Before the Expert Panel appointed under the Fast-track Approvals Act 2024

FTAA-2508-1093

Under	**the Fast-track Approvals Act 2024**
In the matter	**of the Ayrburn Screen Hub**
By	**Waterfall Park Developments Limited**

RESPONSE OF QUEENSTOWN LAKES DISTRICT COUNCIL TO MINUTE 10

AYRBURN SCREEN HUB

5 February 2026

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MAY IT PLEASE THE PANEL CONVENER

1. This memorandum is provided on behalf of Queenstown Lakes District Council (**QLDC**) in response to Minute 10 of the Expert Panel dated 30 January 2026 (**Minute**), regarding the application for approvals for the Ayrburn Screen Hub.

2. The Minute refers to paragraphs [107]-[118] of counsel for the applicant's legal memorandum in response to comments.[1] The Minute states that in light of the contrast with the position in counsel for the applicant's 18 November response to Minute 2 (that the applicant was not relying on a Permitted Baseline position),[2] commenting parties can comment on the legal argument counsel for the applicant has made.

3. This memorandum sets out QLDC's comments on the applicant's legal argument concerning a basis for comparison of effects of the application with an 'anticipated development'. It does not address the merits of the landscape advice from the applicant.

Anticipated development is not the 'permitted baseline'

4. As the Panel will be aware, there is discretion to (ie, the Panel *may*) apply a permitted baseline when assessing a resource consent application under section 104(2) of the RMA. That allows the adverse effects of an activity specified in the Queenstown Lakes PDP as a **permitted** activity to be disregarded.

5. The applicant's 'anticipated development' would require resource consent for subdivision and land use as a restricted discretionary activity.[3] Plainly,

1 Document-1-Legal-Memorandum_Redacted.pdf

2 As summarised in the applicant's legal memorandum: 'The Applicant's Response to Minute 2 dated 18 November 2025, at paragraph 9, recorded that development of the RAA would require restricted discretionary subdivision consent under Rule 27.5.9 of the PDP and restricted discretionary land use consent under Rule 24.4.7B of the PDP. Tony Milne prepared his Addendum Landscape Assessment Memo dated 18 November 2025 which included an assessment that excluded the developed RAA as a basis for comparison of effects.'

3 Applicant's legal memorandum, at [108].

the 'anticipated development' is not permitted and the effects of that activity cannot be disregarded through election to apply the permitted baseline under section 104(2).

Anticipated development is not part of the 'existing environment'

6. The applicant states that case law supports considering anticipated development "as part of the relevant 'environment' as it is expressed in s104(1)(a)".[4]

7. QLDC does not agree with that submission. The 'existing environment' concept as created by case law embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district plan, or by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.[5] The environment does not include the effects of resource consents that might be applied for in the future.[6] The anticipated development proposed for comparison here is neither permitted nor consented, and thus not part of the 'environment'.[7]

Case law on 'anticipated development'

8. The comparison of adverse effects of an application to an anticipated development (ie, a non-permitted and non-consented development) has been held to be unlawful. Most relevantly:[8]

4 Applicant's legal memorandum, at [110].

5 *Queenstown Lakes DC v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA), at [84]; *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104; *Keir v Auckland Council* [2023] NZHC 1658, (2023) 24 ELRNZ 886.

6 *Wallace v Auckland Council* [2021] NZHC 3095, at [131]

7 We note for completeness that the applicant's reference to a resource consent application for a separate site at [115](d) could be part of the existing environment if that consent is likely to be implemented.

8 See also *Green Bay East Residents Society Inc v Auckland Council* [2025] NZHC 644, [33]-[37] where the wrong permitted baseline was applied on the basis a subdivision consent would be required to achieve the density involved.

(a) The High Court in *Wallace v Auckland Council* [2021] NZHC 3095, found it is not correct to consider what is proposed against the scale of development 'anticipated' by zone provisions (as reflected in its objectives, policies and development standards), if the 'anticipated' development would require consent.[9]

(b) In *Sydney St Substation Ltd v Wellington City* [2017] NZHC 2489, the High Court found that the Council was incorrect in applying an "anticipated development model" that measured the effects of a proposal against those that were anticipated by the District Plan. The approach undertaken in that case differed from the permitted baseline as the comparison was not against permitted activities, but restricted discretionary activities.[10]

(c) In *Drive Holdings Ltd v Auckland Council* [2021] NZEnvC 159, the Court was presented with expert evidence that compared an example of what would be "probable development", on the basis that it complied with the built form standards, with that which was proposed. The Environment Court rejected a "likely consentable" comparator, as that comparison point would in most, if not all cases, require restricted discretionary at the least and so could not be considered as part of the permitted baseline.[11]

9. The applicant identifies three further relevant and recent High Court decisions:[12]

(a) *Mahora Residents Society Inc v Hastings District Council* [2024] NZHC 3322*,* where the use of an 'alternative development scenario' when assessing the effects of the application was found not to be unlawful. In that case there was a permitted built form (building coverage in particular) that was being considered and

9 *Wallace v Auckland Council* [2021] NZHC 3095, at [141]-[144].
10 *Sydney St Substation Ltd v Wellington City Council* [2017] NZHC 2489, [2018] NZRMA 93.
11 *Drive Holdings Ltd v Auckland Council* [2021] NZEnvC 159, at [84].
12 While the applicant also mentions *Waimarino Queenstown Limited v Queenstown Lakes District Council* [2024] NZEnvC 176, at [102] – [103], this case seems less relevant.

applied, that would have required a *controlled* activity subdivision consent.[13]

(b) *Frost v Queenstown Lakes District Council* [2021] NZHC 1474, where the High Court held that the Council had not erred in law in considering the Zone objectives, and the site standards to give some context to the assessment of effects.[14] The Court's finding was that the Council in that case had not, as a matter of fact, applied the district plan standards as a permitted baseline.

(c) In *Waimarino Queenstown Limited v Queenstown Lakes District Council* [2024] NZEnvC 176, the Environment Court was clear that the 'anticipated development baseline' that the applicant put forward was not entirely permitted and thus the Court did not apply it as a permitted baseline.[15] However, the Court considered that the anticipated residential development in the relevant policy framework could be considered under section 104(1)(b) and 104D(1)(b) of the RMA, particularly as the wording of the policy framework in question used the term 'anticipated'.[16]

10. All three cases can be distinguished from WPDL's RAA anticipated development proposal. In this case the 'anticipated development' sought to be compared with the application would be a restricted discretionary activity.[17] That different activity status is significant when considering how to apply the existing case law.

11. In QLDC's submission, the Panel would fall into error to accept the applicant's submission that 'the restricted discretionary outcomes are in fact part of an 'anticipated environment' or an 'alternative development'

13 *Mahora Residents Society Inc v Hastings District Council* [2024] NZHC 3322, at [7], [52], and [71]. Noting that the High Court in *Mahora* does not refer to any of the earlier cases mentioned about when reaching that conclusion.

14 *Frost v Queenstown Lakes District Council* [2021] NZHC 1474, at [64]-[68].

15 *Waimarino Queenstown Limited v Queenstown Lakes District Council* [2024] NZEnvC 176, at [97]-[99].

16 *Waimarino Queenstown Limited v Queenstown Lakes District Council* [2024] NZEnvC 176, at [102].

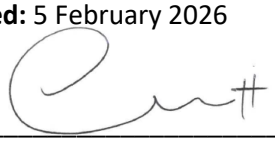
17 Applicant's legal memorandum, at [108], [115], [285]-[286].

for the subject site, on a similar footing to a controlled activity scenario addressed in the above higher court cases.'[18]

12. No higher court authority supports comparison of the effects of the application against an activity that requires a restricted discretionary land use and subdivision consent. A restricted discretionary activity is not 'plan enabled' in the same way a controlled activity is, rather a restricted discretionary activity consent requires a merits assessment and may be refused if the proposal is not acceptable (on the matters discretion has been restricted to.[19]

13. The Panel can take into account what might be reasonably anticipated by the zone from a policy perspective (for example a residential use).[20] That approach (consistent with *Frost* and *Waimarino*) is different from discounting adverse effects that are neither the permitted baseline nor part of the reasonably foreseeable future environment, as the applicant has suggested can be done.

Dated: 5 February 2026



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18 Applicant's legal memorandum, at [116].
19 Applicant's legal memorandum, at [117].
20 For example, as the Applicant's legal memorandum states at [115](a) that 'this is a structure plan which clearly accepts the RAA as having (solely) a residential purpose and design outcome and 'enables' development consistent with the same'.