

Before the Fast-track Expert Consenting Panel

UNDER Fast-track Approvals Act 2024 ("Act")

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

BY Winton Land Limited

Legal submissions of counsel for 897 Alpha Limited in relation to scope

Dated: 3 March 2026

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MAY IT PLEASE THE PANEL

Introduction

1. These legal submissions are filed by counsel for 897 Alpha Limited (**897 Alpha**), in response to Minute 26 of the Panel dated 20 February 2026 (**Minute 26**). In Minute 26 the Panel raised scope concerns with the Applicant's last-minute change seeking to delete traffic conditions 112A and 112B (**Traffic Conditions**). The Panel noted that those ratios were recommended in the original Integrated Traffic Assessment dated February 2025 (**ITA**) that formed part of the Sunfield Project Fast-track application (**Application**) and the draft conditions filed with the application as lodged.
2. Minute 26 directed parties to file legal submissions in response to the Applicant's legal submissions on this topic within two working days, being 3 March 2026.
3. 897 Alpha disagrees that deletion of the Traffic Conditions is within scope of the Application and is concerned at the adverse effects that deletion of the Traffic Conditions would have on the area surrounding the application site.

RMA legal framework

4. The orthodox position under the Resource Management Act 1991 (**RMA**) is that the scope of the activity authorised by a resource consent is defined by the application. Details of the proposal (including limitations and conditions proposed) in the supporting material and evidence submitted with the application form part of the application. Any such limitations and conditions are incorporated into the application as a matter of law and set the outer bounds of the scope of the activity to be authorised by the consent.
5. Subsequent amendments to the proposal and proposed conditions can only reduce the scope of the project and its effects, but cannot be used to enlarge the scope of the Project or increase the nature, scale or magnitude of effects on the environment. The public policy reason for this approach is that enabling an applicant to expand the scope of the effects of its proposal may mean that persons who may have had a concern with such increased effects would not have an ability to raise those concerns, undermining the public participatory nature of the Resource Management Act 1991 and giving rise to natural justice concerns.

6. In *Atkins v Napier City Council*¹ counsel for the applicants submitted that the correct legal test for whether an application would need to be withdrawn and re-notified is whether there are potential submitters who might have been concerned about aspects of the application but who were not alerted to the full scale of the application by virtue of the omissions in the assessment of environmental effects and/or the applications. The Court in *Atkins* considered that this is incorrect. The correct test, as developed by the Environment Court and Court of Appeal through a series of cases, is whether the activity for which resource consent is sought, as ultimately proposed to the consent authority, is significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of the scale or intensity of the proposed activity; or the altered character or effects/impacts of the proposal. Whether there might have been other submitters, had the activity as ultimately proposed to the consent authority been that applied for and notified, is a means of applying or answering the test. But it is not the test itself.
7. Applying the approach in *Atkins* to the Application, it would not be open to the Applicant or Panel to delete the Traffic Conditions if doing so would increase the scale or intensity of the Sunfield project or alter its character or effects/impacts. Whether other invited parties may have provided comments, or parties that did make comments but not on traffic may have additionally commented on traffic, or parties that did comment on traffic but may have taken a different approach or heightened level of engagement, would be relevant factors in determining whether the scope of the Sunfield Project is increased by deletion of the Traffic Conditions.
8. Ultimately, it is a question of fact as to whether a proposed amendment to a proposal or proposed conditions will increase the nature, scale or magnitude of effects on the environment. In *Estate Homes*,² the Supreme Court stated:

We think it plain that jurisdiction to consider an amendment to an application is reasonably constrained by the ambit of an application in the sense that there will be permissible amendments to detail which are reasonably and fairly contemplatable as being within the ambit, but there may be proposed amendments which go beyond such scope. Whether details of an amendment fall within the ambit or outside it will depend on the facts of any particular case, including such environmental impacts as may be rationally perceived by an authority. [Emphasis added].

Fast-track consenting

¹ *Atkins v Napier City Council 2008* (CIV 2008-441-000564, HC, Napier) at [19]– [20].

² *Waitakere City Council v Estate Homes* [2006] NZSC 112 (citing the Court of Appeal in *Shell New Zealand Ltd v Porirua City Council* (CA 57/05, 19 May 2005)).

9. It is submitted that there is no reason to take a more lenient approach on scope when considering resource consent applications under the Fast-track Approvals Act 2024 (**FTAA**) as opposed to the RMA. If anything there are good reasons to take a more conservative approach on scope and amendments to proposed conditions submitted with a Fast-track application. In that regard:
- (a) That proposed conditions form part of the application is more explicitly stated under the FTAA than under the RMA. Clause 5 of the Fifth Schedule of FTAA sets out the information required in a substantive application for resource consent and specifically includes “*the conditions that the applicant proposes for the resource consent*”. This can be contrasted with clause 2(1) of Fourth Schedule of the RMA that does not require an application for resource consent under the RMA to include proposed conditions.
 - (b) It is submitted that this legislative distinction likely recognises that managing the adverse effects on the environment of the types of complex, large-scale applications that can be progressed via the Fast-track regime, proposed conditions will be crucial and should be considered an integral part of the application.
 - (c) In terms of the natural justice and public policy, the legislative ability of affected parties to participate in the process is significantly constrained. The class of persons that are invited to make comments on an application on the first place is limited. There are potentially only two procedural steps for invited parties to participate in,³ i.e. making comments on the application under s 53 of the FTAA and providing comments on the Panel’s draft conditions under clause 70(1)(a) of the FTAA (but only if that party made comments on the application in the first place).
 - (d) This means that an affected landowner may review a substantive application and be satisfied that the conditions proposed by an Applicant satisfactorily address its concerns and decide not to participate on that basis.
 - (e) If conditions can be subsequently deleted at the Applicant’s behest in a way that potentially increases the nature, scale and magnitude of effects on surrounding landowners, then there would be no opportunity for parties who

³ The Panel on the Sunfield project has afforded affected parties with opportunities to participate in issues, conferences, expert caucusing, technical hearings and to present legal submissions on specified topics. However, such opportunities are at the discretion of the expert panel appointed for the substantive application.

did not make comments (on the basis the conditions addressed their concerns) to participate and raise concerns.

- (f) Such an approach would effectively require parties who are satisfied with a proposal to still make comments to preserve their position in case of unexpected changes to conditions and increases in the effects of the proposal. Such an approach would be inefficient and at odds with the scheme and purpose of the FTAA.

Application of principles to Sunfield

10. It is submitted that in the context of Fast-track consenting it cannot be assumed that no person will be prejudiced or that it is reasonable to infer that invited persons interested in traffic effects of the Application have already chosen to participate.⁴
11. The Applicant has sought to delete the Traffic Conditions on the basis of commercial viability of the Employment Precinct. The Applicant's traffic expert, Mr Hills, has produced a memorandum in support of deletion of the Traffic Conditions, in which he has given his opinion that such deletion will not increase the adverse traffic effects of the Application.
12. The timing of this change aimed at increasing the commerciality of the Sunfield project is problematic. Traffic experts for the parties have reviewed and assessed the proposal from the outset on the basis that the Traffic Conditions are a fundamental part of the Application that will act as a limiting factor on the traffic effects of the Sunfield project. Expert caucusing and the technical hearing on traffic was also undertaken on this basis. Mr Hills has now expressed his revised view but the opportunity for the other traffic expert's to robustly assess the effects and produce considered evidence of the effects of that change has passed.
13. Mr Parlane, traffic expert for 897 Alpha has advised counsel that he is concerned by the proposal to delete the Traffic Conditions. He considers that the restrictive rates must be retained as it was mutually agreed at expert caucusing that they were necessary. In his view:

"It makes no difference if the road capacity is used up by residents leaving or employees entering, the adverse effects are the same. Any increase in parking can be considered as part of the future ITAs which are intended to be a check on development if effects are excessive, or to relax rules if that is proven to be correct.

⁴ Contra Applicant's legal submissions at [3.3(f)].

We know that the capacity of the network is limited and the proposed condition of 1 space per 30sqm is basically unconstrained. The removal of these conditions has the potential to result in even more traffic within the network, in which case Auckland Transport are no longer meeting their own goals."

14. In terms the Panel's factual assessment as to the degree to which the proposed deletion of the Traffic Conditions will increase the scale or intensity of the Application or alter its character or effects/impacts, 897 Alpha comments that the assessment should also include customers of businesses in the employment precinct as users of "road capacity". Essentially this is because without customers the employment zone will never be successful and therefore, if you only calculate either residents or employees, the adverse effects will be underrepresented. Mr Hill's memorandum defers this assessment to each business being required to present "Travel Plans" as a condition of consent. However, at that point it is too late. An example of where this can go awry is Westgate where the shopping centre traffic network struggles to cope with Costco's traffic.
15. It is submitted that the consent conditions as originally proposed will enable the capture of the issue and for it to be addressed.

Conclusion

16. For the reasons set out above, 897 Alpha seeks that the Traffic Conditions be retained.



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