BEFORE AN EXPERT CONSENTING PANEL

IN THE MATTER	of the Fast-track Approvals Act 2024 (**FTAA**)
AND	
IN THE MATTER	of an application for approvals by Winton Land Limited to subdivide and develop 244.5 hectares at Old Wairoa Road, Cosgrave Road, and Airfield Road between Takanini and Papakura, Auckland into approximately 3,854 homes, consisting of individual homes and 3 retirement villages containing independent living units and associated features such as a 7.5 hectare town centre, a school, 4 local hubs, open spaces, green links, recreation parks and reserves and ecological areas (**Application**)

MEMORANDUM OF COUNSEL FOR AUCKLAND COUNCIL, AUCKLAND TRANSPORT, AND WATERCARE SERVICES LIMITED

Dated: 4 August 2025

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BROOKFIELDS
LAWYERS

MAY IT PLEASE THE PANEL:

1. INTRODUCTION

1.1 We act for Auckland Council (encompassing Healthy Waters), as well as Council Controlled Organisations (**CCOs**) Auckland Transport (**AT**) and Watercare Services Limited (**Watercare**) (collectively the **Council family**), in relation to the substantive application for the Sunfield project (**Application**) by Winton Land Limited (**Applicant**) under the Fast-track Approvals Act 2024 (**FTAA**).

1.2 This memorandum is provided in response to Minute 2 inviting comments on the Application.[1]

1.3 The structure of this memorandum is as follows:

(a) **Section 2:** An executive summary;

(b) **Section 3:** The legal framework, including an explanation of the framework for decision-making under the FTAA;

(c) **Section 4:** Other legal considerations;

(d) **Section 5:** The outcome of the Council family's assessment of the Application to date; and

(e) **Section 6:** Conclusions and recommendations arising from that assessment.

2. EXECUTIVE SUMMARY

Process Matters

2.1 As the Strategic and Planning Memorandum prepared by Ilze Gotelli, Rachel Dimery and Karl Anderson dated 4 August 2025 (**Planning Memo**) states:[2]

(a) This Application constitutes one of the largest comprehensive development proposals the Council has ever received. In the usual course, the Council would generally expect an applicant to take part

[1] Issued by the Panel on 7 July 2025 pursuant to section 53 of the FTAA.
[2] Planning Memo, Section C, paragraphs 135 and 134.

in a detailed and collaborative pre-lodgement process for an application of this scale and complexity.

(b) The Applicant did not undertake any significant levels of pre-lodgement engagement with the Auckland Council. In order to satisfy the pre-lodgement consultation requirements under section 29 of the FTAA, a meeting was held between the Applicant, their planning consultants and Auckland Council's Principal Project Lead on 11 December 2024.

(c) Despite the Council indicating that further meetings between the Applicant and the Council family would be necessary in advance of the fast-track application being lodged, no further pre-lodgement engagement was requested by the Applicant.

(d) The Planning Memo describes[3] the pre-lodgement discussions as falling significantly short of the Council's expectations.

2.2 A site visit occurred on 11 July 2025, which was attended by Council family personnel.

2.3 Auckland Council issued a memo to the Panel on 16 June 2025 identifying initial concerns and information gaps where it considered the Expert Panel way wish to exercise its power under section 67 of the FTAA. The Panel in its Minute 3 considered it appropriate to provide the Applicant with an opportunity to respond to the memo, and this response was provided on 17 July 2025.

2.4 A Notice of Requirement was lodged by New Zealand Transport Agency / Waka Kotahi (**NZTA**) for Mill Road Stage 2 (**NOR**), on Friday 13 June 2025. The alignment of the NOR encompasses a portion of the site along its eastern boundary. NZTA's requirement for designation has immediate interim effect pursuant to section 178 of the Resource Management Act 1991 (**RMA**). While the Applicant has stated (in their section 67 response) that they are working collaboratively with NZTA, the proposal and supporting information has not been updated to take the impact of the NOR into account, and

[3] Ibid, at paragraph 135.

Council have therefore not been able to review the proposal's integration with the proposed Mill Road Stage 2.

2.5 While recognising the fast-track context, the Council nonetheless records at the outset that its ability to provide comprehensive commentary has been limited by significant information gaps in the Applicant's proposal, and the proposal's lack of integration with the Mill Road NOR.

Summary of Council Family Assessment

2.6 The full details of the Council family's comprehensive assessment are contained in the Planning Memo, and the technical specialist reports annexed to the Planning Memo. A very brief summary of the outcome of this assessment is provided below (also see **Section 5** of this memorandum for further detail).

2.7 Under the FTAA, the Panel must apply a specific decision-making framework that:

(a) Gives greatest weight to the FTAA's purpose of facilitating infrastructure and development projects with significant regional or national benefits;

(b) Incorporates RMA provisions in Parts 2, 6, and 10 of the RMA (including e.g. sections 104 and 104B, 105 to 107, 108 to 109 and 220);

(c) Requires evidence-based assessment of claimed benefits, including net economic benefits. The listing of a project under the FTAA does not pre-determine the extent of regional or national benefits, and the Panel must independently assess whether the project in fact delivers the claimed benefits.

2.8 Under section 85 of the FTAA, in summary, the Panel may decline an approval sought in a substantive application where the 'real-world' adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits (after taking into account potential conditions and modifications to the proposal). We address this 'proportionality test' in greater detail in **Section 3** below when discussing the legal framework.

2.9 As noted in **Section D** of the Planning Memo, the Council family's assessment has identified **twelve** adverse impacts individually and collectively meeting the section 85(3) FTAA threshold (i.e. where the adverse impacts are sufficiently significant to be out of proportion to any regional / national benefits, even after taking into account mitigation etc), broadly relating to the following issues:

(a) **Issue 1**: Inadequate proposal for stormwater and flood management.

(b) **Issue 2**: No / inadequate proposal for water supply servicing.

(c) **Issue 3**: No / inadequate proposal for wastewater servicing.

(d) **Issue 4**: Inadequate proposal for transport integration.

(e) **Issue 5**: Potential ecological effects.

(f) **Issue 6**: Loss of highly productive rural land.

(g) **Issue 7**: Low density urban form.

(h) **Issue 8**: Inadequate provision of formal recreation opportunities.

(i) **Issue 9**: Potential groundwater drawdown and geotechnical effects.

(j) **Issue 10**: Inadequate provision for Mill Road Stage 2 NOR.

(k) **Issue 11**: Impact on planned investment and infrastructure provision.

(l) **Issue 12**: Uncertainty of infrastructure delivery and servicing.

2.10 Importantly, the Planning Memo signals in **Section D** that, in identifying these 'headline issues', there is the clear potential for other material / adverse impacts to be identified subsequently, as a result of further information and assessment of the Application.

2.11 Initial comments on draft conditions have been provided in the specialist reports annexed to the Planning Memo. This is without prejudice to the Council family's ability to comment further should the Panel circulate draft conditions under section 70 of the FTAA.

3. THE LEGAL FRAMEWORK

3.1 This section of our memorandum addresses the FTAA decision-making framework (and does not address pre-lodgement provisions of the FTAA).

3.2 It also touches on several other matters of law – some derived from case law under the RMA – of relevance to the Panel's deliberations (under the subheading "**Other legal considerations**").

FTAA legal framework

3.3 The purpose of the FTAA *"is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits"*.[4]

3.4 The FTAA sets out the legal framework for obtaining approval of both listed and referred projects.

3.5 Sunfield is a listed project and is described Schedule 2 of the FTAA as follows:[5]

Authorised person	Project name	Project description	Approximate geographical location
Winton Land Limited	Sunfield	Develop approximately 3,400 residential dwellings, an approximately 7.6 hectare town centre, retail and healthcare buildings, 3 retirement villages (with approximately 600 independent living units and care beds), approximately 27.7 hectares of open spaces, green links, recreation parks and reserves, and enable the potential development of a school	244.5 hectares at Old Wairoa Road, Cosgrave Road, and Airfield Road, between Takanini and Papakura, Auckland

3.6 Subpart 3 of Part 2 of the FTAA deals with a Panel's consideration of a substantive application for an approval.

3.7 Section 40 states that the process for obtaining the approval under the FTAA *"applies instead of the process for obtaining any corresponding approval under a specified Act"*.

[4] FTAA, s 3.
[5] FTAA, Schedule 2.

3.8 The specified Act, relevant to this Application, is the RMA.

3.9 Pursuant to section 42(4)(a) and (i) of the FTAA, the Sunfield Application seeks all necessary resource consents required to enable the Sunfield proposal to be given effect to, except for any consents required under other legislation which will be applied for separately.[6]

Decisions on approvals sought in substantive application

3.10 The provisions in the main body of the FTAA concerned with "Panel decisions" and "Decision documents" are located in sections 79 to 89.

3.11 Section 81(1) of the FTAA requires the Panel to decide whether, for each approval sought in a substantive application, to:

(a) grant the approval and set any conditions to be imposed on the approval; or

(b) decline the approval.

3.12 For the purpose of making the decision, the Panel:

(a) Must consider the substantive application and any advice, report, comment, or other information received by the Panel under sections 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90;[7]

(b) Must apply the applicable clauses set out in section 81(3) as applicable to the relevant authorisations sought, which in the case of the Sunfield Application is sections 81(3)(a) (resource consent).[8] We address the provisions relevant to resource consents below under the heading "**Assessment of Resource Consent Application**";

(c) Must comply with section 82 (relating to treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019) if applicable;[9]

[6] Sunfield Planning Report dated 31 March 2025 at section 5.1 on page 58. Note that the Planning Report states at paragraph 5.6 that there is a separate consent process for Awakeri Wetlands – Stages 2 and 3. Paragraph 5.6 also lists the other approvals that will be addressed separately. These are: (a) Partial realignment of Hamlin Road and associated road stopping; (b) Network Discharge Consent; (c) Wildlife Act 1953; and (d) Authority under the Heritage New Zealand Pouhere Taonga Act 2014.
[7] FTAA, s 81(2)(a).
[8] FTAA, s 81(2)(b).
[9] FTAA, s 81(2)(c).

(d) In terms of conditions:

(i) Must comply with section 83 in setting conditions. [10]

(ii) May impose conditions under section 84 if applicable, to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019:[11]

We address the FTAA provisions applicable to conditions further below under the heading "**Conditions of Consent**".

(e) May decline the approval only in accordance with section 85 of the FTAA.[12] We address the Panel's power to decline consent further below under the heading "**Power to Decline Consent**".

Assessment of Resource Consent Application

3.13 As noted, a resource consent is an approval described in section 42(4)(a) of the FTAA. When considering the Applicant's resource consent application under section 42(4)(a), the Panel is required by sections 81(2)(b) and 81(3)(a) to apply clauses 17 to 22 of Schedule 5 of the FTAA.

Clause 17 – Criteria and other matters for assessment of consent application

3.14 Clause 17(1) of Schedule 5 requires the Panel, for the purposes of section 81, when considering the resource consent application and setting any conditions in accordance with clause 18,[13] to "***take into account***" the following, giving the greatest weight to (a):

(a) the purpose of the FTAA; and

(b) the provisions of Parts 2, 3, 6 and 8 to 10 of the RMA that direct decision-making on an application for a resource consent – this includes sections 104 and 104B of the RMA, but section 104D of the

[10] FTAA, s 81(2)(d).
[11] FTAA, s 81(2)(e).
[12] FTAA, s 81(2)(f).
[13] Clause 17(1) also refers to clause 19 in relation to conditions. That clause concerns freshwater fisheries activities and is not relevant.

RMA (i.e. the 'gateway test' for non-complying activities) is specifically excluded; and

(c) the relevant provisions of any other legislation that directs decision-making under the RMA.

3.15 Accordingly, under clause 17(1), while the fast-track approvals process prescribed in the FTAA applies to the Application instead of the usual RMA consenting process, the FTAA expressly incorporates (or imports) the RMA provisions relevant to the assessment that direct decision making on resource consent applications, with all necessary modifications.[14]

Meaning of "take into account"

3.16 In *Bleakley v Environmental Risk Management Authority* the High Court held that a statutory obligation in the Hazardous Substances and New Organisms Act 1996 to "take into account" a relevant matter indicated an obligation to: [15]

> … consider the factor concerned in the course of making a decision-to weigh it up along with other factors-with the ability to give it, considerable, moderate, little, or no weight at all as in the end in all the circumstances seemed appropriate

3.17 In an RMA context, *New Zealand Transport Agency v Architectural Centre Inc*, the High Court discussed earlier cases and expressed the view that the phrases "shall have regard to" and "take into account" could be regarded as synonymous.[16] The Court said:[17]

> In my view, the expression 'to take into account' is susceptible of different shades of meaning. I consider that the two phrases can be viewed as synonymous if the phrase 'to take into account' is used in the sense referred to by Lord Hewart CJ in *Metropolitan Water Board v Assessment Committee of the Metropolitan Borough of St Marylebone* of paying attention to a matter in the course of an intellectual process'. The key point is that the decision-maker is free to attribute such weight as it thinks fit to the specified matter but can ultimately choose to reject the matter.

3.18 This reasoning was accepted and adopted by the High Court in *Taranaki-Whanganui Conservation Board v Environmental Protection Authority*.[18]

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[14] FTAA, clause 17(6) of Schedule 5.
[15] *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC) at [72].
[16] *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, [2015] NZRMA 375.
[17] At [63], citations omitted.
[18] *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2018] NZHC 2217, at [159].

3.19 Based on the above case law, the statutory obligation to "take into account" requires the Panel to consider and weigh the specified matter alongside other relevant factors during the decision-making process, while retaining discretion to assign it considerable, moderate, little, or no weight as circumstances warrant.

3.20 In the case of the FTAA, this case law is of course subject to the statutory direction that the most weight be given to the FTAA's purpose, discussed further below.

Relevant purpose provisions – FTAA and RMA purposes

3.21 Two statutory purpose provisions apply to resource consent decision-making under the FTAA:

(a) As already noted, the purpose of the FTAA *"is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits."*[19]

(b) The Panel will be familiar with the sustainable management purpose of RMA, which also applies in light of clause 17(1)(b), albeit with the 'greatest weight' given to the FTAA's purpose.

3.22 We observe that clause 17(2) clarifies how the RMA provisions in clause 17(1) should be applied, specifying that references to "Part 2" of the RMA mean only sections 5, 6, and 7 (i.e. not section 8).[20]

Interpretation of requirement to give "greatest weight" to purpose of FTAA

3.23 Clause 17(1) of Schedule 5 of the FTAA expressly requires that the greatest weight be given to the purpose of the FTAA.

3.24 Some guidance as to the application of a decision-making provision that expressly require greater weight to be given to certain matters can be

[19] FTAA, s 3.
[20] Clause 17(2) also ensures that effects on Māori land and interests are treated as matters of national importance under section 6(e) where the activity has been determined under section 23, and confirms that relevant Mana Whakahono ā Rohe and joint management agreements must be considered as relevant matters under section 104(1)(c) of the RMA.

gleaned from case law concerning section 34(1) of the now-repealed Housing Accords and Special Housing Areas Act 2013 (**HASHAA**).

3.25 Section 34(1) of HASHAA framed the hierarchy of matters as follows:

> An authorised agency, when considering an application for resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater or lesser) in the order listed:
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> (a) the purpose of this Act:
>
> (b) the matters in Part 2 of the Resource Management Act 1991:
>
> (c) any relevant proposed plan:
>
> (d) the other matters that would arise for consideration under –
>
> (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
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> (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
>
> (e) the key urban design qualities expressed in the Ministry for the Environment's *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document.

3.26 In *Enterprise Miramar Peninsula Incorporated v Wellington City Council*,[21] the Court of Appeal examined the interaction between the consenting frameworks under the HASHAA and the RMA. The *Enterprise Miramar* case arose from Enterprise Miramar Peninsula Incorporated's application for judicial review of Wellington City Council's decision under the HASHAA to grant consent for a significant development in Shelly Bay, Wellington.

3.27 The Court of Appeal held that the plain wording of section 34(1) indicated "*that greatest weight is to be placed on the purpose of HASHAA*…". The Court of Appeal also found that the inclusion of additional considerations in subsections (b)-(e) reflected a deliberate intention by Parliament for decision-makers "*not to rely solely on the purpose of the HASHAA at the expense of due consideration of the matters listed in (b)-(e).*"[22]

3.28 The Court of Appeal said:[23]

> The scheme and plain text of s 34(1) requires individual assessment of the listed matters prior to the exercise of weighing them in accordance with the prescribed hierarchy. The matters listed in subs

[21] *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541.
[22] Ibid at [41].
[23] Ibid at [53].

> 1(b)-(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)-(e).

3.29 The principles established in *Enterprise Miramar* should inform the interpretation of clause 17(1) of Schedule 5 of the FTAA, mandating separate consideration of each factor before being weighed in accordance with the prescribed hierarchy. Moreover, weight to be afforded to the purpose of the FTAA should not be such as to neutralise or minimise the other relevant decision-making criteria which stem from the RMA. Specifically, the Court of Appeal commented: [24]

> The Council's adoption of this conclusion and its reference to "housing stock", and its cursory analysis of the matters arising under pt 2 of the RMA, are a further example of the Council having allowed the purpose of HASHAA to neutralise or minimise the other matters that arise for consideration under s 34(1)(b)–(e). As in relation to s 34(1)(d)(i) discussed above, the consequence is that the matters arising under s 34(1)(b) were not given due consideration and weight. Rather than just treating the purpose of HASHAA as the most important and influential matter to be weighed, the Council used the purpose of HASHAA to eliminate or greatly reduce its consideration and weighing of the other s 34(1) factors. For the reasons we have set out, this was a significant error of law resulting in a failure to take into account relevant considerations. We allow the appeal on that basis.

Extent of the project's regional or national benefits

3.30 Section 81(4) of the FTAA requires the Panel to consider the extent of the project's regional or national benefits when taking the purpose of the FTAA into account under clause 17(1)(a) of Schedule 5. As addressed further below under the heading "**Power to Decline Consent**", the project's regional or national benefits are also relevant to any decision by a panel to decline an approval under section 85(3).

3.31 The project's listing does not preclude the Panel's independent assessment of whether the contended benefits are "significant", or otherwise, in light of the full evidence.

3.32 The Ministry for the Environment's advice[25] in relation to Sunfield's potential listing is clear that it reflects an *"initial (Stage 1) analysis of the application"*, and is subject to the following "disclaimer":

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[24] Ibid at [59].
[25] FTA160-Sunfield-Sch-2A-MfE-assessment-form-Stage-1_Redacted.pdf

> Given time and scope constraints, the initial assessment is solely based on information provided by applicants. There may be additional relevant information which has not been provided to MfE.

3.33 Some analogy can be drawn with COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTCA**), where several expert consenting panels appointed under that legislation found that they were not bound by Ministerial determinations that projects would help achieve the purpose of the FTCA, and were required to make their own independent assessments of applications against the statutory purpose (section 4, FTCA).[26]

3.34 It therefore remains essential that a Panel interrogate and test the alleged benefits of a project, consistent with its duties under sections 81(4) and 85(3) of the FTAA. In practice, the Panel's testing should be evidence-based. For example, the Panel can and should rely on objective evidence to test whether the adverse impacts on infrastructure are out of proportion to the claimed regional economic benefits.

3.35 The Applicant's Planning Report says that *"Sunfield will provide significant regional and national benefits through significant economic impacts (a $4.68 billion economic impact on capital expenditure), meeting the purpose of the Act."*[27] However, the Applicant's Economic Assessment does not support the statement that there will be significant national benefits. It simply concludes that the project will generate significantly more economic benefits for the local and regional economy and communities than economic costs.[28]

3.36 As addressed further below, and in Dr Meade's report and the Planning Memo, the Council family's assessment is that the project's contended benefits are overstated, and the potential risks and costs are understated.

3.37 The Panel must consider whether the alleged benefits represent a net economic contribution or benefit. This requires scrutiny not only of the gross outputs, but also of associated real-world economic costs. Accordingly, the analysis should address the costs / adverse impacts relating to the inadequate infrastructure provision, loss of Highly Productive Land, transport and parking congestion costs, socio-economic costs to nearby residents, opportunity costs relating to the development being relatively low-rise, and

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[26] E.g. the FTCA decisions on the following projects: *Tasman Aquaculture Trials*, at [45], *Kohimarama Retirement Village*, at [32], *Hananui Aquaculture Project*, at [53].
[27] Sunfield Planning Report dated 31 March 2025, at page 300.
[28] Sunfield Economic Assessment dated December 2024, at page 89.

other additional costs due to the development being on peat soils.[29] Without such a net assessment, benefits risk being overstated, in turn distorting the proportionality exercise required under section 85(3).

3.38 The FTAA is silent on whether regional or national economic benefits are to be assessed on a gross or net basis. The Council submits that the only reasonable approach is that economic benefits should be considered on a net basis. A gross-benefit approach risks perverse outcomes, where projects that may deliver significant gross economic outputs but impose economic costs that outweigh those outputs could nonetheless be elevated under the FTAA's purpose. Parliament cannot have intended that result, absent express language (such as a specific reference to "gross economic benefits").

Clause 17(1)(b) – RMA provisions

3.39 As noted, clause 17(1)(b) of Schedule 5 requires the Panel to take into account the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D of the RMA).

3.40 We draw the Panel's attention to clause 17(3) and (4) of Schedule 5 to the FTAA, which applies to any RMA provisions which would **require** the refusal of consent. In relation to such provisions, the Panel must take into account that the provision would normally require an application to be declined, but must not treat the provision as requiring the Panel to decline the application the Panel is considering. Section 107(1) would appear to be an example of such a provision. By contrast, section 106(1) would not (as it uses the language "may refuse" rather than "must refuse").

3.41 The provisions in Parts 2, 6 and 10 of the RMA relevant to this Application encompass:

Part 2, RMA provisions

(a) The provisions of Part 2 of the RMA. As noted above, applying clause 17(2)(a), sections 5, 6 and 7 (but not section 8) are applicable. The statutory planning assessment by Mr Anderson, contained in **Section**

[29] *Comments on Economic Evidence Provided in Support of Sunfield Fast-Track Application* provided by Dr Richard Meade (**Meade Report**), Annexure 2 to Planning Memo.

D of the Council's overarching Planning Memo, addresses sections 5 to 7 of the RMA. He identifies sections 5, 6(h) and 7(b) and (f) as relevant.

Part 6, RMA provisions

(b) A number of provisions in Part 6 of the RMA relating to resource consents apply, as outlined briefly below.

(c) First, the usual decision-making considerations under **section 104(1)(a) to (c)** of the RMA, namely:

(i) Any actual and potential effects on the environment of allowing the activity. The Council family's assessment has identified a range of potential adverse effects, some of which can be adequately mitigated, but some of which are assessed as significant and incapable of being avoided, remedied, or mitigated.

(ii) Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

(iii) Any relevant provisions of—

(A) a national environmental standard:

(B) other regulations:

(C) a national policy statement:

(D) a New Zealand coastal policy statement:

(E) a regional policy statement or proposed regional policy statement:

(F) a plan or proposed plan; and

The Council's assessment refers to relevant provisions in applicable national policy statements and the Auckland Unitary Plan.

(iv) Any other matter the consent authority considers relevant and reasonably necessary to determine the application. The Council's Future Development Strategy is an example of such a matter. See the further discussion below in this regard.

(d) **Section 104B**, which relates to decision-making for discretionary and non-complying activity consent applications (the Application is for a non-complying activity overall[30]).

(e) Under **section 105**, the Panel must, in addition to the matters in section 104(1), have regard to:

(i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and

(ii) the Applicant's reasons for the proposed choice; and

(iii) any possible alternative methods of discharge, including discharge into any other receiving environment.

Council's stormwater memo by Mr Meyer identifies that the current stormwater management regime does not adequately address potential downstream flooding effects and capacity and water quality issues.[31]

(f) Under **section 106**, the Panel may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that there is a significant risk from natural hazards (section 106(1)(a)). The Planning Memo notes that the proposal would be unable to satisfy section 106 of the RMA as it relates to natural hazards as the likelihood of natural hazards and associated material damage to the land being exacerbated by the proposal without appropriate control is high. [32]

(g) Under section 107, the Panel cannot grant a discharge permit to authorise the discharge of a contaminant or water into water if after

[30] Sunfield Planning Report dated 31 March 2025 at section 5.5 on page 64.
[31] Stormwater report by Martin Meyer, Annexure 4 to Planning Memo, paragraph 15. In relation to stormwater matters, see also the memorandum by Healthy Waters (Annexure 3) and the stormwater memorandum by Awa Environmental attached to Auckland Transport's comments (Annexure 7).
[32] Planning Memo, at paragraph 152.

reasonable mixing, the water discharged is likely to give rise to all or any of a number of listed effects in the receiving water.

(h) **Sections 108, 108AA, 108A and 109** relating to conditions and bonds / covenants. We address conditions below under the heading "**Conditions of Consent**".

Part 10, RMA provisions

(i) The provisions of Part 10 of the RMA relating to subdivisions also apply.

(j) Of relevance to this Application, we highlight section 220, which identifies specific conditions that may be imposed on subdivision consents (without limiting section 108), as well as section 221 (consent notices) and section 224 (restrictions upon deposit of survey plan), which are likely to be relevant in the event that the Panel decides to approve the Application.

Conditions of Consent

3.42 As noted, clause 17(1) requires the Panel, when considering setting any conditions in accordance with clause 18, to take into account the provisions listed at subclause (1)(a) to (c), giving the greatest weight to (a).

3.43 Clause 17(1) of Schedule 5 of the FTAA imports Part 6 (Resource Consents) and Part 10 (Subdivision and reclamations) of the RMA. This includes sections 108, 108AA, 108A, 109 and 220 of the RMA.

3.44 In *Waitakere City Council v Estate Homes Ltd*,[33] the Supreme Court held that the power to impose conditions on resource consents under section 108(2) of the RMA was a broadly expressed power, which included, in that case, the requirement to build an arterial road.

3.45 Section 108AA(1) of the RMA codifies, in part, the common law requirements for conditions to be valid.[34] Section 108AA(1) states:

[33] *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112.
[34] Ibid at [54].

> **108AA Requirements for conditions of resource consents**
>
> (1) A consent authority must not include a condition in a resource consent for an activity unless—
>
> (a) the applicant for the resource consent agrees to the condition; or
>
> (b) the condition is directly connected to 1 or more of the following:
>
> (i) an adverse effect of the activity on the environment:
>
> (ii) an applicable district or regional rule, or a national environmental standard:
>
> (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021:
>
> (iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021; or
>
> (c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

3.46 In addition, conditions must also meet the established common law principles from the *Newbury* test. The *Newbury* requirements, which will be familiar to the Panel, are:[35]

(a) Conditions must be for a planning purpose and not for any ulterior one.

(b) They must fairly and reasonably relate to the development permitted, though this relationship test has been strengthened under section 108AA(1)(b) of the RMA, which requires conditions to be "directly connected" rather than merely "fairly and reasonably" related.

(c) They must not be so unreasonable that no reasonable planning authority could have imposed them.

3.47 For completeness, section 83 of the FTAA states an overarching obligation on the Panel when setting conditions, namely that:

> When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to

[35] *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731, as applied in New Zealand by *Waitakere City Council* v Estate Homes Ltd [2007] 2 NZLR 149, at para [66].

> address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

3.48 The decision-making process that the Panel must go through under the FTAA when setting conditions is to:

(a) take into account the various matters set out in clause 17(1) of Schedule 5 (which 'imports' *inter alia* RMA sections relating to conditions), giving the greatest weight to the purpose of the FTAA;

(b) identify the reason it considers a consent condition is needed; and

(c) ensure that it is no more onerous than necessary for addressing that issue.

3.49 In practice, we do not consider that the direction in section 83 that conditions should be no more onerous than necessary substantially alters the existing position – the same proportionate approach is expected under standard RMA decision-making. Equally, we do not consider that section 83 of the FTAA empowers the Panel to permit material environmental harm in facilitating project delivery.

Conditions precedent

3.50 Based on the Council's assessment to date, should the Panel be minded to grant consent for the Application, use of conditions precedent is likely to be essential to ensure that defined development / subdivision does not occur prior to certain works / upgrades being completed. It is therefore appropriate to briefly address RMA case law on such conditions, which we submit would apply equally to the FTAA context.

3.51 A condition precedent is one *"that must be satisfied before a consent-holder can undertake activities authorised by a consent or a designation"*.[36] In *Westfield (New Zealand) Ltd v Hamilton City Council*, the High Court confirmed that a condition precedent which defers the opportunity for an applicant to embark upon the activity until a third party carries out some independent activity is not invalid.[37]

[36] *Tram Lease Limited v Auckland Transport* [2015] NZEnvC 137 at [28].
[37] *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254, at [56].

3.52 A condition precedent is lawful subject to the requirement that it does not:[38]

(a) purport to impose conditions prior to the substantive consent having legal effect;[39]

(b) require the consent holder to do something that it cannot lawfully do;[40]

(c) frustrate the grant of consent;[41]

(d) give rise to undue uncertainty as to the effects of the consented works and whether the mitigation measures proposed can be implemented, and if they are, whether they would be effective.[42]

3.53 In *Hildeman v Waitaki District Council*,[43] the Environment Court considered a land use consent application for a campground and found that increased traffic from the proposed campground would necessitate an intersection upgrade. The Court noted that, while there were existing issues at the intersection, the current low traffic volume did not warrant an upgrade. The Court therefore concluded that, notwithstanding the pre-existing nature of the problem, at least part of the responsibility must lie with the applicant. Although the Court accepted that there are situations where it is appropriate to impose a condition precedent on a resource consent, it ultimately declined the consent, as the Council had refused to commit to the intersection upgrade and the applicant was unable to fund the upgrade on an economically viable basis. The Court said that "*Such a condition would potentially render the grant of consent futile and ought not be imposed.*"[44]

3.54 While conditions precedent are clearly a legally available mechanism, they are not always appropriate in practice. In *Laidlaw College Inc v Auckland City Council*, the Environment Court noted that the factual situation must support the imposition of such a condition, particularly where third party agreement or assessment is required.[45] The Court emphasised that there must be sufficient certainty that proposed mitigation measures would be effective

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[38] Ibid.
[39] Ibid, citing *Director-General of Conservation v Marlborough District Council* HC Wellington CIV-2003-485-2228, 3 May 2004, HC, 2004 at [15].
[40] Ibid, citing *Westfield (NZ) v Hamilton City Council* HC Hamilton, CIV-2003-485-000956, 17 March 2004.
[41] Ibid, citing *Hildeman v Waitaki District Council* [2010] NZEnvC 51.
[42] Ibid, citing *Laidlaw College Inc v Auckland City Council* [2011] NZEnvC 248.
[43] *Hildeman v Waitaki District Council* [2010] NZEnvC 51 (*Hildeman* Interim Decision) and *Hildeman v Waitaki District Council* [2010] NZEnvC 194 (*Hildman* Final Decision).
[44] *Hildman* Interim Decision at [83].
[45] *Laidlaw College Inc v Auckland City Council* [2011] NZEnvC 248 at [52].

before a condition precedent can appropriately be imposed. Similarly, as demonstrated in *Hildeman*, a condition precedent should not be imposed where it would potentially render the grant of consent futile due to practical impediments such as lack of funding or third party commitment to necessary works.

3.55 Accordingly, while conditions precedent may be a useful tool in appropriate circumstances, careful consideration must be given to whether the factual matrix supports their use, including whether there is sufficient certainty as to the effectiveness of proposed mitigation and the practical ability to fulfill the condition.

Power to Decline Consent

3.56 Section 85 prescribes circumstances where the Panel "must" (section 85(1)) and "may" (section 85(3)) decline approval.

3.57 The Council's assessment has not identified any reasons why the Application ***must*** be declined in terms of section 85(1) of the FTAA.

3.58 Under section 85(3) of the FTAA, the Panel ***may*** decline an approval where adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits.

3.59 Specifically, subsection (3) provides that the 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.

3.60 Broadly, this 'proportionality test' requires the Panel to consider:

(a) The nature and significance of adverse impacts identified through the section 81(2) process;

(b) The project's regional / national benefits as assessed under section 81(4) (note our comments at paragraph 3.35 above concerning the suggestion in Tattico's Planning Report of national benefits);

(c) Whether proposed conditions or applicant modifications could adequately address adverse impacts;

(d) Whether the proportionality threshold is met even after accounting for mitigation measures, compensation etc.

3.61 Should the Panel assess the adverse impacts as being sufficiently significant to be out of proportion to the project's regional benefits, having considered the above matters, the Panel may in its discretion decline the Sunfield Application.

3.62 The term "adverse impact" is defined in section 85(5) as meaning *"any matter considered by the panel in complying with section 81(2) that weighs against granting the approval"*. The term is therefore broad, and could encompass (for example) adverse effects on the environment, matters arising from planning instruments, and section 104(1)(c) matters.

3.63 The Council's assessment (summarised in **Section 5** below and in the Planning Memo) has identified several material adverse impacts that are considered sufficiently significant to be out of proportion to the project's regional benefits (even taking into account mitigation, offsetting etc – and whether or not the Applicant's or Council's assessment of benefits is preferred).

3.64 Section 85(4) requires brief comment. The subsection states that 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"* (emphasis added).

3.65 The provision does not prohibit consideration of inconsistency or contrariness with planning documents – it only prevents reliance on inconsistency alone as sufficient grounds for decline. This suggests Parliament intended that inconsistency remains a relevant consideration. It simply cannot be the only factor supporting a decline decision. Where inconsistency with planning provisions is, for instance, coupled with actual adverse impacts

(environmental, social, or economic etc), both factors may legitimately contribute to a decision to decline.

3.66 While section 85(4) prevents reliance solely on planning inconsistency as grounds for decline, the underlying policy framework and the real-world issues it addresses remain highly relevant to the overall proportionality assessment.

Case law

3.67 The decisions of the Supreme Court in *East-West Link*[46], the Court of Appeal in *Glenpanel*[47], and the High Court in *Auckland Council v Matvin*[48], warrant brief comment at this juncture.

3.68 *East-West Link* arose under the RMA in relation to notices of requirement and resource consent applications. The Supreme Court found (*inter alia*) that the "avoid" directive in policy 11 of the NZCPS with respect to the indigenous biological diversity leaves room for deserving exceptions, even if, in almost all cases, its effect is clearly to "not allow" or "prevent the occurrence of". The Court found that these exceptions are necessary for the broad language of the policy to work as intended in the innumerable places and circumstances to which it must be applied, and without producing outcomes plainly at odds with Part 2. The residual discretion is simply a mechanism to ensure that the policies are applied in accordance with the purpose of the RMA.[49]

3.69 These findings were applied by the Court of Appeal in *Glenpanel* in the context of a resource consent application for urban development under the FTCA which had been declined by an Expert Consenting Panel (**panel**). The proposal involved the creation of approximately 179 residential units and a primary school, or up to 384 residential units without a primary school.[50] The proposal was for a non-complying activity on rural zoned land outside a prescribed urban growth boundary under the Queenstown Lakes Proposed District Plan (**PDP**), and partly within an Outstanding Natural Feature. However, the appellant argued that a series of formal and informal planning documents identified this area as a site for urbanisation in the future, and the

[46] *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241.
[47] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154.
[48] *Auckland Council V Matvin* [2023] NZHC 2481
[49] *East-West Link* at [105].
[50] *Glenpanel* at [5].

PDP had been amended in response to the National Policy Statement on Urban Development 2020 to contemplate additional housing in the area over the short to medium term, with a map of "Indicative Future Expansion Area(s)", which included land to which the proposal related.[51]

3.70 A key issue in *Glenpanel* was the application of RMA section 104D's "non-complying activity" gateway test in the fast-track context.[52] The panel found that adverse effects would be more than minor and that the project was contrary to a set of objectives and policies in the PDP, including the avoidance of urbanisation of rural land outside urban growth boundaries and the protection of landscape values of outstanding natural features.

3.71 On appeal, applying the Supreme Court's subsequent *East-West Link* decision, the Court of Appeal found this to be in error, as a "more nuanced approach" to assessment was required given the substantive nature of the wider planning instruments.[53] The Court of Appeal noted that the fast-track regime was intended to "bring forward" projects that would otherwise likely be granted under the RMA in the future, including "planned projects",[54] and found that the Panel in Glenpanel erred by concluding that *"the plain wording of the provisions of the Proposed District Plan prevented the application from being granted because urbanisation of this area was planned for a later time"*.[55]

3.72 The Court of Appeal in *Glenpanel* recorded important qualifications to this approach:

(a) Bringing forward consideration of projects in this way does not mean applications should be granted;[56]

(b) The more nuanced approach to appraisal of objectives and policies flowing from *East West Link* does not dictate an outcome;[57] and

(c) Under the more nuanced approach, uncertainties connected with where and how the urban development would take place, including

[51] Ibid at [6].
[52] Ibid at [14]-[16].
[53] Ibid at [38].
[54] Ibid at [43].
[55] Ibid at [44].
[56] Ibid at [45]
[57] Ibid.

uncertainties about exactly how such urbanisation would occur, would properly be taken into account by the panel.[58]

3.73 As noted, the FTAA has its own distinct evaluative framework, which:

(a) Does not carry over section 104D of the RMA;

(b) Imposes the proportionality test in section 85(3); and

(c) Contains an express instruction in section 85(4) that inconsistency with the planning instruments is not, by itself, a sufficient reason to decline.

3.74 Ultimately, in light of the FTAA's express statutory provisions, *Glenpanel* may be seen as generally confirming the thrust of the decision-making framework under the FTAA, rather than altering it – and in this sense may not be seen as 'shifting the needle'.

3.75 The decision of the High Court in *Auckland Council v Matvin*[59] is also relevant and must now be read subject to *East-West Link*. The case arose under the FTCA and concerned the proposed development for a retirement village, i.e. urban development, in the of the Future Urban Zone (**FUZ**) ahead of a plan change. Woolford J held[60]:

> [29] The Panel criticises the "strict literal" interpretation of the FUZ provisions taken by the Council. However, words are generally to be given their natural or ordinary meanings. The Panel also says that they do not read the Zone description as being absolute. However, I view the Zone description as a synthesis of the objectives and policies. It is quite clear in its meaning. It succinctly states in three sentences:
>
> > *The Future Urban Zone is applied to greenfield land that has been identified as suitable for urbanisation. The Future Urban Zone is a transitional zone. Land may be used for a range of general rural activities but cannot be used for urban activities until the site is re-zoned for urban purposes.*
>
> The Zone description uses the words, "cannot be used", not "can perhaps be used" or "may be used."
>
> ….
>
> [35] Again, quite strong words are used – "require", "avoid" and "prevent".

[58] Ibid at [46].
[59] *Auckland Council V Matvin* [2023] NZHC 2481
[60] At [29]

> [36] In interpreting the FUZ provisions, it is not a question of weighing up the various objectives and policies for and against urban development. There are no provisions specifically allowing urban development.
>
> …
>
> [38] I am therefore persuaded that the Panel made an error of law in finding that the overall purpose of the FUZ was to preclude activities that may compromise future urban development. The overall purpose of the FUZ is as a holding zone and to provide a transition from rural to urban use and development. The zone recognises the need for comprehensive and intentional design for soon-to-be urban areas. Until rezoned urban, the primary set of activities that are to occur in the FUZ are rural.

3.76 While *East West Link* and *Glenpanel* both refer to a more 'nuanced' approach to policy interpretation, they do not undermine the core findings in *Matvin*[61] regarding the interpretation of the AUP's FUZ provisions. We make several observations in this regard:

(a) His Honour Woolford J's analysis of the directive language in the FUZ provisions – emphasising that words like "avoid," "prevent," and "cannot be used" should be given their natural meaning – remains good law.

(b) The key development from *East West Link* is the recognition that genuine, on-the-merits exceptions may be permitted where they would not subvert the general policy and where sustainable management clearly demands it.

(c) However, the Supreme Court was clear[62] that this exception is fact-specific, requiring circumstances where granting consent would advance rather than undermine the policy framework and where sustainable management clearly demands it. We also draw to the Panel's attention the Supreme Court's comment that the *"the more precise and sharp-edged the policy, the less room there will be for outcomes that can fairly be considered so anomalous or unintended that an exception is justified"*.[63]

[61] At [29]-[38].
[62] At [110].
[63] At [110].

Power to decline in part

3.77 It is well established that, when determining applications for resource consent, the decision-maker has *"the power to grant consent to something less than what is actually being sought"*. [64]

3.78 In the decision of the expert consenting panel concerning an application for a comprehensive care retirement village at Kohimarama, Auckland under the FTCA, the Panel considered the following comments from RMA case law: [65]

> The Resource Management Act provides procedures for applications for resource consent that are designed to enable all persons who wish to take part to do so. … In practice, the lodging of submissions and the presentation of opponents' cases frequently leads to applicants or consent authorities modifying proposals to meet objections that are found to be sound. That must surely be part of the statutory intent in providing for making submissions.

3.79 The Panel then said that it saw:

> … no reason why this approach should not be equally applicable to resource consenting under the FTA provided that the purpose of the FTA is not neglected in the process. For example, there may be instances where s 108 conditions of consent would be unavailable or inappropriate to restrict certain effects that can be remedied by a partial consent which still enables an effective project.

3.80 Therefore, under section 81(1) of the FTAA, the Panel has three options:

(a) grant the full approval (with conditions);

(b) decline it entirely; or

(c) approve only part of what is sought (with conditions), and decline the remaining parts.

3.81 However, any decision to decline an approval (whether in whole or in part) must be made in accordance with section 85 of the FTAA. Therefore, the Panel must work through the considerations relating to section 85 identified above.

---

[64] See *Director-General of Conservation v the New Zealand Transport Agency* [2020] NZEnvC 19 at [20].

[65] Amended decision concerning the *Kohimarama Retirement Village*, at [53], citing *Collins v Northland RC* [2013] NZHC 3039 at [26] – [27] and *Haslam v Selwyn District* (1993) 2 NZRMA 628 (PT) at 634.

4. OTHER LEGAL CONSIDERATIONS

4.1 We address, from a legal perspective, a number of discrete legal topics / considerations relevant to the Panel's deliberations, as follows:

(a) The National Policy Statement for Highly Productive Land (**NPS-HPL**);

(b) Case law and higher order planning instrument provisions confirming that infrastructure issues, including funding impacts, are valid considerations for the Panel;

(c) Similarly, case law confirming that the Courts (and here the Panel) do not have power to direct the executive (i.e. the Council) or any of its agencies as to how they may collect or spend public moneys;

(d) Update the Panel on Court of Appeal authority confirming Watercare's ability *inter alia* to decide what assets would vest in it; and

(e) The status of the Council's Future Development Strategy.

National Policy Statement for Highly Productive Land

4.2 The rural-zoned 188 hectare part of the site is highly productive land[66] (**HPL**) and subject to the NPS-HPL, the objective of which is:[67]

> Highly productive land is protected for use in land-based primary production, both now and for future generations.

4.3 The objective of the NPS-HPL is supported by nine policies. The implementation methods for achieving the objective and the policies are set out in Part 3 of the NPS-HPL.

4.4 The Applicant's Economic Assessment refers to the test under clause 3.6(1)(a) of the NPS-HPL. However, the test in clause 3.6(1)(a) is irrelevant as it applies to rezoning proposals and the Application is seeking resource consents. Therefore, the applicable test in the NPS-HPL is found in clause 3.10 which sets a high bar for activities on HPL that are not land based

[66] The rural zoned land is classified as having LUC 2 and LUC 3 class soils. It is therefore caught by the interim definition in clause 3.5(7) of the NPS-FM. The interim definition applies until the regional policy statement containing maps becomes operative. The Environment Court has confirmed that an applicant cannot use more detailed mapping to change the Land Use Capability of their land. See *Blue Grass Ltd v Dunedin City Council* [2024] NZEnvC 83.
[67] NPS-HPL, clause 2.1.

primary production. The Planning Memo and the specialist reports of Ms Underwood (Annexure 16 to the Planning Memo), Dr Guinto (Annexure 17) and Dr Meade (Annexure 2) explain why the clause 3.10 test is not met, and why the Application would result in a material loss of HPL.

4.5 While section 85(4) of the FTAA prevents the Panel from declining an application ***solely*** on the basis of inconsistency with a planning instrument such as the NPS-HPL, this does not diminish the substantive adverse effects that flow from the proposed development. The 'real world' consequence is the permanent and irreversible loss of 188 hectares of highly productive soils. This represents not merely a policy inconsistency, but an actual reduction in New Zealand's finite stock of high-quality agricultural land capable of supporting land-based primary production.

Relevance of infrastructure funding and delivery

Policy instruments

4.6 It is trite that the adequacy of infrastructure to support development is a relevant consideration for the Panel. Higher order planning instruments and case law confirms that funding considerations are also relevant matters for the Panel in its deliberations. These matters are addressed in some detail in **Sections B and D** of the Planning Memo, and in the funding and financing memo of Brigid Duffield (**Annexure 1** to Planning Memo).

4.7 The NPS-UD recognises the importance of the integration of infrastructure provision and funding decisions with urban development:

(a) Under Objective 6, which is that local authority decisions on urban development that affect urban environments are (*inter alia*) integrated with infrastructure planning and funding decisions.

(b) Under Policy 1 and the concept of well-functioning urban environments, which includes good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport.

4.8 Several AUP RPS objectives and policies in sections B2 and B3 are of particular relevance:

(a) Objective B2.2.1(1)(c):

> A well-functioning urban environment with a quality compact urban form that enables all of the following: …
>
> (c) better use of existing infrastructure and efficient provision of new infrastructure; …

(b) Objective B2.2.1(5):

> The development of land within the Rural Urban Boundary, towns, and rural and coastal towns and villages:
>
> (a) is integrated with the provision of appropriate infrastructure; …

(c) Policy B2.2.2(7)(c):

> Enable rezoning of land within the Rural Urban Boundary or other land zoned future urban to accommodate urban growth in ways that do all of the following:
>
> …
>
> (c) integrate with the provision of infrastructure; and …

(d) Policy B2.4.2(6):

> Ensure development is adequately serviced by existing infrastructure or is provided with infrastructure prior to or at the same time as residential intensification. …

(e) Objective B3.3.1(1)(b):

> (1) Effective, efficient and safe transport that: ….
>
> (b) integrates with and supports a quality compact urban form; …

(f) Policy B3.3.2(5):

> Improve the integration of land use and transport by:
>
> (a) ensuring transport infrastructure is planned, funded and staged to integrate with urban growth; …

4.9 The explanatory text at B3.5 of the RPS confirms the intention that *"development, especially that associated with growth in greenfield areas, must be integrated and co-ordinated with the provision of infrastructure and the extension of networks"*. These provisions expressly require an 'integrated' approach and are directed at ensuring decision-making on growth and urbanisation is carefully coordinated with transport infrastructure and funding decisions. Regard must be had to these provisions under section 104(1)(b) RMA and clause 17 of Schedule 5 FTAA.

Case law

4.10 The Courts have long recognised that it is bad resource management practice and contrary to the purpose of the RMA to rezone land for development where the necessary infrastructure does not exist and there is no commitment to provide it. This principle applies even where the land that forms part of the plan change would otherwise be generally appropriate for more intensive use but for the lack of provision of necessary infrastructure: *National Investment Trust v Christchurch City Council.*[68]

4.11 The Environment Court in Foreword Developments Ltd v Napier City Council held:[69]

> It is bad resource management practice and contrary to the purpose of the Resource Management Act - to promote the sustainable management of natural and physical resources; to zone land for an activity when the infrastructure necessary to allow that activity to occur without adverse effects on the environment does not exist, and there is no commitment to provide it. In *McIntyre v Tasman District Council* (W 83/94) the Court said:
>
> > *We agree with Mr Robinson that in this case the extension of services such as the sewage system and roading should be carried out in a coordinated progression. We hold that if developments proceed on an ad hoc basis they cannot be sustainably managed by the Council - an aspect which is not commensurate with section 5 of the Act.*
>
> There are similar comments in decisions such as *Prospectus Nominees v Queenstown-Lakes District Council* (C 74/97), *Bell v Central Otago District Council* (C 4/97) and confirmation that the approach is correct in the High Court decision of *Coleman v Tasman District Council* [1999] NZRMA 39.

4.12 While these cases arose in the context of re-zoning proposals and the Application is technically a resource consent, given the scale of Sunfield its effect is akin to a re-zoning and the principles set out above are equally applicable. We observe in passing that the Ministry for the Environment's advice[70] in relation to Sunfield's potential listing noted that:

> while the project is large-scale, it is a reasonably novel urban concept which is not enabled by the underlying zoning. It may be that the project would be more appropriately considered through a plan change process under the RMA.

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[68] *National Investment Trust v Christchurch City Council,* C41/2005 at [116].
[69] *Foreworld Developments Ltd v Napier City Council*, W08/2005, at [15].
[70] FTA160-Sunfield-Sch-2A-MfE-assessment-form-Stage-1_Redacted.pdf, page 4.

4.13 In any event, the Environment Court has held in *Norsho Bulc v Auckland Council* that a proposal causing unnecessary expense to the ratepayers is a lawful basis on which to refuse an application for *resource consent*.[71]

4.14 The Environment Court in *Norsho Bulc* cited with approval the *Coleman v Tasman District Council* decisions which concerned a subdivision application which had been declined based on inadequacy of the surrounding roading infrastructure to cope with the cumulative effects of development in circumstances where there was no funding for upgrades.

4.15 *Coleman* affirmed the principle from *Bell v Central Otago District Council*[72] that courts should not put local authorities in positions where they might be forced to commit funds to infrastructure improvements, recognising that councils have the prerogative to determine funding priorities for public works like roading, which should be achieved at rates with which communities can *"physically and economically cope".*

Expenditure of public money a matter for the Council

4.16 Flowing from the above, there is no duty on a Council to commit funds to works / infrastructure. The Courts have long held that they do not have power to direct the Executive (i.e. the Council) or any of its agencies as to how they may collect or spend public moneys.[73]

4.17 In *National Investment Trust* the Environment Court held that it was *"not for this Court to dictate to the Council when these infrastructural improvements should be made"*[74] (which related to roading and water and sewage infrastructure in that case). As the Court put it in *Foreworld*:

> … decisions about priorities for spending on infrastructure are matters for the Council to decide. … Those sorts of policy decisions are ones for which the Council may be politically accountable, but neither they nor costing calculations are decisions which we have any power to investigate or to rule upon.

4.18 The above statements remain good law as confirmed in *Norsho*. The Applicant may argue that conditions precedent are an appropriate

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[71] *Norsho Bulc v Auckland Council* (2017) 19 ELRNZ 774, at [93], citing *Coleman v Tasman District Council* EnvC Wellington W67/97, 26 June 1997; upheld on appeal: *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).
[72] *Bell v Central Otago District Council,* C4/97.
[73] See e.g. *Norsho Bulc v Auckland Council* (2017) 19 ELRNZ 774, at [88], citing *Bell v Central Otago District Council EnvC Christchurch* C4/97, 24 January 1997 at 8; *Coleman v Tasman District Council* [1999] NZRMA 39 (HC).
[74] C41/2005, at [117].

mechanism to address any identified gaps in infrastructure provision and funding. This would represent bad resource management practice and an undesirable outcome as the Court held in *Foreworld*:[75]

> Unmeetable expectations are raised and the Council is put under pressure to spend money it has decided, as a matter of managing the City in an integrated fashion to commit elsewhere. That is the antithesis of the function of integrated management of resources imposed on territorial authorities by the RMA.

Watercare's ability to decline to accept vesting of assets / connections

4.19 The Applicant has asserted that the existing Watercare transmission network has sufficient capacity and relies on this as a critical foundation for the proposed water supply and wastewater servicing strategy.[76] Watercare's comments provide a comprehensive answer to the Applicant's position. Watercare states that it opposes the Application and may refuse any requests for water supply and wastewater connections, emphasising that the Application should not be approved on an assumption of public capacity being available. Watercare has also confirms that it will not accept any private infrastructure or assets for vesting, requiring the Applicant to demonstrate permanent private servicing solutions for both potable water and wastewater. No private solutions are proposed by the Applicant.

4.20 We emphasise Watercare's discretion with respect to these matters. The Court of Appeal's decision in *Thirty Eight Moffat Ltd v Auckland Council and Watercare Services Ltd* concerned Watercare's refusal to accept vesting of a watermain located under a jointly owned access lot (JOAL) in a 22-lot subdivision. Watercare declined to accept vesting, citing its Code of Practice which generally prohibited watermains under private land.[77]

4.21 The High Court had held that:[78]

> … **There is no right, as such, to water from the public water system; Watercare must agree. The phenomenon of agreement is something with which most Aucklanders are familiar: a contract between customer and Watercare. Similarly, there is no right, as such, to connect a watermain to the public water system. Again, Watercare must agree.** Equally, no one can insist Watercare accept infrastructure as its own; there is no "right" to vest assets in Watercare. Approached another way, Watercare could decline to accept a watermain as part of the public water system - provided, of

[75] *Foreworld* at [20].
[76] Letter dated 15 July 2025 from Maven Associates Limited.
[77] *Thirty Eight Moffat Ltd v* Auckland *Council and Watercare Services Ltd* [2023] NZCA 107.
[78] *Thirty Eight Moffat Ltd v Auckland Council and Watercare Services Ltd* [2021] NZHC 2978, at [40].

> course, it acted reasonably in doing so - quite apart from the existence of an associated code of practice, let alone bylaw.
>
> [emphasis added]

4.22 In deciding whether or not to accept ownership of infrastructure, Watercare was acting in its own right. It was not exercising legislative power as a delegate of the Council.[79]

4.23 The Court of Appeal dismissed the subsequent appeal. It found that Watercare was empowered, as owner and operator of the water supply network, to decline to accept vesting of the watermain under the lane.[80] Further:

(a) Like any other company that owns and operates network infrastructure, it is free to decide whether or not to accept the transfer of an asset and the grant of an easement.[81]

(b) Arguments concerning Watercare's bylaw were rejected, the Court finding that, even absent the bylaw, Watercare would have precisely the same ability to decline to accept ownership of infrastructure that did not comply with its own internal codes of practice.[82]

4.24 These findings of the Court of Appeal are particularly relevant in light of Watercare's advice that it may refuse connections for the Sunfield Project in accordance with its policies and under the Water Supply and Wastewater Bylaw Network 2015.[83]

4.25 Under clause 6(5) of the bylaw, Watercare may refuse an application for approval to connect to a network including where:

> …
>
> (c) in Watercare's reasonable opinion, there is insufficient capacity in the network to accommodate the connection; or
>
> (d) in Watercare's reasonable opinion, the connection could compromise its ability to maintain levels of service in relation to the water supply or wastewater network; or

[79] Ibid, at [59]-[61].
[80] Ibid at [79].
[81] Ibid at [61].
[82] Ibid at [64].
[83] Annexure 7 to Planning Memo.

> (e) the connection is outside the area currently served by the water supply or wastewater network, regardless of its proximity to any specific component of the water supply or wastewater network; or …

4.26 The ratio in *Thirty Eight Moffat* appears equally applicable to other network utility owners and operators and bodies corporate who retain a discretion (acting reasonably) to decline to accept vesting of land or assets. Given the out-of-sequence nature of this Application, if it is granted then that scenario may well come to pass, e.g. parks or stormwater assets are not accepted for acquisition or vesting. As such, conditions of consent should include a contingency for this, making provision for potential private ownership and maintenance of land and assets which are proposed to vest.

Status of Council's Future Development Strategy

4.27 The relevance of planning instruments such as the AUP and NPS-UD to the Panel's decision-making is clear. It may be helpful to briefly address the status of the Future Development Strategy (**FDS**). Section B of the Council's Planning Memo discusses strategic planning matters, including the FDS.

4.28 In short:

(a) The FDS is an important growth document required by subpart 3 of Part 3 of the NPS-UD.

(b) The FDS was prepared using the special consultative procedure in section 83 of the LGA.

(c) The purpose of an FDS is inter alia to "assist the integration of planning decisions under the Act with infrastructure planning and funding decisions" (clause 3.13(1)(b)).

(d) The FDS is a relevant consideration to "have regard to" under section 104(1)(c) of the RMA. In this regard, we note that the Environment Court has previously confirmed[84] that similar documents – the Future Urban Land Supply Strategy and Auckland Plan – are relevant under section 104(1)(c).

(e) The meaning of the phrase "have regard to" has been considered in a number of RMA cases. It requires the decision-maker to give

[84] *Albert Road Investments Ltd v Auckland Council* [2018] NZEnvC 102, at [64].

genuine attention and thought to the matter / document, and apply such weight as is considered to be appropriate.[85]

5. OUTCOME OF COUNCIL FAMILY ASSESSMENT TO DATE

5.1 The Council family has undertaken a comprehensive review and assessment of the Application which is set out the Planning Memo and associated annexures. We provide a brief summary below of the key findings with respect to adverse impacts, the extent of benefits, and proportionality assessment.

Adverse impacts

5.2 The significant adverse impacts identified by the Council family assessment are:[86]

(a) **Issue 1: Inadequate proposal for stormwater and flood management** – Significant information gaps result in technical uncertainties and unresolved issues regarding stormwater and flood management, and the proposal presents a significant environmental risk and there is a clear risk to public health, safety, and property.

(b) **Issue 2: No / inadequate proposal for water supply servicing** – Watercare has assessed the capacity of the existing and planned bulk water supply infrastructure required to support the FUZ portion of the proposal ahead of the 2050+ timing in the FDS. There are physical restrictions to providing connections until the Waikato-2 Watermain is operational (no earlier than 2034). No public water supply network is available to service the MRZ portion of the proposal. The absence of a clear and feasible proposal for water supply servicing is a key infrastructure deficit, creating significant uncertainty as to the feasibility of development, and concerns (if consent is granted) as potential public health risks for the future community.

(c) **Issue 3: No / inadequate proposal for wastewater servicing** – Watercare has assessed the capacity of the existing and planned bulk wastewater infrastructure required to support the FUZ portion of the proposal ahead of the 2050+ timing in the FDS. There are

[85] *Unison Networks Ltd v Hastings District Council* [2011] NZRMA 394 (HC) at [70].
[86] As set out in Section D of the Planning Memo.

downstream infrastructure constraints that would require upgrades, including potentially Māngere Wastewater Treatment Plant upgrades, to support the development, and the Applicant has not proposed to undertake these upgrades at their cost. No public wastewater connections are available to service the MRZ portion of the proposal. The absence of a clear and feasible proposal for wastewater servicing is a key infrastructure deficit, creating significant uncertainty as to the feasibility of development, and concerns (if consent is granted) as potential public health risks for the future community.

(d) **Issue 4: Inadequate proposal for transport integration** – There are key information gaps relating to transport matters, and Auckland Transport have assessed the proposal in its current form as being likely to result in significant effects including safety risks, poor transport outcomes, a lack of realistic alternative modes to private vehicle transport in the early stages of development (where private vehicle transport is also not catered to), and unplanned cost burdens.

(e) **Issue 5: Potential ecological effects** – There are key information gaps which result in adverse freshwater ecology effects not being able to be fully assessed – namely with regard to stream diversion. The Application details infer a net loss in stream length and there will likely be an associated net loss in ecological values. Measures proposed to mitigate these specific effects have not been demonstrated.

(f) **Issue 6: Loss of highly productive rural land** – The proposal involves development over 188 hectares of LUC class 2 and 3 soils (HPL under the NPS-HPL and Prime Land under the AUP(OP)). These soils can support economically viable land-based primary production activities, and loss of these soils further constrains an already rare resource in the Auckland region, and puts further pressure on remaining high-class soils due to the displacement of existing rural activities.

(g) **Issue 7: Low density urban form** – In response to difficult ground conditions and close proximity to Ardmore Airport, building heights and typology types are limited, with no provision for terraced housing or 3+ storey apartments that would be expected near neighbourhood

centres and employment locations. Combined with the transport issues and staging of the proposal which undermines the goals of a car-less neighbourhood, the proposal does not contribute to a well-functioning urban environment.

(h) **Issue 8: Inadequate provision of formal recreation opportunities** – All proposed parks to vest are located within the wider drainage network, often with a dual-purpose flood management function. The proposal has not demonstrated a sufficient formal recreation open space network that can support the open space needs of the future community.

(i) **Issue 9: Potential groundwater drawdown and geotechnical effects** – There are key information gaps including insufficient hydrogeological data and geotechnical data available for groundwater modelling purposes, and the limited scope of the investigations provided do not enable the potential adverse effects on the environment, structures and other assets to be assessed. The geotechnical report has not been based on the current design plans. There is a potential significant risk to the viability of the project, future land stability, on future buildings and on both private and public infrastructure.

(j) **Issue 10: Inadequate provision for Mill Road Stage 2 NoR** – The proposal does not respond to the Mill Road Stage 2 NoR, and a large number of the application documents, plans and specialist reports need to be revised to take this reduction in land area into account. This includes updated traffic assumptions, revised employment area numbers, revised stormwater proposals, etc. The Application presents as a significant risk to the viability of the Mill Road Stage 2 project if approved without integration.

(k) **Issue 11: Impact on planned investment and infrastructure provision** - Bringing forward the timing of the proposed development comes at the expense of the delivery of other developments and is not possible without displacing planned investment and infrastructure service provision in existing live zoned areas and sequenced areas. There are significant infrastructure funding and financing gaps for the

application and no agreements are in place to confirm the scope of proposed infrastructure and ongoing opex.

(l) **Issue 12: Uncertainty of infrastructure delivery and servicing** – The absence of resolved stormwater, water supply, wastewater and transport infrastructure delivery and servicing creates significant uncertainty and risk that, if the application is approved, interim solutions may be required. The Application does not adequately address these concerns, and there is insufficient certainty that Council will not bear (or be placed under pressure to bear) the short, medium or long term operational and capital costs, which Council is not in a position to absorb. Also see Issues 1, 2, 3 and 4 above.

Benefits Assessment

5.3 The Applicant contends that the project will deliver regional benefits through housing supply (3,854 homes), retail, commercial, medical, industrial, community and recreation land uses, and national benefits through significant economic impacts, estimated to be around $3.2 billion in net present value (**NPV**).

5.4 Dr Richard Meade, in his economics review undertaken for the Council, concludes that:[87]

(a) The Applicant's analysis has used a methodology that inherently overstates the development's benefits; cost-benefit analysis (**CBA**) is a more appropriate method when compared to the economic impact analysis (**EIA**) provided by the Applicant. Even if an EIA was accepted, this particular approach has systematically overstated the relevant benefits, and has not considered benefits net of any relevant displacement effects or costs (including in adjoining regions);

(b) Any assessment of the development's benefits requires a full CBA, including suitable sensitivity analysis and scenario modelling to test the importance to claimed benefits of key uncertainties, which have not been provided;

[87] Annexure 2 to the Planning Memo.

(c) The Applicant's analysis fails to properly define the development's counterfactual, nor does it properly assess all relevant costs/adverse effects, and it overstates certain of the claimed benefits;

(d) The Application's assessed benefits have not been reliably established, and not to the level of demonstrating significant regional or national benefits.

5.5 Having noted the above matters, even if the Panel were to accept the Applicant's assessment of regional (or national) benefits, the Council's assessment is that there remain a number of adverse impacts that are sufficiently significant to be out of proportion to those benefits.

6. CONCLUSION AND RECOMMENDATIONS

6.1 The proposal represents unanticipated development on unsuitable land that would displace planned investment from properly serviced areas while creating significant risks to public safety and environmental values. The adverse impacts significantly outweigh any claimed benefits, warranting decline under FTAA.

6.2 As matters stand on 4 August 2025, the result of the Council family's comprehensive assessment is that Application should be **declined**.

DATED the 4th day of August 2025

Matt Allan / Rowan Ashton / Michelle Hooper
Counsel for Auckland Council family