4 August 2026

Vineway Limited

By email: [redacted]

Response to Westlake Trustee Limited – Delmore – FTAA-2512-1164

1. We have reviewed the letter and attachments from Beresford Law on behalf of the neighbouring property owned by Westlake Trustee Limited dated 28 July 2026.

2. We have been asked to comment on the legal issues as to:

   (a) The proposed asset management plan for the water treatment plants;

   (b) The proposed bond and/or specifically mandated sinking funds for that purpose.

3. We agree it is important to ensure that the private water and wastewater infrastructure is maintained and renewed over its operational life. A fixed and inflexible sinking fund or bond requirement does not, of itself, guarantee the long-term repair, maintenance, renewal or replacement of infrastructure. Long-term asset performance depends on the quality of the original design and construction, regular maintenance, appropriate asset management practices, and timely decision-making by those responsible for the assets. Funding is only one component of that framework.

4. To address that issue further, the Applicant is willing to provide an Asset Management Plan prepared by a suitably qualified person. Robust asset management planning and disclosure without mandating a single funding solution ensures future residents have identified key assets, anticipated maintenance requirements, replacement cycles and lifecycle costs. This requirement would be included in the constitution provided under Condition 46 for the Utility Company and would then in turn be required to be implemented by the Resident's Society under Condition 49.

5. The constitutions are the appropriate mechanism for addressing long-term asset management and funding obligations. These govern how each operates, makes decisions and raises funds from the applicant and future residents. The constitutions create clear obligations to maintain infrastructure, require regular asset management planning, identification of available funding mechanisms (including for example, sinking funds, special levies, borrowing, user charges, insurance and other general reserve funds), and prescribe the decision-making processes that apply.

6. The draft conditions anticipate that the infrastructure could remain privately owned, operated and funded, and will not become a public asset for which Council assumes responsibility. In those circumstances, the critical issue is not whether Council mandates a particular funding solution or security, but whether there is an enduring governance framework requiring the owners of the infrastructure to maintain, repair, renew and fund the assets. That framework is most appropriately contained in the constitutions and asset management arrangements, rather than through prescriptive consent conditions that dictate how future owners must fund those obligations.

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7. That is a familiar and workable governance model. Under the Unit Titles Act 2010, bodies corporate manage long-term maintenance of communal assets (including renewal of those assets) through a mandated requirement for a long-term maintenance plan, and as determined by the body corporate, a combination of a long-term maintenance fund, contingency fund and/or operational funds. Here, we achieve the same end using constitutions under the Incorporated Societies Act 2022 (Resident's Society) and Companies Act 1993 (Utility Company). This ensures legally enforceable obligations, decision making by the relevant owners collectively enabled by formal governance structure, with those constitutions provided to and approved by Council as required by the consent conditions.

8. Mandating sinking fund requirements does not enable the residents to determine for themselves the most appropriate funding mechanism and is not future proof. Unfairness can result if a sinking fund is established but then not required for replacement of plant, as early residents have funded a windfall for future owners. The suggested sinking fund of $200,000 per year is equivalent to the 472 Stage 1 lot owners being levied an additional $423 per lot per year over and above operational costs. That is not so significant that it requires a mandatory approach to such a fund and is a level of funding that the Utility Company and Resident's Society can determine (or not) to fully or partially fund.

9. As to the bond requirements, if a sinking fund is not required (as we consider it should not be), requiring a bond would likely deter the future Society from considering alternative funding arrangements due to the duplication of financing involved. This would, in effect, restrict the Society's ability to choose its preferred funding mechanism. There are also practical issues to resolve. There would be complications as to who holds such bond and who has priority to call upon it – is it Council, the neighbouring owner that has submitted that a bond should be required or is the Society itself? Given there are 472 lot owners proposed in stage 1, a sum of $500,000 could be raised through a one-off levy of approximately $1,059 per owner, which is a relatively modest amount in the context of property ownership costs. When viewed through that lens, the additional administrative and other cost and complexity that the suggested bond would impose on the Applicant, the Resident's Society and Utility Company, the residents and on Council (as holder of the bond) does not deliver good value for money. We are not aware of a provider of bonds to Residents Societies and/or Utility Company for these purposes either and we note that Auckland Council has reviewed and agreed these conditions with the Applicant and did not seek such a requirement.

10. The appropriate balance is therefore an independently prepared Asset Management Plan, coupled with Council review of the Utility Company and Residents' Society constitutions as proposed. That provides a clear, enforceable framework for long-term maintenance including renewal if required.

Yours faithfully

ALEXANDERDORRINGTON

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