

BEFORE THE FAST-TRACK EXPERT PANEL

IN THE MATTER of the Fast-track Approvals Act 2024 (the **FTAA**)

AND

IN THE MATTER of an application by Winton Land Limited (the **Applicant**)
under section 42 seeking approval for the Sunfield project
(FTAA-2503-1039)

**MEMORANDUM OF COUNSEL FOR THE AUCKLAND COUNCIL FAMILY IN
RESPONSE TO MINUTE 26 RELATING TO SCOPE QUERY**

Dated: 3 March 2026

Matthew Allan
Partner
allan@brookfields.co.nz
Telephone No. 09 979 2128
P O Box 240
DX CP24134
AUCKLAND

BROOKFIELDS
LAWYERS

MAY IT PLEASE THE PANEL:

1. On 20 February 2026, the Panel issued Minute 26, requesting *inter alia* legal submissions on whether the change now sought by the Applicant to increase the number of parking spaces for (a) offices and (b) warehouse / industrial / manufacturing activities in the employment precinct is within scope of the original application.
2. On 26 February 2026, the Applicant provided its response to Minute 26.¹
3. This Memorandum sets out the Council family's position on the scope question raised in Minute 26.
4. The Council family will abide by the Panel's decision on the legal question of scope.
5. However, to assist the Panel, counsel briefly address the following:
 - (a) case law guiding the Panel's consideration of the issue of scope; and
 - (b) the outcome of Auckland Transport's assessment of the proposed change in parking ratios.

Case law on scope

6. Counsel for the Applicant have cited a number of cases relevant to the question of whether a change to an application is within the scope of the original application, including the Supreme Court's decision in *Estate Homes*.²
7. As the Panel will be aware, there is a substantial body of RMA case law on whether modifications fall within scope, which remains germane in the context of the FTAA. In addition to the cases cited by counsel for the Applicant, the Panel may find it helpful to consider the summary of principles and authorities by the Environment Court in *HIL Ltd v Queenstown Lakes District Council*³, and the High Court's discussion of the relevant test and cases in *Atkins v Napier City Council*.⁴

¹ Refer section 3 of the Memorandum of Counsel for the Applicant in response to Minute 26 dated 26 February 2026.

² *Waitakere City Council v Estate Homes Limited* [2007]2 NZLR 149

³ *HIL Ltd v Queenstown Lakes District Council* [2014] NZEnvC 45, at [42], cited with approval by the Environment Court in *Re Waiheke Marinas Ltd* [2015] NZEnvC 66, at [10].

⁴ *Atkins v Napier City Council* [2009] NZRMA 429, at [20] onwards, applied in a number of cases including *Auckland Council v Auckland Council* [2020] NZEnvC 70, at [32]-[33].

Auckland Transport's assessment of change in ratios

8. While the Council family has ultimately decided to abide on the legal question posed, Auckland Transport obtained a brief technical note from Martin Peake of Progressive Transport Solutions Limited to inform its and Auckland Council's consideration of the issue raised by the Panel. The reason for seeking this analysis is that an assessment of questions of scope typically requires an understanding of the actual implications of a proposed modification – e.g. the altered scale, intensity and character of the altered activity or its effects.
9. The Panel has sought legal submissions only and counsel are conscious of not providing additional unsolicited material. Mr Peake's technical note is accordingly not attached to this memorandum. However, in summary, the advice indicates:
 - (a) materially higher maximum parking numbers in the employment precinct (617 increasing to 2,286);
 - (b) support for the Applicant's proposed warehouse / industrial / manufacturing parking rate of 1 space per 250m²;
 - (c) support for an office parking rate of 1 space per 100m², differing from the Applicant's proposal.
10. Counsel can provide a copy of Mr Peake's technical note if the Panel considers it would assist.

DATED the 3rd of March 2026



Matt Allan / Rowan Ashton / Michelle Hooper

Counsel for the Auckland Council family