than declining the Application.

### **CONCLUSION**

35 For the reasons above, NZTA submits that the Panel can legally impose a condition precedent to address the adverse transportation impacts of the Project. The Panel will need to determine, on the information before it, whether a condition precedent is necessary to address the adverse transportation impacts of the Project.

**Dated 27 February 2026**

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<sup>30</sup> Applicant Memorandum, paragraph 50.