

Before the Expert Panel

FTAA-2505-1057

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

Legal memorandum to the Expert Panel on proposed amendment to Condition 3 accompany comments under s 70(4)

Date: 15 April 2026

Applicant's solicitors:

Jo Appleyard | Tallulah Parker
Anderson Lloyd
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011
PO Box 13831, Christchurch 8141
DX Box WX10009 Christchurch
p + 64 3 379 0037
jo.appleyard@al.nz | tallulah.parker@al.nz

**anderson
lloyd.**

May it please the Panel

- 1 These legal submissions are provided by NTP Development Holdings Limited (**Applicant**) as part of its response under s 70(4) of the Fast-track Approvals Act 2024 (**FTAA**) for the Pound Road Industrial Development [FTAA-2505-1057] (**Application**).
- 2 The purpose of these legal submissions is to support the Applicant's proposed amendments to Condition 3 of the subdivision consent.
- 3 These legal submissions are provided in conjunction with the memorandum of Novo Group, which responds to the Expert Panel's Minute 16, and other matters raised by the parties in their comments on the Draft Decision and conditions (the **Novo Memorandum**).

Legal Approach to Conditions under the FTAA

- 4 A substantial body of legal submissions has already been provided by parties to the Panel addressing the statutory framework and principles governing the imposition of conditions under the FTAA. Those submissions comprehensively traverse the relevant tests, authorities, and statutory constraints, and are not repeated here.
- 5 As summarised by the Panel in the Draft Decision:¹

By way of background, in setting conditions under the FTAA, the parties agree that:

- (a) *Section 81(1) requires us to decide, if we grant an approval, whether any conditions should be imposed.*
- (b) *Schedule 5 cl 18 confirms that when setting conditions on a consent, the provisions of Parts 6, 9 and 10 RMA apply to RMA approvals, subject to the modifications required by the FTAA. Accordingly, in reliance on established law for RMA conditions, any conditions must:*
 - (i) *Comply with, inter alia, s 108AA;*
 - (ii) *Be for a resource management purpose, not an ulterior one;*

¹ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [148].

- (iii) *Fairly and reasonably relate to the development authorised by the resource consent*
 - (iv) *Not be so unreasonable that no reasonable planning authority duly understanding its statutory duties could have imposed them;*
 - (v) *Be certain, not lacking in finality;*
 - (vi) *Be capable of enforcement;*
 - (vii) *Not require the consent of a third party;*
 - (viii) *An applicant may offer conditions which the decision-maker may accept, including conditions that might otherwise be unlawful if imposed without the applicant's agreement;*
- (c) *Schedule 5 cl 17 requires us to take into account the purpose of the FTAA, along with the relevant RMA provisions, with the purpose of the FTAA to be given the greatest weight;*
- (d) *Section 83 requires:*
- 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.*
- (e) *Section 84A allows the imposition of conditions to ensure that infrastructure relied upon by the project is, or can be made, adequate to support the project or the relevant stage of the project and clarifies that any such condition may impose obligations only on the applicant.*

6 Regarding s 84A, the Applicant has previously submitted that the term "ensure" in the context of "is or can be made adequate" requires that infrastructure adequacy be feasible and achievable, rather than speculative or fanciful (i.e. be certain it is possible). As stated by the Panel, the word "ensure" can properly be read as requiring the Panel to be "certain" or

satisfied that a credible infrastructure solution is available.² It does not require certainty that the relevant infrastructure will be in place at the time the Panel makes its decision. This is an evidentiary inquiry.

- 7 The adequacy of the consent conditions is also relevant to the Panel's ultimate decision to grant or decline approvals under section 85, albeit the Panel may only decline an application under section 85(3) where the adverse impacts, taking into account the proposed consent conditions, are sufficiently significant to be out of proportion to the project's regional or national benefit.
- 8 Taken together, sections 81, 83, 84A, and 85 establish a structured and constrained decision-making framework. Where a proposed condition would materially affect the delivery of the Project and, in doing so, erode or negate the regional or national benefits that underpin its significance, the scope to impose that condition is limited. In those circumstances, conditions may be imposed only to the extent necessary to address adverse effects that are themselves sufficiently significant to outweigh those benefits. Any condition that goes further, or which effectively frustrates delivery of the Project (at least without the Applicant's consent), would be contrary to the purpose of the FTAA and condition setting under the RMA.

Applicants requested amendments to the staging condition

- 9 The Applicant requests the following amendments of the Panel's wording (additions shown as **bold underline** and deletions as ~~strikethrough~~)
 - a) *The ~~Records of Title~~ **Section 224 Certificates** for Lots located in Stage 1 of the subdivision as shown on the plan titled "Pound Road Industrial Subdivision – For Consent Purposes," (drawing Reference E20739 Revision 2, dated December 2025) shall not be issued before 31 December 2027;*
 - b) *The ~~Records of Titles~~ **Section 224 Certificates** for lots located in Stage 2 or Stage 3 of the subdivision as shown on the plan titled "Pound Road Industrial Subdivision - For Consent Purposes," (drawing reference E20739 Revision 2, dated December 2025) shall not be issued before 1 January 2029;*

² DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [192].

- c) ~~Records of Title~~ **Section 224 Certificates** shall not be issued for Lots located in Stage 4 of the subdivision as shown on the plan titled "Pound Road Industrial Subdivision - For Consent Purposes," (drawing reference E20739 Revision 2, dated December 2025), ~~unless~~ **until the sooner of:**
- i. the intersection of State Highway 1 and Pound Road and the intersection of Waterloo Road and Pound Road (the intersections) are upgraded ~~to achieve Level of Service C or better and Saturation of 0.9 or less in general accordance with the concept design shown in drawing 0383-012-DWD1001-B prepared by Novo Group dated 27 June 2025;~~ **or**
 - ii. **1 July 2031**
- d) The consent holder shall fund 20% of the costs of the upgrades to the intersections referred to in the clauses above and **based on the figure indexed in the 'Davie Lovell Smith Pound Road Industrial Development, Panel Minute 14 Response Infrastructure Costs and Timeframe' included as Appendix 3 to this decision; and**
- e) Condition 3 a), 3 b), 3 c) and 3 d) shall not apply if the consent holder enters into a developer agreement with NZTA and CCC for an alternative arrangement as to timing of intersection upgrades and cost sharing.

10 The proposed amendments can be grouped into four sets of requested changes.

11 As stated in the Novo Memorandum, Christchurch City Council (CCC) has reviewed the amended wording of the condition and confirmed that they have no further comments on the substance of the wording.³

First: Reference to "Section 224 Certificates"

12 As stated in the Novo Memorandum, after discussion with CCC, it is now agreed that the condition should refer to 'Section 224 Certificates' instead of 'Record of Title'. There is no opportunity to control the issue of Record of

³ Memorandum of Novo, Pound Road Industrial Development [FTAA-2505-1057] Section 70(4) response at [3].

Titles, as these can only be controlled via the issue of Section 224 Certificates.⁴

Second: Level of Service References

- 13 The Applicant seeks that the staging condition be amended such that the references to Levels of Service (**LoS**) are removed.
- 14 This amendment is necessary to ensure the condition complies with the FTAA, reflects the agreed evidence, and confines the Applicant's obligations under the conditions to effects attributable to the effects of the Proposal.
- 15 The LoS requirement introduces unnecessary legal and practical uncertainty. All parties accept that the traffic modelling and concept design prepared by Novo Group appropriately address the traffic effects of the proposed development. Retaining a LoS standard implies a need for further or ongoing traffic assessment, despite there being no evidential basis or dispute justifying such reassessment.
- 16 A LoS-based condition also risks exposing the Applicant to obligations arising from speculative or external changes in the wider transport network, rather than effects generated by the Proposal itself.
- 17 As outlined in the Novo Memorandum, this could include potential outcomes of the NZTA Hornby Study (also discussed below), changes to the function of Pound Road, or development anticipated under Plan Change 19 (if approved).⁵ These matters are not consented, may not proceed, and are not effects that form part of the 'environment' for assessing effects or for which the Applicant can lawfully be held responsible.

Third: Clarification of Funding Contribution

- 18 Amendment is also sought such that the Applicant's 20% funding contribution is explicitly tied to the intersection upgrade design shown on Novo Group drawing 0383-012-DWD1001-B and the figure indexed in the Davie Lovell Smith Pound Road Industrial Development, Panel Minute 14 Response – Infrastructure Costs and Timeframe.

⁴ Memorandum of Novo, Pound Road Industrial Development [FTAA-2505-1057] Section 70(4) response at [15].

⁵ Memorandum of Novo, Pound Road Industrial Development [FTAA-2505-1057] Section 70(4) response at [31].

- 19 The design shown in 0383-012-DWD1001-B provides a clear, certain, and evidence-based mitigation response to the traffic effects of the Application and has been accepted by all parties.
- 20 The 20% contribution is derived from agreed 2038 traffic forecasts, reflects the proportion of traffic attributable to the project, and is indexed in the Davie Lovell Smith cost estimate. It has been accepted by the Panel as appropriate.⁶ Any requirement for a greater contribution, whether arising through revised modelling, altered design standards, or future network planning, would not fairly or reasonably relate to the development and would be more onerous than necessary.
- 21 As noted in the Novo Memorandum, if the NZTA Hornby Study were to identify a preference for a more extensive or costly upgrade that is not required to mitigate the effects of the Application, it would be unreasonable and unlawful to require the Applicant to contribute to that upgrade.⁷

Fourth: Ensuring delivery of Stage 4

- 22 The Panel has assessed, based on the transport evidence before it, that from Stage 3 the traffic effects at the Pound Road / SH1 and Pound Road / Waterloo Road intersections would be significant in the absence of the Intersection Upgrades.⁸
- 23 On this basis, requiring the Intersection Upgrades prior to Stage 3 (as suggested by NZTA) would be more onerous than necessary.
- 24 The Applicant has further proposed an amendment to Condition 3 to ensure that Stage 4 of the development can proceed through the inclusion of a clearly defined fallback or “sunset” date. This enables the issuance of Section 224 Certificates from 1 July 2031 if the identified Intersection Upgrades are not in place. In practical terms, the inclusion of a final sunset date provides certainty that the Project will be delivered in its entirety.
- 25 As noted by the Panel in the Draft Decision, the Applicant has provided evidence that the Project might not proceed due to financial constraints unless the Applicant has certainty that all stages could proceed.⁹ This

⁶DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [284] – [285].

⁷ Memorandum of Novo, Pound Road Industrial Development [FTAA-2505-1057] Section 70(4) response at [18].

⁸ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [277].

⁹ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [254].

evidence has not been challenged by any party and is central to assessing the appropriateness of the proposed staging condition.

- 26 Although Stage 4 is presently only a balance lot, and the exact intensity of development at that stage is unknown, beyond the indicative yields used in the transport modelling, the Applicant is reliant on it contributing positively to the financial viability of the Proposal. The additional economic evidence from the Applicant indicates Stage 4's contributions to the Project's economic impacts.¹⁰ The inclusion of a sunset date, therefore, provides necessary certainty as to the Project's viability and delivery of the regional benefits associated with the Project.
- 27 Further, as set out in the Novo Memorandum, this timeframe enables the Applicant to utilise their land use consents from the Canterbury Regional Council (**CRC**) to carry out the bulk earthworks (consent has a duration of seven years).¹¹ If the earthworks associated with Stage 4 are not completed within this timeframe, the Applicant would need to reapply to CRC for resource consent to undertake these works, resulting in unnecessary costs, delays, and inefficiencies in the process, further impacting the financial viability of the Proposal and jeopardising the delivery of Stage 4.
- 28 The Panel has found that there is no clear pathway for the Intersection Upgrades to be implemented unless a developer agreement is reached with the transport agencies that includes some form of funding contribution from the Applicant.¹² That process and the timing of any such agreement are outside the Applicant's control. In the absence of a fallback date, delivery of Stage 4 would therefore be contingent on the actions of uncertain third-parties. On the evidence before the Panel, that uncertainty materially undermines the delivery of the Project as a whole.
- 29 The Applicant has previously provided further economic evidence on the disbenefits or costs of the Project proceeding without the Intersection Upgrades in place, including an attachment to monetise some of those disbenefits for the purpose of a cost-benefit analysis. The Panel has concluded that, even with the disbenefits, if the Intersection Upgrades are not provided, it is satisfied that, having taken into account the quantitative and qualitative disbenefits of the Proposal and offsetting them against the

¹⁰ Appendix 1: Natalie Hampson, Savvy Consulting Limited, FTAA-2505-10057: Pound Road Christchurch Applicant Response.

¹¹ Memorandum of Novo, Pound Road Industrial Development [FTAA-2505-1057] Section 70(4) response at [17].

¹² DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [281].

claimed benefits, the Proposal is still able to be granted under section 85.¹³ On this basis, and in light of the above, the Applicants submit that including the 'sunset' date is appropriate and necessary in terms of section 83.

- 30 Additionally, we note that the inclusion of a fallback date does not alter the Applicant's ability to contribute to the Intersection Upgrades. As noted by the Panel, the Applicant's willingness to contribute (up to the levels of contribution identified above and in the Novo Memorandum) is a matter of public record.¹⁴ If the Transport Agencies elect to proceed with the upgrades at a later stage, the Applicant would remain willing to engage and to contribute on that same basis, consistent with the evidence already before the Panel, provided that it is before full occupation of Stage 4 / completion of the Project (which is anticipated to occur between 2033 and 2038).
- 31 If the Transport Agencies have not considered it necessary to implement the Infrastructure Upgrades prior to 2038, then question arises as to whether there are any significant traffic impacts attributable to the Project. As noted by the Panel, the modelling indicated that, with background traffic growth but without the Project, the Intersections would continue to operate within acceptable levels of service through to 2038.¹⁵
- 32 Having regard to the evidence before the Panel and the purpose of the FTAA, the Applicants submit that the proposed fallback date must be implemented.

Dated this 15 April 2026



Jo Appleyard / Tallulah Parker
Counsel for NTP Development Holdings Limited

¹³ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [688].

¹⁴ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [282].

¹⁵ DRAFT Record of Decision of the Expert Consenting Panel under Section 87 of the Fast-Track Approvals Act 2024 at [220].