

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

2 DECEMBER 2025

Counsel instructed:

B S Carruthers KC
Shortland Chambers

P [REDACTED]
E [REDACTED]

W Goldsmith
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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 This memorandum is filed in response to:

- (a) The joint witness statements arising from expert conferencing to the extent they have resulted in proposed amendments to conditions;
- (b) The further information from Te Ākitai Waiohū Settlement Trust on 17 November in response to Minute 15;
- (c) The economics peer review provided by Dr William Cheung on 20 November;
- (d) The technical acoustic memorandum provided by Ardmore Airport Limited on 26 November in response to Minute 16;
- (e) The memorandum of counsel for Auckland Council provided on 26 November regarding the Applicant's ecology response to Minute 13;
- (f) The "joint statement" on infrastructure funding and financing dated 28 November.

1.2 This memorandum and its attachments were prepared in advance of receipt of Minute 17 earlier today but nonetheless address the Panel's directions / invitations in:

- (a) Paragraph 11 to file an updated version of conditions by 5 December;
- (b) Paragraph 17 to respond (if the Applicant chooses to do so) to the ecology issue raised by Auckland Council by 9 December; and
- (c) Paragraph 21 to respond (if the Applicant chooses to do so) to respond to the Te Ākitai Waiohū Settlement Trust letter by 9 December.

2. CONDITIONS

- 2.1 The Applicant has prepared a revised set of proposed conditions to address matters arising at expert conferencing. Both word and PDF versions are attached as “A”.

3. ENGAGEMENT WITH MANA WHENUA

- 3.1 The Applicant’s cultural advisor has prepared a brief response to the further information from Te Ākitai Waiohū Settlement Trust. This is attached as “B”.

4. ECONOMICS PEER REVIEW

- 4.1 The memorandum of counsel submitted with the response to comments on 15 October addressed, among other topics, both Auckland Council’s request for a cost-benefit analysis and the approach to decision-making under the Act.
- 4.2 Regrettably, it appears that Dr Cheung was not provided that memorandum before he prepared his peer-review nor (it would seem) any explanation as to the scheme of the Act and its requirements.
- 4.3 It is clear that Dr Cheung has fundamentally misunderstood the situation. In particular:
- (a) He understands the scheme of the Act requires “a higher evidentiary threshold”¹ or “exceptional scrutiny”² and that projects must be “exceptional enough to warrant fast-tracking and preferential status over others progressing through integrated planning channels.”³ There is no basis to those opinions.
 - (b) He suggests it is net benefits “created by *using the fast-track pathway* versus progressing through the standard [RMA] processes” that are relevant,⁴ and that only benefits “reliably attributed to the *fast-track process*” are relevant.⁵ Again, there is no basis to those opinions.

¹ See para 16.

² See para 49.

³ See para 38.

⁴ See para 27.

⁵ See para 28.

- (c) He argues that a cost benefit analysis is required in order to determine “whether adverse effects [sic] are “sufficiently significant to be out of proportion to the project’s regional or national benefits””.⁶ He supports the use of a CBA to enable the benefits and adverse impacts to be weighed.⁷ That is neither the scheme of the Act nor the role of an economist in the decision-making process.

4.4 As set out in the 15 October memorandum of counsel:

- (a) The purpose of the Act is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”⁸
- (b) All listed projects in Schedule 2 have been subjected to an initial assessment of benefits. (As an aside, the Amendment Bill proposes to clarify that all listed projects indeed **have** significant regional or national benefits).
- (c) In deciding whether to grant or decline approval⁹ to Sunfield:
- (i) The Panel must¹⁰ “give the greatest weight” to the purpose of the Act.¹¹
- (ii) When taking the purpose of the Act into account, the Panel must “consider the extent of the project’s regional or national benefits.”¹² As set out in paragraph 6.3 of the 15 October memorandum:
- (aa) Delivering “significant economic benefits” is just one way¹³ in which a project may have “significant regional or national benefits”¹⁴.

6 See para 12.

7 See para 14, 16.

8 Section 3.

9 Section 81(1).

10 Section 81(2)(b).

11 Schedule 5, clause 17

12 Section 81(4).

13 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).

14 Section 22(1).

- (bb) Increasing the supply of housing, addressing housing needs, or contributing to a well-functioning urban environment is another.¹⁵
- (cc) Sunfield is not being advanced solely on its “economic benefits”.
- (iii) In its s104 RMA consideration, the Panel must have regard to:
 - (aa) 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.
 - (bb) the provisions of the relevant planning instruments, as identified and assessed in Sections 8 and 9 of the Planning Report and set out in paragraph 7.3(ii) of the 15 October memorandum:
 - (cc) other relevant matters, as identified and assessed in Sections 9.1 and 9.2 of the Planning Report and set out in paragraph 7.3(iii) of the 15 October memorandum:
- (d) The Panel must decide whether any of the above matters “weighs against granting the approval”.¹⁶
- (e) If there are no such matters, there are **no** “adverse impacts” and **no** weighing of benefits against adverse impacts is required.
- (f) If the only such matter is the fact that the project is either inconsistent with or contrary to a “document that a panel must take into account or otherwise consider”,¹⁷ there are similarly **no** “adverse impacts” and **no** weighing of benefits against adverse impacts is required.

¹⁵ Section 22(2)(a)(iii).

¹⁶ Section 85(5).

¹⁷ Section 85(4).

- (g) Otherwise, the Panel must consider whether any adverse impacts¹⁸ are “sufficiently significant to be out of proportion to the project’s regional or national benefits”. If they are, the Panel has a discretion to decline approval but is not required to do so.¹⁹
- (h) There is no foundation for Dr Cheung’s assertion that the Panel’s task under (g) above requires a cost-benefit analysis.

4.5 The Property Economics analysis undertaken for the Applicant appropriately:

- (a) Assesses the economic effects of the Project, to assist the Panel with its consideration under s104(1)(a); and
- (b) Assesses the economic benefits of the Project, to assist the Panel with its consideration of the purpose of the Act.

4.6 Respectfully, given his complete misunderstanding of decision-making under the Act, the peer review undertaken by Dr Cheung is of no assistance to the Panel at all. In the event it is considered, Property Economics have prepared the brief response that is attached as “C”.

5. TECHNICAL MEMORANDUM ON ACOUSTIC DIFFERENCES

5.1 The Applicant’s independent acoustic expert has prepared a concise response to the technical memorandum submitted by Ardmore Airport Limited. This is attached as “D”.

6. REQUEST FOR FURTHER INFORMATION REGARDING ECOLOGICAL ASSESSMENT

6.1 By memorandum of counsel dated 26 November 2025 the Council sought leave to present a “brief technical review” of the Applicant’s explanation of its SEV and ECR methodology that “identifies outstanding matters”. This was purportedly done “in the interests of efficiency”.

6.2 With respect, it would have been more efficient for the Council to raise the outstanding matters and request the further information from the Applicant direct.

¹⁸ 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.”

¹⁹ Section 85(3)

- 6.3 The Applicant has now provided the Council with the SEV excel calculator. The other “outstanding matters” have been addressed by the Applicant’s independent ecologist in the memorandum attached as “E”.

7. INFRASTRUCTURE FUNDING AND FINANCING

- 7.1 The Applicant raised concerns with the Council as to the efficiency and usefulness of the Council’s suggested approach to the preparation of the “joint statement” on infrastructure funding and financing. Unfortunately those concerns have been realised.
- 7.2 As noted in section 7 – *‘the parties did not have an opportunity to review or comment on Part B or C, as these were separately prepared and collated’*. Notwithstanding the Council’s intended approach, the Applicant completed and provided its proposed Part B ahead of time with a suggestion:

... Part C simply [identify] any areas of disagreement with the attached Part B.

Please note that Part B is a well-advanced draft but may change
..... Winton is also happy to receive any comment or questions on it, if that reduces the extent of disagreement to be recorded in Part C.

- 7.3 The Applicant is disappointed with the approach taken by Council in Part C. To assist the Panel and its understanding, Mr Ash has prepared the brief clarification response attached as “F”. Given the clarity provided at the meeting and recorded in Part B of the “joint statement”, the Applicant requests the Panel pay no regard to Part C as currently drafted.

DATED 2 December 2025



B S Carruthers KC / W Goldsmith

Counsel for Winton Land Ltd