

BEFORE THE FAST-TRACK EXPERT CONSENTING PANEL

UNDER THE

Fast-Track Approvals Act 2024

AND

IN THE MATTER OF

An application under section 42 for approval to
Sunfield, a project listed in Schedule 2 to the Act

BY

Winton Land Limited

Appellant

**MEMORANDUM OF COUNSEL FOR THE APPLICANT
WITH RESPONSE TO COMMENTS**

15 OCTOBER 2025

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 This memorandum has been prepared to address legal issues arising in the comments received by the EPA under sections 53 and 54 of the Act.
- 1.2 It addresses the following:
- (a) Amendments made to the application to align with the Mill Road Notice of Requirement, and that it is within scope to do so;
 - (b) The request by NZTA to assess the transport effects as if the proposed transport outcomes will not be achieved;
 - (c) Watercare's concerns with "out of sequence" development;
 - (d) Watercare's capacity concerns;
 - (e) Auckland Council's request for a cost-benefit analysis;
 - (f) Decision-making under the Act.

2. AMENDED PROPOSAL

- 2.1 The Notice of Requirement for the Mill Road – Takaanini section of the Mill Road Project (**Mill Road NoR**) was issued on 13 June 2025.¹ NZTA has advised that it will not provide approval to Sunfield under s176/178 of the RMA "in its current form" as Sunfield is "conflicting with the NoR and would prevent or hinder the Mill Road Project."²
- 2.2 In *Aokautere Land Holdings Ltd v Palmerston North City Council*³ the Environment Court held that the existence of an NoR and the extent of potential conflict with a consent proposal is a relevant "other matter" under s104(1)(c) that must be taken into account when deciding whether to grant consent. The Court went so far as to suggest it would be "irresponsible" of a consent authority to grant consent to an activity clearly in conflict with the NoR, and that it is likely to be a "decisive factor" leading to a decline of consent if anything for which consent is sought would prevent or hinder the NoR project. The Court did, however, leave

¹ NZTA Comments, para 2.3 and 5.1.

² NZTA Comments, para 5.6.

³ [2021] NZEnvC 122

open the possibility for an applicant to offer an *Augier* (an otherwise unlawful but proffered) condition or a lawful condition precedent that only allows the project to proceed if the NOR is withdrawn.

- 2.3 Dismissing the appeal to the High Court,⁴ Simon France J considered that “the extent to which [an NoR] influences matters will no doubt be influenced by the extent to which there is incompatibility” and that it was counterintuitive to suggest it be ignored.
- 2.4 Given the above, the Applicant has constructively engaged and collaborated with NZTA on an amended proposal that integrates the relevant part of the Mill Road NoR into the Sunfield masterplan.
- 2.5 The amended proposal is explained in section 3.2 of the Section 55 Planning Report prepared by Tattico. The changes to the potential effects of the Sunfield development are assessed in section 3.3. Section 3.4 confirms that the amended proposal does not trigger any new reasons for consent nor result in any material additional exceedances from the changes.
- 2.6 The amended proposal is a permissible alteration on the basis that:
 - (a) It is not a materially different proposal, nor is it a case of “mutating’ into something that was quite different”⁵ or becoming “in substance a different application”;⁶
 - (b) The revisions are proposed to remove the conflict with the Mill Road NoR and address the request from NZTA;
 - (c) There are no additional or different adverse effects arising from the revisions. All adverse effects are already squarely before the Panel, and addressed in either the application material or the response to comments;
 - (d) No person is prejudiced by allowing the revised application to proceed:
 - (i) It is reasonable to infer that invited persons interested in the effects of Sunfield have already chosen to participate;

⁴ *Aokautere Land Holdings Ltd v Palmerston North City Council* [2022] NZHC 453.

⁵ The submission made at *Estate Homes*, [25].

⁶ *Estate Homes*, [29]

- (ii) There is no class of persons likely to be adversely affected beyond those already invited to comment.
 - (e) Allowing it would be consistent with the earlier decisions of the Courts,⁷ including the leading case of the Supreme Court in *Waitakere City Council v Estate Homes Limited*.⁸
- 2.7 On behalf of the Applicant, we confirm the proposal is now that reflected in the plans provided in Attachments C, E and F to the Section 55 Planning Report.
- 3. EFFECTS OF THE ACTIVITY**
- 3.1 NZTA has requested an assessment of the transport effects “should the stated outcomes relied upon in the proposal not be achieved.”⁹ No concern is expressed with the effects in the event those outcomes do “materialise”¹⁰ or “eventuate”.¹¹
- 3.2 As recorded in the Applicant’s response to Minute 3, the measures proposed to support a car-less outcome for the Sunfield development include:
- (a) Design led restrictive pavements – Pavement surfaces will be designed to avoid facilitating car parking spaces within the residential areas.
 - (b) Road marking and signage – no stopping marking and signage will be implemented in areas of no parking.
 - (c) Residents’ Society – there will be an overarching residents’ society that will have the power to enforce parking restrictions and remove parked vehicles from restricted areas.
 - (d) Incorporated Societies – each COAL will have an Incorporated Society attached that will have the power to enforce parking restrictions and remove parked vehicles from restricted areas.

⁷ *Sutton v Moule* (1992) 2 NZRMA 41 (CA); *Haslam v Selwyn District Council* (1993) 2 NZRMA 628 (PT); *Zakara Investments Ltd v Rodney District Council* A118/04; *Coull & Ors v Christchurch City Council* C077/06.

⁸ [2007] 2 NZLR 149 (SC).

⁹ NZTA Comments, para 6.4(b), see also 6.5 and 6.6.

¹⁰ NZTA Comments, para 6.4(i).

¹¹ NZTA Comments, para 6.4(j).

- (e) Alternative mode support – alternative modes of transport will be provided or supported:
 - (i) There is a loop road within the centre of the development that supports a dedicated bus lane and facilitates links to the local transport hubs in Papakura and Takanini.
 - (ii) There are local hubs that provide ride share pick up and drop off locations along with charging and storage stations for micro mobility and cycling modes.

3.3 The above is achieved by proposed conditions 110 – 114 and as illustrated on the updated Neighbourhood Movement Plans (Attachment C5 to the Section 55 Planning Report).

3.4 This is the basis on which the transport and traffic effects of Sunfield have been addressed. There is no legal basis or justification for doing otherwise, as requested by NZTA. It is well-settled law that:¹²

...a consent authority, when it imposes conditions, is entitled to assume that the applicant and its successors will act legally and adhere to rules and conditions: see *Barry v Auckland City Corporation* [1975] 2 NZLR 646 (CA) at p 651. That is obvious. Nothing could ever be approved if consent authorities had to work on the contrary assumption, namely that its rules and conditions would not be observed.

4. OUT OF SEQUENCE DEVELOPMENT

4.1 At the heart of Watercare's comments is its belief that:¹³

Watercare plans for and supports areas of urban growth identified by the Council, which **excludes rural zoned land**, in accordance with **our obligations**.

As an infrastructure provider, Watercare needs to plan for future development. It is **necessary** that the development of future urban areas **aligns with the sequencing and timing** of Auckland Council's long-term planning documents.

¹²

88 The Strand Ltd v Auckland City Council [2002] NZRMA 475 (HC) at [19].

¹³

Watercare comments, para 21.

(emphasis added)

- 4.2 Even more so than the Covid-19 Recovery (Fasttrack Consenting Act) 2020, this Act “contemplates bringing forward in time planned projects.”¹⁴ Here the objective of facilitating the delivery of listed projects is at the forefront of decision-making, elevated above RMA considerations.¹⁵
- 4.3 *Glenpanel* provides Court of Appeal authority for the proposition that the intent behind fast-track legislation is in part to bring forward development. It is, with respect, irrelevant that it is “out of sequence” with the FDS. Parliament decided to include Sunfield in Schedule 2 of the Act as a listed project. That is a clear indication it should be delivered now, unless a matter that weighs against granting consent¹⁶ is “sufficiently significant to be out of proportion to the project’s regional or national benefits” even after taking into account:¹⁷
- (a) any conditions that the panel may set in relation to those adverse impacts; and
 - (b) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- 4.4 The Panel may not form the view an adverse impact is “sufficiently significant to be out of proportion to the project’s regional or national benefits” solely on the basis it “is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider”.¹⁸
- 4.5 The Auckland Future Development Strategy 2023 – 2053 (**FDS**) was prepared in response to the requirement in the National Policy Statement on Urban Development 2020,¹⁹ using the special consultative procedure in section 83 of the LGA 2002.²⁰ It is to be reviewed and updated every 3 years.²¹ The Council:²²

14 An observation by the Court of Appeal in *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154 (“Glenpanel”) at [43] by reference to the Covid-19 Recovery (Fasttrack Consenting Act) 2020

15 FTAA, Schedule 5, clause 17(1).

16 Definition of “adverse impact” in FTAA, s85(5).

17 FTAA, s85(3).

18 FTAA, s85(4).

19 NPSUD2020, Subpart 4.

20 NPSUD2020, clause 3.15(1).

21 NPSUD2020, clause 3.16(1).

22 NPSUD2020, clause 3.17.

- (a) Must have regard to the FDS “when preparing or changing RMA planning documents”; and
- (b) Is “strongly encouraged to use the relevant FDS to inform”:
 - (i) long-term plans, and particularly infrastructure strategies; and
 - (ii) regional land transport plans prepared by a local authority under Part 2 of the Land Transport Management Act 2003; and
 - (iii) any other relevant strategies and plans.

4.6 “RMA planning documents” is defined to mean all or any of the following:

- (a) a regional policy statement
- (b) a regional plan
- (c) a district plan

4.7 The consequence of the above is that:

- (a) There is **no** requirement in the RMA to have regard to the FDS when considering resource consent applications.
- (b) There is **no** requirement in the NPS:UD to have regard to the FDS when considering resource consent applications.
- (c) The Panel may, however, choose to have regard to the current FDS as a “relevant other matter” under s104(1)(c);²³
- (d) If it exercises its discretion to do so, even if Sunfield was considered contrary to the FDS (which the Applicant says it is not), the Act is clear that would not enable a decline of consent:
 - (i) A finding of being contrary to the FDS may weigh against a grant of consent and therefore amount to an “adverse impact”;

- (ii) However, being inconsistent with or contrary to a provision of “any other document that a panel **must** take into account or otherwise consider”²⁴ does not enable a decline of consent;
- (iii) Here, the FDS is simply a document that **may** be taken into account.
- (iv) It would be contrary to the scheme of the Act to find the adverse impact capable of being sufficiently significant, when such a finding is not available for mandatory documents. In other words, if a finding that a project is contrary to the Unitary Plan (a mandatory requirement) cannot justify a decline of consent, it cannot be the case that a finding a project is contrary to another non-RMA document that may be relevant can lead to a decline.
- (e) At its next review, the FDS can easily be updated to reflect all consents issued under the Act. It is a living document.

5. CAPACITY CONCERNS

5.1 In its comments, Watercare claimed that:

- (a) Wastewater:
 - (i) Upgrades will be required to the transmission infrastructure to service the Future Urban Zoned land.
 - (ii) Upgrades will be required to the Takanini branch sewer and the Southern Interceptor sewer.
 - (iii) There is a constraint on wastewater treatment capacity at the Mangere Wastewater Treatment Plant.
 - (iv) The rural zoned land will not be able to be provided with connection.

- (b) Water supply:
 - (i) Both the Airfield Road and Porchester Road Bulk Supply Points are at full capacity.
 - (ii) There are limitations in accessing transmission main capacity.

5.2 After endeavouring to obtain information on the above from Watercare directly,²⁵ on 17 September the Applicant requested the Panel utilise its power under sections 67(1) and 67(3) to direct the EPA to request the necessary further information by 26 September. The requested direction was made in Minute 7.

5.3 Minute 8 subsequently directed each person who authored a technical report submitted as part of a response to an invitation to make comments to submit a signed written statement confirming compliance with the Code of Conduct.

5.4 The further information was not provided. Instead:

- (a) The Council response to Minute 8 advised:²⁶

Watercare's comments and information were provided in its capacity as the statutory water and wastewater service provider and asset owner, and represent corporate/asset-owner comments. The provision of such comments – and the underlying assessment of matters such as network capacity, connection feasibility, and infrastructure sequencing – necessarily reflects a blend of professional judgment by various Watercare staff members with specialist or professional expertise, alongside corporate knowledge of Watercare's assets, statutory obligations, and planning framework.

²⁵

Recorded in paragraph 1.4 of the Applicant's Memorandum dated 17 September 2025.

²⁶

See paragraph 6 of Mr Butcher's memorandum

- (b) The authors of the Watercare comments confirmed they represented corporate / asset owner comments²⁷ and that “appropriate experts” would be identified and put forward in the event expert conferencing were to occur.²⁸
- (c) The Brookfields’ memorandum of 26 September proposed a cost of \$48.4K+GST and a 6-week timeframe to undertake the necessary assessments.

5.5 Given the earliest the requested information could be available was 10 November, and the latest the Applicant could resume processing of the application was the earlier date of 17 October, the Applicant did not agree to incur the additional cost.

5.6 Instead:

- (a) A detailed Water Supply and Wastewater Response Memorandum has been prepared, attached to the Section 55 Planning Report as Attachment R; and
- (b) Conditions 117, 120, 162, 167 - 169, 175 and 205 have been proposed to address the issue.

5.7 As correctly noted by Brookfields,²⁹ a resource consent decision cannot, through conditions or otherwise, compel Watercare to provide new connections, commit funding for infrastructure, or accept the vesting of assets. A claimed lack of capacity therefore constitutes a developer’s risk with proceeding; it is **not** an effect on the environment **nor** a consenting issue.

5.8 The concern raised has been addressed to the extent reasonably possible in this process, but at the end of the day the ability to connect to the public system is a matter to be resolved between the Applicant and Watercare in the event the resource consent is granted.

²⁷ See paragraph 3(a) of Watercare’s statement attached to Mr Butcher’s memorandum.

²⁸ See paragraph 3(e) of the above.

²⁹ Memorandum of 22 September, para 6(d).

6. THE REQUEST FOR A COST BENEFIT ANALYSIS

6.1 Sunfield is listed in Schedule 2 of the Act.

6.2 As a necessary precursor to its listing, the Ministry for the Environment (MfE) undertook an initial assessment of whether it would have significant regional or national benefits.³⁰ The MfE analysis answered positively in relation to the following statements:³¹

- (a) The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment:³²

Yes – the applicant considers there can be no doubt that Sunfield will increase the supply of housing, address Auckland housing needs, and contribute to a well-functioning urban environment.

- (b) The project will deliver significant economic benefits:³³

Yes – the total economic impact on business activity within Auckland as a result of the Sunfield development to 2044 is estimated to be around \$4.7 billion. In terms of employment multipliers this would contribute around 8,130 full time equivalents during the peak development and operation year within Auckland, with a total number of full-time equivalents at around 24,700 over the development period.

- (c) The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:³⁴

Yes – the Sunfield concept masterplan providing a clear framework that will enable a dramatic reduction in car dependence which will promote healthier transport options.

³⁰ Available at: <https://environment.govt.nz/acts-and-regulations/acts/fast-track-approvals/fast-track-projects/sunfield/>

³¹ Which are now reflected in s22(2) of the Act for consideration when assessing a referral application.

³² Now s22(a)(iii).

³³ Now s22(a)(iv)

³⁴ Now s22(a)(vii)

- (d) The project will support adaptation, resilience, and recovery from natural hazards.³⁵

Yes – the primary risk and only known natural hazard relating to the Property is the matter of the flood plain which affects the Property. A comprehensive and significant engineering solution has been developed to manage the stormwater that affects the Property.

- (e) The project will address significant environmental issues:³⁶

Yes – the applicant states the Sunfield development will move away from a reliance on private motor vehicles toward a future thinking people centric collection of liveable neighbourhoods. This approach has unlocked a number of doors that will lead to healthier and more sustainable outcomes now and the future. Meeting the needs of communities requires that Sunfield considers all aspects of life and integrates housing, employment opportunities, amenity and open space as we look to our neighbourhoods to become more self-sufficient and provide for higher standards of living in compact ways. Sunfield will provide a sustainable and environmentally friendly 15 minute sustainable neighbourhood, not seen before in New Zealand.

6.3 It is important to note that:

- (a) Delivering “significant economic benefits” is just one way³⁷ in which a project may have “significant regional or national benefits”³⁸.
- (b) Increasing the supply of housing, addressing housing needs, or contributing to a well-functioning urban environment is another.³⁹
- (c) Sunfield is not being advanced solely on its “economic benefits”.

³⁵ Now s22(a)(viii)

³⁶ Now s22(a)(ix)

³⁷ See s22(2) for list of potential benefits in (a) and the ability for the Minister to consider any other matter s/he considers relevant in (b). This factor is in (iv).

³⁸ Section 22(1).

³⁹ Section 22(2)(a)(iii).

- 6.4 Given the above, there is no justification for the Council's request that a cost benefit analysis (**CBA**) be undertaken.
- 6.5 The scheme of the Act is clear:
- (a) The purpose of the Act is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits."⁴⁰
 - (b) All listed projects in Schedule 2 have been subjected to an initial assessment of benefits.
 - (c) The Panel must now decide whether to grant or decline approval to Sunfield.⁴¹ In doing so:
 - (i) It must⁴² "give the greatest weight" to the purpose of the Act.⁴³
 - (ii) When taking the purpose of the Act into account, it must "consider the extent of the project's regional or national benefits."⁴⁴
 - (iii) In the event any adverse impacts⁴⁵ are "sufficiently significant to be out of proportion to the project's regional or national benefits" the Panel has a discretion to decline approval.⁴⁶
- 6.6 This means that the Panel must:
- (a) Consider the extent of Sunfield's benefits when giving the greatest weight to the Act's purpose in its evaluation;
 - (b) In the event any matter "weighs against granting the approval",⁴⁷ consider whether that matter is sufficiently significant to be out of proportion to those benefits and, if so, consider whether⁴⁸ the approval should be declined.

40 Section 3.

41 Section 81(1).

42 Section 81(2)(b).

43 Schedule 5, clause 17

44 Section 81(4).

45 Defined in s85(5) as "any matter considered by the panel in complying with [clauses 17 – 22 of Schedule 5] that weighs against granting the approval."

46 Section 85(3)

47 Section 85(5).

48 Section 85(3) provides a discretion.

- 6.7 This does not require a CBA, nor a finding that a project will have significant economic benefits on either a regional or national scale. The Act is to facilitate the delivery of development projects occurring at sufficient scale to be noticeably increasing the supply of housing. Where, as at Sunfield, the development is also addressing natural hazards and the master-planned community is providing housing in a way that is designed to reduce greenhouse gas emissions the positive economic effects are a bonus, not a requirement.

7. DECISION-MAKING UNDER THE ACT

- 7.1 The approval sought by the Applicant is for resource consents that would otherwise have been applied for under the Resource Management Act 1991 (**RMA**).⁴⁹

- 7.2 In deciding whether to grant or decline the approval the Panel:⁵⁰

- (a) Must apply clauses 17 and 18 of Schedule 5 of the Act.⁵¹ That requires the Panel to take into account:⁵²
 - (i) The purpose of the Act (in the manner set out above); and
 - (ii) Section 104 of the RMA⁵³ (without having regard to section 8 in any consideration of Part 2⁵⁴).
- (b) May take the Otūwairoa Stream statutory acknowledgement in the Ngāti Tamaoho Claims Settlement Act 2018 into account⁵⁵ in order to comply with section 82.⁵⁶
- (c) Must “not set a condition that is more onerous than necessary to address the reason for which it is set” to comply with section 83.

49 Section 42(4)(a),

50 Section 81(2)

51 Section 81(2)(b) and (3)(a).

52 Clause 17(1).

53 Included in Part 6 of the RMA.

54 Clause 17(2)(a).

55 Ngāti Tamaoho Claims Settlement Act 2018, s36(1)

56 Which requires the Panel to give it : “the same or equivalent effect through the panel’s decision making as it would have under [the RMA]”.

- (d) May decline the approval only in accordance with section 85:
- (3) *A panel may decline an approval if, in complying with section 81(2) the panel forms the view that -*
 - (a) *there are 1 or more adverse impacts in relation to the approval sought; and*
 - (b) *those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—*
 - (i) *any conditions that the panel may set in relation to those adverse impacts; and*
 - (ii) *any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.*
 - (4) *To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).*
 - (5) *In subsections (3) and (4), **adverse impact** means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.*

7.3 For Sunfield this is relatively straightforward:

- (a) In its s104 RMA consideration, the Panel must have regard to:
 - (i) the actual and potential effects on the environment of allowing the activity, which are described in detail in Section 7 of the Planning Report with further analysis provided in the Section 55 Planning Report.
 - (ii) the provisions of the relevant planning instruments, as identified and assessed in Sections 8 and 9 of the Planning Report:

- (aa) National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011;⁵⁷
- (bb) National Environmental Standards for Freshwater 2020;⁵⁸
- (cc) National Policy Statement on Urban Development 2020;⁵⁹
- (dd) National Policy Statement on Freshwater Management 2020;⁶⁰
- (ee) National Policy Statement for Highly Productive Land;⁶¹
- (ff) National Policy Statement on Indigenous Biodiversity 2023;⁶²
- (gg) Auckland Unitary Plan;⁶³
- (iii) other relevant matters, as identified and assessed in Sections 9.1 and 9.2 of the Planning Report:
 - (aa) The Auckland Plan;⁶⁴
 - (bb) The Future Development Strategy (2023);⁶⁵
- (b) As no matter above “weighs against granting the approval”, there are **no** “adverse impacts”.
- (c) As a consequence there is:
 - (i) no need for this Panel to turn its mind to whether any matter is sufficiently significant to be out of proportion to the benefits of Sunfield;

57 Planning Report, section 8.7.

58 Planning Report, section 8.3.

59 Planning Report, section 8.1.

60 Planning Report, section 8.2.

61 Planning Report, section 8.5.

62 Planning Report, section 8.4.

63 Planning Report, section 9.3 for RPS provisions and section 9.4 for remainder of provisions.

64 Planning Report, section 9.1.

65 Planning Report, section 9.2.

- (ii) no discretion to decline the approval.
- (d) The delivery of the project can be facilitated by a grant of consent on the conditions attached to the Section 55 Planning Report, thereby achieving the purpose of the Act.

8. CONCLUSION

- 8.1 In conclusion, we submit that Sunfield is worthy of a grant of consent on the proffered conditions.

DATED 15 October 2025



B S Carruthers KC / W Goldsmith

Counsel for Winton Land Ltd