In the Supreme Court of New Zealand
Te Kōti Mana Nui o Aotearoa

SC 123/2024

Between	TONY JAMES SOFUS PASCOE and DEBBIE ANN PASCOE 3072 Mōkau Road Mt Messenger R D 48 Urenui 4378 Appellants
And	MINISTER FOR LAND INFORMATION Land Information New Zealand 155 The Terrace Wellington 6011 Respondent

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SUBMISSIONS IN REPLY OF THE APPELLANTS

14 October 2025

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THE APPELLANTS CERTIFY THAT, TO THE BEST OF THEIR KNOWLEDGE, THESE SUBMISSIONS CONTAIN NO SUPPRESSED INFORMATION AND ARE SUITABLE FOR PUBLICATION.

Table of contents – Points in response to submissions for Minister

May it please the Court:

1. These submissions make the following Points in response to the submissions for the Minister.

First Point: The submissions for the Minister do not state the purpose of the Public Works Act 1981

2. Correctly stating the purpose of the Public Works Act 1981 ("PWA") is required by New Zealand law including s 10 of the Legislation Act 2019.

3. As will be addressed later: The submissions for the Minister never cite the Legislation Act 2019 or other fundamental law engaged by this Appeal such as the law stated by Lord Denning MR at page 198 of *Prest v Secretary of State for Wales* (1982) 81 LGR 193 (quoted in paragraph one of our written submissions) or the statements made by the United Nation' Office of the High Commissioner for Human Rights' in *Land and Human Rights - Standards and Applications* (cited in Footnote 23 of our written submissions).

4. The submissions for the Minister avoid the fundamental law engaged by this Appeal because those submissions profoundly breach that law.

5. The submissions for the Minister also avoid the statements which counsel assisting this Court rightly highlights by quoting them in paragraph 40 of their submissions. Those statements were made by the Minister of Works and Development, the Honourable WL Young, who was Minister in the National Government which prepared and introduced and, with majority in Parliament, passed the Public Works Bill.

6. It is also critically important to draw attention to the further statements of the Minister of Works and Development (recorded in Hansard Volume 438 dated 10 July 1981, page 1484):

"… **I emphasise that it [the PWA] protects the right of the individual against the State and local bodies, except in extreme cases when their needs can be taken care of under the Order in Council procedure**." [Bolding added]"

7. The statements made for the National Government, including by the Minister of Works and Development (which are recorded in pages 1478 to 1488 of Hansard Volume 438 dated 10 July 1981) mirror and uphold the statements of constitutional and human rights law made by Lord Denning and Lord Watkins in *Prest v Secretary of State for Wales* (1982) 81 LGR 193 and by Justice Grant Hammond in *Deane v Attorney-General* and in the Judgments of this Court in *Dromgool v Minister for Land Information* and the other statements of constitutional and human rights law made in the other authorities referred to in our written submissions in this Appeal.

8. Mr L Schultz, a member of the National Government, states (as recorded on page 1478 of Hansard 10 July 1981):

> "In effect, the Bill retains the philosophy of a greater consideration of the rights of property owners. Although most local authorities and some Government departments, sought relaxation, the Bill does not give it."

9. The Minister of Works and Development states (as recorded on page 1483 to 1484 of Hansard 10 July 1981):

> "I know the Leader of the Opposition … would take land right, left, and centre … The [National] Government does not believe in taking land right, left, and centre. Government members believe and we come out four-square in the [Public Works] Bill and say so – that not only will we make it harder for the State to take land compulsorily, but we will also, make it harder for local bodies to take land compulsorily. …
>
> If members really respect the right of the individual in relation to land, if they do not believe that the bureaucrats should have an absolute right, they will vote four-square for the committee's report and leave further discussion on the Bill to some later date. For the reasons I have given, I support the Bill, which is a good measure, and **I emphasise that it protects the right of the individual against the State and local**

bodies, except in extreme cases when their needs can be taken care of under the Order in Council procedure." [Bolding added]

10. The Crown (including Minister for Land Information Chris Penk) had the duty, owed to every New Zealand citizen, to draw those statements to the attention of this Court (and, previously, to the High Court and Court of Appeal) – but, instead, the Crown has profoundly breached that duty – which is to uphold the rule of law.

11. For all the reasons referred to in our written submissions and our further submissions: The purpose of the PWA is as stated in paragraph 15 of our written submissions which states that purpose is:

> "15.1. To affirm that every person's rights to their land, and above all land which is a human being's home, are part of and protected by constitutional law and the rule of law and, in particular, to affirm that no person is to be deprived of their land against their will unless that deprivation meets the requirements of constitutional law and the rule of law.
>
> 15.2. Always informed by constitutional law and the rule of law: To, on strict terms and subject always to strictly independent and vigilant judicial scrutiny, provide Government with the draconian power to take a person's land from them against their will where that taking meets the strict requirements of constitutional law and the rule of law including that the particular person's sacrifice to the Public Good is demonstrably justified and that sacrifice is recognised and honoured and rewarded in accordance with constitutional law and the rule of law."

12. We clarify that the words "constitutional law" in that statement of purpose at paragraph 15 of their written submissions must be read as "constitutional and human rights law".

13. The submissions made for the Minister at paragraph 12, far from stating the purpose of the PWA, profoundly breach that purpose and the constitutional and human rights law that purpose affirms and upholds. The submissions made for Minister at paragraph 12 turn the purpose of the PWA on its head and upside

down and inside out. That purported statement of purpose has not **even** included the word "balance" – which the Minister's submissions relegate to Footnote 30.

14. The purported statement of purpose at paragraph 12 of the submissions for the Minister not only profoundly breaches the law but also simply does not make sense and is conceptually wrong – the second sentence of paragraph 12 states that the PWA "has a dual purpose: protecting the rights of landowners, but only insofar as necessary to enable public works to be undertaken."

15. Those statements are that citizens' rights to their land are only protected by the PWA if, and then only to the extent, "**necessary to enable public works to be undertaken**" [Bolding added]. But protecting a citizen's rights to their land **never *enables*** public works to be undertaken. To the polar opposite: Protecting a citizen's rights to their land is **in direct opposition to** the exercise of the draconian power to destroy those rights by taking that citizen's land so as to enable public works to be undertaken.

16. Constitutional and human rights law, which the purpose of the PWA affirms and upholds, is that Government may only exercise the draconian power to take a citizen's land from them against their will by use of force if Government has proven, to the highest standards, that the destruction of that citizen's constitutional and human rights is demonstrably justified (is "decisively demanded" as Lord Denning MR stated in *Prest*) for the Public Good.

Second Point: Submissions for the Minister seek to rewrite the text Parliament decided to enact as s 18(1)(d) of the PWA

17. The submissions for the Minister are that the text which New Zealand's citizens, acting through their Parliament, have chosen to enact as s 18(1)(d) of the PWA must be deleted and replaced with text chosen by the Minister. The Crown seeks to rewrite the text Parliament decided to enact as s 18(1)(d) of the PWA.

18. First: The submissions for the Minister are that the text of s 18(1)(d) "… the Minister … shall ... **make every endeavour** …" [Bolding added] must be deleted

and replaced with the text, chosen by the Crown, "… the Minister … shall ... **be satisfied that every endeavour has been made** …" [Bolding added].

19. Second: The submissions for the Minister are that the text of s 18(1)(d) "… **make every endeavour** …" [Bolding added] must be deleted and replaced with the text, chosen by the Crown, "… make **reasonable** endeavours …" [Bolding added].

20. The submissions for the Minister are therefore that the text of s 18(1)(d) "… the Minister … shall ... **make every endeavour** …" [Bolding added] must be deleted and replaced with the text, chosen by the Crown, "… the Minister … shall ... **be satisfied that reasonable endeavours have been made** …" [Bolding added].

21. The Appellants submit, for the reasons set out in their written submissions and for the further following reasons, that the submissions for the Minister, which seek to rewrite the text parliament has enacted as s 18(1)(d) PWA, breach the law and rule of law and have no foundation or merit. The submissions for the Minister do violence to, and ask this Court to do violence to, the text Parliament has decided to enact as s 18(1)(d) PWA.

22. These submissions for the Appellants will deal with each of the two submissions, referred to above, in turn.

The submission for the Minister that: The text of s 18(1)(d) PWA "… the Minister … shall ... make every endeavour …" must be deleted and replaced with the text, chosen by the Crown, "… the Minister … shall ... be satisfied that every endeavour has been made …"

23. Paragraph 13 of the Court of Appeal Judgment finds that the law provided by s 18(1)(d) of the PWA requires "… the Minister (or their delegate) **to be satisfied that every endeavour has been made** to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land …" [Bolding added].

24. Those statements were made in the Court of Appeal Judgment in reliance on the submissions made for the Minister to the High Court and the Court of Appeal (see [18] of the High Court Judgment).

25. The text which New Zealand's citizens, acting through their Parliament, decided to enact as s 18(1)(d) of the PWA is:

> "Where any land is required for any public work **the Minister … shall**, before proceeding to take the land under this Act— ... **make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land**." [Bolding added]

26. Parliament decided ***not to*** enact the text "the Minister shall be satisfied that every endeavour has been made to negotiate" as text of s 18(1)(d) PWA. Parliament's decision ***not to*** enact that text, as part of s 18(1)(d), is highlighted by the fact Parliament decided ***to enact*** the text "… **the Minister, upon being satisfied**— …" [Bolding added]" as part of the text of s 20(1) of the PWA.

27. Parliament's decision ***not to enact*** the text "the Minister shall be satisfied that every endeavour has been made to negotiate", as part of s 18(1)(d), is also highlighted by the fact Parliament ***has decided to enact*** the text of other Acts including s 29A(2) of the Crown Minerals Act 1991 (and four other sections of that Act) and s 26ZV of the Conservations Act 1987.

28. Attachment "A" to the Appellants' Memorandum dated 30 October 2024 (Document **[Tab 28 at 101.0296]**), filed and served in the Court of Appeal (CA87/2023), states:

> "The HC Judgment states in paragraph [18] "The statutory requirement is for the Minister or delegate to be satisfied that every endeavour has been made". … Those statements in [18] of the HC Judgment purport, unlawfully, to rewrite s 18(1)(d) PWA."

29. The written submissions made for the Minister in this Appeal have, in stark contrast to the submissions for the Minister as recorded in paragraph 18 of the

High Court Judgment, been written so as to never use the words "The statutory requirement is for the Minister or delegate to be satisfied that every endeavour has been made". The persons acting for the Crown have, in their submissions in this Appeal, shied away from the word "satisfied" so severely that they have used it only once – in paragraph 64 of the submissions for the Minister.

30. While the submissions for the Minister in this Appeal have been carefully reworded and no longer use the words "The statutory requirement is for the Minister or delegate to be satisfied that every endeavour has been made": The, reworded, submissions for the Minister in this Appeal are, just like the submissions made for the Minister to the Court of Appeal and the High Court, that the Minister can ***delete*** the text of s 18(1)(d), in which Parliament chose ***not to*** enact the words "the Minister shall be satisfied that every endeavour has been made", and that the Minister can ***replace*** the enacted text of s 18(1)(d) with the text "the Minister shall be satisfied that every endeavour has been made".

31. The submissions for the Minister do violence to, and ask this Court to do violence to, the text Parliament has decided to enact as s 18(1)(d) PWA. The submissions for the Minister profoundly breach the rule of law including the sovereignty of Parliament.

The submission for the Minister that: The text of s 18(1)(d) PWA "... make every endeavour …" must be deleted and replaced with the text, chosen by the Crown, "… make reasonable endeavours …"

32. The written submissions for the Minister, including in particular in paragraph 30.2, constitute the submissions that the text of s 18(1)(d) of the PWA "... make every endeavour …" must be deleted and replaced with the text, chosen by the Crown, "… make reasonable endeavours …". Those submissions for the Minister are that the Executive Branch, and Judicial Branch, of Government can and should do violence to the text Parliament decided to enact as the text of s 18(1)(d) of the PWA.

33. The written submissions for the Minister profoundly breach the law and rule of law (including the sovereignty of Parliament) for all the reasons that are clear when those submissions are considered in light of the Appellant's written submissions, and the written submissions of counsel assisting this Court, and the further submissions made for the Appellants and by counsel assisting this Court.

Third Point: The submissions for the Minister are that the Minister's Practice determines the law rather than the law determining the Minister's Practice

34. The written submissions for the Minister, including paragraphs 35-44, make statements about the Practices, the "systems", which the Minister, and the persons acting for the Minister, have adopted since the PWA was first enacted.

35. Those submissions are epitomised by the statement made in paragraph 44 "… This system has operated since the mid-1990s, without a question of the need for formal delegation arising. …".

36. That statement in paragraph 44 expressly admits that the Minister has adopted and purported to follow that "system" without ever asking, and answering, the question: What is the law and what does that law require?

37. The Minister has adopted and purported to follow that "system" without ever asking, and answering, the question: Is that "system" lawful?

38. The submissions, in paragraph 44 and generally, in essence submits: No-one has ever questioned the Minister's Practice, the Minister's "system", and therefore that Practice, that Minister's "system", must be lawful. That submission shines a light on the Crown's profound breach of the law and rule of law.

39. We submit that, for the reasons stated in the Opinion (marked "A") attached to this document, the Minister's Practice, the Minister's "system", is unlawful because it breaches the law, which is a code, Parliament decided to enact by enacting s 4C of the PWA.

40. We submit, for the reasons stated in Attachment "A" to this document, that the purported delegations referred to in the Court of Appeal Judgment (including, as key examples, in paragraphs 30-33 and 37-38 and 54) are, and have at all times been, unlawful.

41. Every action purportedly taken by any person pursuant to and/or in reliance on the unlawful purported delegations referred to in the Court of Appeal Judgment (including, as key examples, any action purportedly taken pursuant to section 18 or section 23 of the PWA) is, and has at all times been, unlawful.

42. The Crown, including the Minister for Land Information, has the duty to uphold the rule of law. That duty has at all times required the Minister to determine, and state, what the law is and what it requires – and ***only then*** to decide what Practices, what "systems", to adopt.

43. The submissions for the Minister, including paragraphs 35-44, establish that the Minister has profoundly breached the law and rule of law by taking actions, adopting Practices and "systems", without even asking, let alone answering, the question: What is the law and what does it require? As the submissions for the Minister state in paragraph 44 "… This system has operated since the mid-1990s, **without a question of the need for formal delegation arising**. …" [Bolding added].

Fourth Point: The submissions for the Minister, including by stating "ultimate power" and "ultimate responsibility" and "conduct of day-to- day negotiations", admit that an 'Accredited Contractor' purports to exercise and perform the Minister's statutory "powers" and "responsibilities" pursuant to s 18(1)(d) of the PWA.

44. The submissions for the Minister (including paragraph) appear to be that no action taken by what the Crown calls an 'Accredited Supplier'/'Accredited Contractor' constitutes, or involves, the purported exercise by that Contractor of any of the Minister's powers or functions or duties pursuant to s 18(1)(d) of the PWA – or any other provision of the PWA.

45. That submission lacks any foundation or merit – as the statements made, and referred to, in the written submissions for the Minister establish.

46. Some of the statements, made in the written submissions for the Minister, which highlight the truth include:

46.1. The submission stated in paragraph 2.3 "… **ultimate** responsibility for good faith negotiations remains with the respondent (and his delegate)." – which highlights (and admits) that "responsibility" to exercise and perform the Minister's powers and functions and duties pursuant to s 18(1)(d) **is** purportedly exercised by what the Crown calls an 'Accredited Supplier'/'Accredited Contractor'.

46.2. The submission stated in paragraph 52 "… In maintaining oversight, and **ultimately** being the decision-maker, the respondent does not delegate …" which highlights (and admits) that an 'Accredited Supplier'/'Accredited Contractor' **does** purport to act, in undertaking what the Minister calls 'day-to-day negotiations', **as "decision- maker[s]"**.

46.3. The submission stated in paragraph 52 "… the Minister or his delegate retains **ultimate** responsibility for the conduct of negotiations. …" which highlights (and admits) that "responsibility" to exercise and perform the Minister's powers and functions and duties pursuant to s 18(1)(d) **is** purportedly exercised by an 'Accredited Supplier'/'Accredited Contractor'.

46.4. The written submissions for the Minister use the term "day-to-day **negotiations**", in conjunction with various other words, throughout the submissions (a few examples include the uses in paragraphs 2, 19, 23 and 31). The use of that term highlights (and admits) that the actions taken by an 'Accredited Supplier'/'Accredited Contractor' purport to exercise and perform the Minister's powers and functions and duties pursuant to s 18(1)(d).

47. The submissions for the Minister are that the **only** actions the Minister takes to exercise and perform the Minister's powers and functions and duties pursuant to s 18(1)(d) PWA are the actions comprising the Minister's "… delegate's thorough **review acting as quality assurance** …" [Bolding added] (paragraph 52 of submissions for Minister).

48. The submissions for the Minister have not pointed, and cannot point, to **any** action which the Minister says has exercised or performed the Minister's powers and functions and duties pursuant to s 18(1)(d) PWA **other than** the "review" (paragraph 52 of submissions for Minister) by the Minister's purported delegate **of** the actions (what the Minister calls 'day-to-day negotiations') undertaken by the 'Accredited Supplier'/'Accredited Contractor'.

49. That "review" cannot, itself, constitute any **actions** which "make" any, let alone "every", endeavour in exercise and performance of the Minister's powers and functions and duties, pursuant to s 18(1)(d) PWA, which are "… shall … make every endeavour to negotiate in good faith with the owner …".

50. And the submissions for the Minister say that none of the actions by an 'Accredited Supplier'/'Accredited Contractor' constitutes, or involves, the exercise or performance of any power or function or duty pursuant to s 18(1)(d) PWA.

51. The submissions for the Minister are, therefore, that the "review" (paragraph 52 of submissions for Minister) by the Minister's purported delegate **of** the actions (what the Minister calls 'day-to-day negotiations') undertaken by the 'Accredited Supplier'/'Accredited Contractor' is a Philosopher's Stone.

52. The submissions for the Minister are that the actions by an 'Accredited Supplier'/'Accredited Contractor' are lead, in that those actions do not constitute the exercise or performance of any function or power or duty or discretion pursuant to s 18(1)(d) PWA, **but** that when the Philosopher's Stone of the "review" is applied to those 'Contractor' actions (those 'day-to-day negotiations') are transformed into gold in that those 'Contractor' actions, those 'day-to-day

negotiations', become the actions, the "negotiations", taken by the Minister in exercise and performance of the Minister's powers and functions and duties provided by the text of s 18(1)(d) PWA "… the Minister … shall, before proceeding to take the land under this Act—... make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land."

53. The submissions for the Minister highlight that the **only** actions the Minister can point to as actions which purport to exercise and perform the Minister's powers and functions and duties pursuant to s 18(1)(d) PWA **are the actions (which the Crown calls 'day-to-day negotiations') taken by what the Crown calls an 'Accredited Supplier'/'Accredited Contractor'**. That purported exercise and performance of the Minister's powers and functions and duties pursuant to s 18(1)(d) PWA by any such 'Contractor' is and has at all times been unlawful.

54. The submissions for the Minister, for all the reasons submitted by the Appellants and by counsel assisting this Court, profoundly breach the law and rule of law.

Fifth Point: The submissions for the Minister in relation to *Wellington City Council v Body Corporate 51702 (Wellington)* [2002] 3 NZLR 486 (CA) breach the law and rule of law

55. The same, one-paragraph, submission was made in the submissions for the Minister to:

    55.1. The Court of Appeal in CA87/2023 (paragraph 25 of the submissions for the Minister dated 9 July 2024).

    55.2. The Environment Court in ENV-2021-AKL-116 (paragraph 74 of the submissions for the Minister dated 17 November 2023).

    55.3. The High Court in CIV-2024-443-36 (paragraph 106 of the submissions for the Minister dated 8 July 2024).

56. That same, one-paragraph, submission is:

"The statutory duty to be fair must be exercised in good faith, acting reasonably in the public interest but with due regard to the interests of the landowner.26 The Court of Appeal in *Wellington City Council v Body Corporate 51702 (Wellington)* considered what "an obligation to negotiate in good faith" means:[27]

> *An obligation to negotiate in good faith essentially means that the parties must honestly try to reach agreement*. They remain able to pursue their own interests within what is subjectively honest, rather than what is objectively reasonable. [Emphasis added]"

57. We consider that those submissions, and the making of those submissions, profoundly breach the duties of the Minister for Land Information and the persons acting for the Minister – including for the reasons referred to in paragraphs 83-98 of the Opinion dated 21 July 2025 referred to in Footnote 28 of the Appellants' written submissions (a copy of that Opinion is at **[A38]**).

58. The Appellants consider that the preparation and the making for the Minister, in this Appeal, of the submissions in paragraphs 28 and 29 establish that the Minister, and the persons acting for the Minister, admit that they breached the law and rule of law by making their submissions to:

    58.1. The Court of Appeal in CA87/2023 (paragraph 25 of the submissions for the Minister dated 9 July 2024).

    58.2. The Environment Court in ENV-2021-AKL-116 (paragraph 74 of the submissions for the Minister dated 17 November 2023).

    58.3. The High Court in CIV-2024-443-36 (paragraph 106 of the submissions for the Minister dated 8 July 2024).

59. While the submissions for the Minister in paragraphs 28 and 29 of the written submissions for the Minister in this Appeal have been reworded: Those submissions are as profoundly wrong in law as the submissions for the Minister in CA87/2023 (paragraph 25 of the submissions for the Minister dated 9 July 2024) and ENV-2021-AKL-116 (paragraph 74 of the submissions for the Minister

dated 17 November 2023) and CIV-2024-443-36 (paragraph 106 of the submissions for the Minister dated 8 July 2024).

60. The submissions for the Minister in paragraphs 28 and 29 of the written submissions for the Minister in this Appeal profoundly breach the law and rule of law for the reasons referred to in paragraphs 83-98 of the Opinion dated 21 July 2025 referred to in Footnote 28 of the Appellants' written submissions (a copy of that Opinion is at **[A38]**).

61. The submissions for the Minister in paragraphs 28 and 29 of the written submissions for the Minister in this Appeal profoundly breach the law and rule of law for the further following reasons.

62. The submissions for the Minister in paragraphs 28 and 29 of the written submissions for the Minister in this Appeal, which submit that common or conventional contract and/or commercial and/or property law is relevant to this Appeal, are wrong for the reasons referred to by the Court of Appeal in *Attorney-General v Hull* [2000] 3 NZLR 63 (CA) at paragraph [49]:

> "Our final comment relating to s 40 concerns the various descriptions or characterisations given by Courts of the former owner's right under that provision. **We do not consider that it is useful to try to compare the position under s 40 with conventional property law concepts. It might be better simply to allow the provisions of s 40 to speak for themselves in their historical and legislative context**." [Bolding added]

63. We submit, with respect, that what the learned Court of Appeal held in paragraph [49] of *Attorney-General v Hull* [2000] 3 NZLR 63 (CA) is: That the law provided by the sections of the PWA must be determined as required by the law – including constitutional and human rights law and the Legislation Act 2019.

64. The authorities (referred to in the Appellants' written submissions) make clear that, where Government purports to use the draconian power to take a citizen's land, and above all land which is their home, by use of force: The law, at all times, imposes the duty on Government to establish, to prove, that it is lawful for

Government to use that draconian power to take that citizen's land. That duty is of the highest, the most severe, order commensurate with the reality that the matter in issue is not a matter of commercial law between parties voluntarily engaging in business but, to the extreme contrary, a matter of constitutional law of the highest order – a matter which puts centrally in issue the social contract between every citizen and their Government.

65. The matter in issue is at the opposite end of the spectrum from a matter concerning a commercial contract between parties with the freedom to choose whether or not to enter into that contract. The matter in issue is: Government asserting it can take from a citizen, against their will by use of force, the land which is that citizen's home – to take that citizen's life, to take that citizen's means to sustain themselves materially and culturally and spiritually, to take that citizen's security.

66. The submissions for the Minister (including in paragraphs 28 and 29 of the written submissions for the Minister) shine a light on the approach and attitude of the persons acting as or for the Crown. What is revealed is a Crown approach and attitude which profoundly breaches the law providing and protecting every citizen's rights to the land which is their home. What is revealed is a Crown approach and attitude which profoundly breaches the law governing the draconian power to take a citizen's land against their will by use of force. What is revealed is a Crown approach and attitude which profoundly breaches the rule of law.

Sixth Point: The submissions for the Minister in paragraphs 31 and 32 of the written submissions for the Minister have no foundation or merit in light of the facts of the actions taken on behalf of the Crown in relation to Te Rūnanga o Ngāti Tama Trust ('TRoNT') as "owner" pursuant to s 18(1)(d) of the PWA.

67. The Judgment of the Environment Court in *Director-General of Conservation and Ors v New Zealand Transport Agency and Ors* [2019] NZEnvC 203 ("*DGC v NZTA*") states:

"***Result***

…

2. In light of **the [New Zealand Transport] Agency's assurance that it will not compulsorily acquire the Ngāti Tama land**, the Court is not prepared to complete its consideration of the NOR and resource consents, absent advice from Te Rūnanga that it has agreed to the acquisition and further mitigation. [Bolding added]

…

[438] A significant part of the Agency's ability to avoid, remedy and mitigate the effects of the Project rests on compliance with the proposed conditions addressing cultural and ecological effects. At present there is a major obstacle, namely that **the Agency has not acquired the Ngāti Tama Land which is needed for the Project and the ecological enhancement. It has assured Ngāti Tama and the Court that it will not compulsorily acquire that land.** As at the date of this interim decision the land has not been acquired, and agreement on other 'key elements' referred to in Te Rūnanga's opening submissions has not been reached. [Bolding added]

…

[483] In light of **the [New Zealand Transport] Agency's assurance that it will not compulsorily acquire the Ngāti Tama land**, the Court is not prepared to complete its consideration of the NOR and resource consents absent advice from Te Rūnanga that its has agreed to the acquisition and further mitigation. [Bolding added]"

68. We say that, for all the reasons referred to in the Opinion dated 10 January 2025 (Document **[A36]**) and the Opinion dated 21 July 2025 (Document **[A38]**) referred to in paragraph 10 of our written submissions, the Crown breached the law and rule of law by, on the Crown's one hand, giving the "assurance" referred to above to TRoNT as "owner" (for s 18(1)(d) of the PWA) and by (on the Crown's other hand) not giving an equal "assurance" to us as "owner" (for s 18(1)(d) of the PWA).

69. The submissions for the Minister in paragraphs 31 and 32 of the written submissions for the Minister have no foundation or merit in light of the facts of the actions taken by and on behalf of the Crown in relation to TRoNT as "owner" pursuant to s 18(1)(d) of the PWA.

70. Those actions taken by and on behalf of the Crown in relation to TRoNT as "owner" pursuant to s 18(1)(d) of the PWA are referred to in the Opinion dated 10 January 2025 (Document **[A36]**) and the Opinion dated 21 July 2025 (Document **[A38]**) referred to in paragraph 10 of our written submissions. Those actions include but are certainly not limited to:

    70.1. The Crown's actions, in relation to TRoNT as "owner" pursuant to s 18(1)(d) of the PWA, in giving TRoNT the "assurance that it will not compulsorily acquire the Ngāti Tama land" as stated in *DGC v NZTA*.

    70.2. The Crown's various actions, in relation to TRoNT as "owner" pursuant to s 18(1)(d) of the PWA, in attempting to reach agreement with that "owner" for the purpose of acquiring, from that "owner", the land owned by TRoNT which the Crown wished to acquire for the purposes of what Crown calls the 'Mt Messenger bypass' project.

    70.3. The Crown's actions in offering to pay to TRoNT, as "owner" pursuant to s 18(1)(d) of the PWA, money and money's worth totalling more than$8,930,000 for the purpose of acquiring, from that "owner", the land owned by TRoNT which the Crown wished to acquire for the purposes of what Crown calls the 'Mt Messenger bypass' project. Those actions by the Crown include offering to pay to TRoNT as "owner" (for s 18(1)(d) of the PWA) some 120 hectares of land, worth some $1,230,000, in exchange for the 22ha (fee simple) and 15.9ha (leasehold) the Crown wished to acquire from TRoNT for the purposes of what Crown calls the 'Mt Messenger bypass' project.

71. In light of the submissions for the Minister in paragraphs 31 and 32 of the written submissions for the Minister: We say the Minister will need to explain the facts referred to above to the Court, and us the Appellants, in this Appeal.

72. The matters referred to above, concerning the Crown's actions in relation to TRoNT as "owner" (for s 18(1)(d) of the PWA), raise the question: Precisely what actions have **in fact** been taken by or on behalf of the Crown to attempt to reach

agreement, and to reach agreement, with the many different "owners" "owner" (for s 18(1)(d) of the PWA whose land the Crown has sought to acquire and/or acquired since the PWA came into force on 1 February 1982?

Seventh Point: The submissions for the Minister never state or apply the law – including (as examples only) the "Magna Carta 1297" and the words of Lord Denning MR at page 198 of *Prest v Secretary of State for Wales*

73. Our written submissions cite and refer to authorities which we submit state the law. As paragraph [1] of our written submissions state:

> "The foundational law is the constitutional and human rights law. That foundational law is stated in documents including the Magna Carta 1297, which remains at the heart of our Statute Book, and by Lord Denning MR at 198 of *Prest v Secretary of State for Wales* (1982) 81 LGR 193 as follows:[1]
>
> > "I regard it as a principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands ... If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen.""

74. The written submissions for the Minister for Land Information never use the words "Magna Carta 1297" or the words of Lord Denning MR at page 198 of *Prest v Secretary of State for Wales* or the words of the United Nations' Office of the High Commissioner for Human Rights in their publication *Land and Human Rights - Standards and Applications* or the words of the United Nations' Food and Agriculture Organisation publication *Compulsory acquisition of land and compensation.*

75. It is interesting to note that the United Nations' publication *Compulsory acquisition of land and compensation* records, under the heading "Acknowledgments", that the "Review panel" included a person named "Trevor Knowles" who we understand is the Trevor Knowles employed by Land Information New Zealand involved in the matters in issue on this Appeal.

76. The written submissions for the Minister for Land Information never *even* use the word “constitutional” or the words “human rights”.

77. In our submission the Minister for Land Information’s written submissions choose never to state any of those words (including “Magna Carta 1297” and the words stated in *Prest v Secretary of State for Wales* and the words stated in the United Nations’ instruments and other authorities) because the persons acting as and for the Crown are. desperately, trying to avoid and evade those words. In our submission that avoidance and evasion is fundamentally wrong.

78. Every person who purports to act as or for the Crown (the Executive Branch of Government) has the fundamental, underpinning and overarching and overriding, duty to uphold the rule of law.

79. Every person purporting to act as or for the Crown is, as a matter of constitutional law, acting for every citizen equally.

80. Every such person has the fundamental duty to determine the law and, then, determine if the Crown’s actions are lawful. The fundamental duty of every such person is *not* to simply *defend* the actions, the *Practices*, the Crown has taken. We submit those duties are at their highest in relation to any matter involving the draconian power to take a citizen’s land by force.

81. This Appeal shines light on the Crown’s actions and conduct, the Crown’s approach and attitude, in relation to every citizen’s rights in relation to their land and, in particular, the use of the draconian power to take by force the land which is a citizen’s home. This Appeal, including the submissions made for the Minister in this Appeal, reveal that Crown’s actions and conduct, the Crown’s approach and attitude, are in profound breach of the law and rule of law.

Eighth Point: The Ministers submissions, including in paragraphs 61-70, are that this Court should endorse the Crown’s profound breach of the rule of law and enable the Minister to do further violence to the rule of law by finding that the Minister

can take by use of force the land which is Mr Tony Pascoe's and Mrs Debbie Pascoe's home and life.

82. The Ministers submissions, including in paragraphs 61-70, ask this Court to join with and enable the Crown in doing violence to the law governing the use of the draconian power to take our land, which is our home and life, against our will by use of force.

83. We confirm all the submissions made for us and the written submissions made by counsel assisting the Court which, we submit, establish that the submissions for the Crown could not be more profoundly wrong and those submissions should never have been made.

84. The persons acting as or for Government (including the Minister for Land Information and NZTA) have, over time, made a great many allegations that our proceedings, our exercising of our fundamental constitutional and human rights, have caused delay to those persons in undertaking the work they appear to call the 'Mt Messenger Project'.

85. There is and has never been any foundation for or merit in those allegations and it is profoundly wrong of the persons acting as or for Government to have made those allegations both in documents filed in the courts and through the media.

86. The plain truth is that the persons acting as or for Government (including the New Zealand Transport Agency) unlawfully decided to proceed to undertake works, to expend scarce public resources, on what they call the 'Mt Messenger Project' before those persons had lawfully acquired the land they say they wish to acquire from us for the purpose of that 'Project'.

87. Those actions are profoundly wrong including in that those actions demonstrate and epitomise those persons' disregard, their contempt, for our fundamental constitutional and human rights to the land which is our home including our fundamental rights to ask the Independent Judiciary to uphold our rights as human beings, citizens, farmers and parents, against what we say is the

profoundly unlawful purported exercise by those persons (purporting to act as or for Government) in purporting to exercise the draconian power to take from us by force the land which is our home.

88. Those actions are profoundly wrong including in that those actions demonstrate and epitomise those persons' disregard, their contempt, for the rule of law including those persons' disregard, their contempt, for the administration of justice in our country.

89. The law, including constitutional and human rights law, required the persons acting as or for Government to respect and uphold the rule of law by waiting until all court proceedings, including appeals, had been finally determined in accordance with the law before those persons initiated the expenditure of scarce resources, belonging to all citizens equally, by beginning work on what they call the 'Mt Messenger Project'. The purported 'work' is not to stop the meltdown of a nuclear reactor but, to the extreme contrary, to purportedly improve a road.

90. As a matter of law Government could only lawfully proceed to exercise the draconian power to take the land which is our home **if** the Independent Judiciary determines (including in final determination of all appeals), in accordance with the law, that taking is lawful. If it is correct, as Government asserts, that Government "requires" our land to be able to undertake what they appear to call the 'Mt Messenger Project' then it has at all times been a matter of law and fact that Government may never be able in law or fact to complete that 'Project'. It necessarily follows that any and all expenditure of scarce public resources which the persons acting as or for Government have seen fit to incur, in relation to that 'Project', have been unlawfully expended through the fault of no-one other than the persons acting as or for Government.

91. The submissions for the Minister state in paragraph 4:

> "In the event the Court considers the question of relief the respondent asks it to refuse relief. The invalidation of the s 23 Notice is not in the public interest as it would

have the effect of adding substantially to an already significant delay in the construction of **necessary** public infrastructure."[Bolding added]

92. The submissions for the Minister in paragraph 70, including the submissions "The invalidation of the s 23 Notice is not in the public interest. It would cause prejudice to the respondent and NZTA by way of substantial delay to the completion of **necessary** public infrastructure. ... "[Bolding added] are also referred to.

93. The submissions for the Minister lack any foundation or merit for reasons including those stated in the Opinion dated 10 January 2025 (Document **[A36]**) and the Opinion dated 21 July 2025 (Document **[A38]**) referred to in paragraph 10 of our written submissions including as follows:

> ..."The Crown's actions have fundamentally breached the law protecting Mr and Mrs Pascoe's rights to their land and life and security. Those actions by the Crown therefore fundamentally breached the law …
>
> … for the public good. No lawful justification has, therefore, ever existed for the Crown's actions in asserting it can and will use the draconian power to take Mr and Mrs Pascoe's land, their home, by force."

94. For the reasons referred to in our submissions: There is no foundation for or merit in the Minister's submissions that the Minister (or any other person) has at any relevant time "**needed**", or that it has ever been "**necessary**", to construct what the Minister's submissions refer to, including in paragraphs 4 and 70, as "public infrastructure".

95. The Crown's action, in giving the "assurance that it will not compulsorily acquire the Ngāti Tama land" to TRoNT as "owner" for s 18(1)(d) of the PWA (referred to elsewhere in our submissions), is a public declaration that the Crown, including the Minister for Land Information, has never **needed**, that it has never been "**necessary**" for the Crown (including the Minister for Land Information), to undertake the specific road improvement action for the public good – because the giving of that "assurance" meant the Crown could not have undertaken that

road improvement action if TRoNT had refused to sell the land the Crown wished to acquire from TRoNT.

96. The Crown's actions, in giving the "assurance that it will not compulsorily acquire the Ngāti Tama land" referred to above, establish (as a matter of objective fact and law) the Crown, including the Minister for Land Information, has never **needed**, that it has never been "**necessary**" for the Crown, to undertake the specific road improvement action for the public good. No lawful justification has, therefore, ever existed for the Crown's, including the Minister for Land Information's, actions in asserting it can and will use the draconian power to take Mr Tony Pascoe's and Mrs Debbie Pascoe's land, their home and life, from them against their will by use of force.

Dated this 14th day of October 2025

Signature:

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Tony James Sofus Pascoe

_____

Debbie Ann Pascoe

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