Applicant's Response under Section 55
to Comments received by the EPA as a result of invitations under Section 53
Ayrburn Screen Hub
FTAA-2508-1093

(23 January 2026)

Introduction

1. This Memorandum addresses legal issues arising in relation to comments received by the EPA under section 53 of the FTAA (**Comments**) and provides a response to such Comments in accordance with section 55(2) of the FTAA.

2. The Memorandum addresses the following:

   Part A: Partial response to Minute 6 – Ecological Assessment;

   Part B: Comments considered to be out of scope;

   Part C: Amendments to the application;

   Part D: Matters irrelevant to consideration of the application;

   Part E: Water supply;

   Part F: Chapter 27 PDP – Subdivision;

   Part G: Noise;

   Part H: Significant benefits;

   Part I: Adverse impacts;

   Part J: Section 85(3) assessment.

3. Accompanying this Memorandum are the following documents which respond to issues raised in Minute 6 and in the Comments:

   a. Planning Statement by Karl Cook of Barker & Associates dated 23 January 2026;

   b. Terrestrial Ecology Assessment by SLR Consulting New Zealand dated 15 January 2026;

   c. Lizard and Incidental Fauna Assessment by Dr Mandy D Tocher of LizardExpertNZ dated 5 January 2026;

   d. Lake Hayes Management Strategy 1995;

   e. Statement of Chris Meehan dated 21 January 2026;

f. (Film) Addendum to Ayrburn Screen Hub Report by Dave Gibson dated 18 January 2026;

g. Economic Memorandum by Phil Osborn/Tim Heath of Property Economics dated 21 January 2026;

h. Engineered Batter Planting Memo by Mike Plunket of Geosolve dated 19 December 2025;

i. Supplementary Landscape Assessment by Tony Milne of Rough Milne Mitchell dated 9 January 2026;

j. Peer Review: Supplementary Landscape Assessment by Shannon Bray of Wayfinder dated 14 January 2026;

k. Second Supplementary Landscape Assessment by Tony Milne of Rough Milne Mitchell dated 21 January 2026;

l. Depth Contour Plan by Patersons dated 15 December 2025;

m. South Neighbours Additional Mitigation Plan by Winton dated 21 January 2026;

n. Wilding Tree Removal and Proposed Native Planting Plan by Winton dated 21 January 2026;

o. Acoustic Barrier Specifications by Winton dated 21 January 2026;

p. Southern Boundary Bank Planting Specification and Maintenance Plan by Winton dated 21 January 2026;

q. Supplementary Noise Assessment Memo by Marshall Day Acoustics dated 20 January 2026;

r. Noise Peer Review by Jon Styles of Styles Group dated 22 January 2026;

s. Draft Light Management Plan by Xyst dated 8 January 2026;

t. Planting Establishment Feasibility by Michael Tither of The Plant Store dated 9 January 2026;

u. Urban Design Supplementary Assessment by Gerald Barratt-Boyes of Studio Pacific Architecture dated 15 January 2026;

v. Heritage Memorandum by Robin Miller of Origin dated 9 January 2026;

w. Amended Proposed Draft Consent Conditions dated 23 January 2026 (tracked change version);

x. Amended Proposed Draft Consent Conditions dated 23 January 2026 (clean version with tracked changes accepted);

y. Word version of the clean version Proposed Draft Consent Conditions document.

4. Referring to the documents listed in the previous paragraph:

    a. The tracked change version Proposed Draft Consent Conditions is for the information of the Panel and Participants to enable the Panel and Participants to see where amendments have been made;

    b. The clean version Proposed Draft Consent Conditions dated 23 January 2026 replaces the previous version dated 18 November 2025.

5. Expert conferencing was held on 9 and 13 January 2026. At the request of the Panel in Minute 6, the Fast-track team was provided Joint Witness Statements (JWSs) for the issues raised. Where appropriate this Memorandum refers to the JWSs.

Part A: Partial response to Minute 6 – Ecological Assessment

6. In paragraph [6] of Minute 6 the Panel requested an assessment of the application against the requirements of the National Policy Statement for Indigenous Biodiversity. That request is addressed in the Planning Statement.[1]

Part B: Comments considered to be out of scope

7. Comments include a statement from the Mayor John Glover and a statement from Councillor Samuel Belk (**Elected Member Statements**). Those Statements are out of scope and should be ignored, if not formally struck out, for the following reasons:

    a. Queenstown Lakes District Council (**QLDC**) was invited to comment under s53(2)(a). QLDC lodged Comments by letter dated 17 December 2025 signed by Fiona Blight, Manager Resource Consents. That letter contains no reference to the Elected Member Statements.

    b. Both Elected Member Statements state that they reflect the relevant author's "*… personal views …*". They do not purport to be made on behalf of QLDC and they were provided separately to the QLDC Comments. Why they are written on QLDC letterhead is not clear.

    c. Under s53(3) comments may be invited from any other person the Panel considers appropriate. The Panel did not request the EPA to invite comments from the authors of the Elected Member Statements. There is no jurisdiction for the Elected Member Statements to be received and considered and there is no ability for the Panel to retrospectively invite comments from those Elected Members under s 53(3) at this stage in the process. Section 81 does not appear to provide a discretion to consider uninvited Comments.

8. In case the Panel or the EPA may consider that there is jurisdiction to receive and consider the Elected Member Statements, the following additional points are made:

    a. It is impossible to tell, from the contents of the Elected Member Statements, what information the relevant authors have read and considered. This is particularly noting that s

[1] Planning Statement by Karl Cook dated 23 January 2026 at Part 2.7.

54(2) sets out that any invitation for comment from the Panel must include notice of the substantive application, with details as to how to access the application, and as noted above, the authors were not extended any such invitation. There are references to discussions with individuals but no reference to the reading of any documentation supporting the substantive application or the application itself. By way of example, it might be considered curious that there is no reference to the significant benefit arising from improvement of water quality in Lake Hayes, given the extent of QLDC involvement in the protection and enhancement of water quality in Lake Hayes (refer Part H below).

b. To allow such Elected Member Statements to be received and considered would open the door to the kind of lobbying which appears to have taken place, particularly as is evident from Councillor Belk's Elected Member Statement. By way of the same example, the Applicant might have explored the possibility of obtaining supportive Elective Member Statements from Councillors interested in the issue of water quality in Lake Hayes or improvements to the public trails network. This process would undermine the apparent intention of sections 53-55 of the FTAA to provide a code for those with standing to comment.

Part C: Amendments to the application

Timing of construction

9. The practical (and legal, given the requested lapse period) reality is that the entire Screen Hub Project will have to be constructed at the same time. That is evident from the '*Rationale for Proposed Six-Year Lapse Period*'[2] which details a 4.8 year delivery programme and requests a six year lapse period to allow flexibility for unexpected delays (also as a result of the water supply situation addressed in Part E below).

10. During consultation, concerns were expressed about a possibility of just the visitor accommodation component being constructed and the film studio component not being constructed. A number of individual Comments also express a concern that the visitor accommodation could be constructed without any of the studios being constructed (which has never been the intention). To address those concerns the draft conditions dated 18 November 2025 included Condition 67, as a phasing condition, to ensure that one studio (and associated workshop and workroom spaces) would have to be completed along with the first 100 accommodation units and the second phase would have to include the second studio (and associated workshop and workroom spaces). That phasing condition appears to have been misinterpreted as signalling an intention to carry out the development in stages.[3]

11. To address this issue, and resolve those concerns, the amended consent conditions which accompany this Memorandum include the deletion of previous Condition 67 and its replacement by (new) Condition 67 which provides that visitor accommodation units cannot be occupied until all the film studio buildings have been completed.

[2] Refer Schedule A to the Applicant's Response to Minute 2 dated 18 November 2025.

[3] Refer Legal Submissions of Jayne Macdonald dated 17 December 2025 at paragraphs 4.9, 5.20, 5.22 and 6.24-6.26.

Additional consents required

12. As a consequence of matters addressed in this Memorandum, the following additional consents are required and are applied for:

    a. Consent to plant vegetation within part of the OS Area adjoining the southern boundary of the site (refer Paragraph 27.a below);

    b. Consent to erect acoustic/glare barriers which are deemed to be buildings (refer Paragraph 27.b below).

13. The report by LizardExpertNZ dated 15 January 2026 (**Lizard Report**) referenced in the Planning Statement[4] raises the possibility of consent being required under the Wildlife Act 1953 to relocate some McCann's Skinks which are a 'Not Threatened' species. It is apparent from Figure 1 on page 4 of the Lizard Report that the areas where McCann's Skinks may be found are mostly in the parts of the OS Area which will not be disturbed by development. It is also concluded in this Lizard Report that, where any works over areas providing habitat for indigenous lizards cause disturbance, then a Lizard Management Plan (**LMP**) and Wildlife Authority will be required. The LMP will include any necessary salvage of all lizards from the site within any areas to be disturbed, and the management of an on-site release site ('Christine's Hill). The Applicant will deal with any separate approvals required under the Wildlife Act 1953 if approval for this project is granted.

Issues raised by neighbours

14. A number of individual invited landowners have provided Comments. To assist the Panel, attached in **Schedule A** of this Memorandum is a plan which identifies (by highlighting and numbering) the locations of the properties owned by those adjacent landowner participants (noting that Jan Andersson owns the three lots numbered 2, 3 and 4 which together contain one dwelling).

15. The Comments from those neighbours have been carefully considered. A number of amendments to relevant plans and conditions have been made. In summary those amendments comprise:

    a. installation of two 2.4m high acoustic/glare barriers;

    b. relocation of film studio related traffic away from the southern site boundary;

    c. relocation of Trail B away from the southern site boundary;

    d. imposition of additional noise management measures;

    e. imposition of more stringent lighting controls;

[4] Planning Statement by Karl Cook dated 23 January 2026 at Part 2.7.

f. removal of conifers/native planting/neighbour rights of access within an area adjoining the southern boundary.

16. The amendments summarised in the previous paragraph are further explained as follows:

    a. Attached in **Schedule B** of this Memorandum are the following two plans dated 21 January 2026 (jointly referred to as the '**Mitigation Plans**'):

        i. South Neighbours Additional Mitigation Plan;

        ii. Wilding Tree Removal and Proposed Native Planting Plan.

    b. Items a., b. and c. in Paragraph 15 above are detailed in the South Neighbours Additional Mitigation Plan;

    c. Item d. in Paragraph 15 above is addressed in the Supplementary Noise Assessment Memo by Marshall Day Acoustics and the Noise Peer Review by Jon Styles.

    d. Item e. in Paragraph 15 above is addressed in the Planning Statement;[5]

    e. Items f. in Paragraph 15 above are addressed in paragraphs 19-26 below.

17. The Ayrburn Design Report dated 3 June 2025 lodged with the application includes some plans which will be affected by the contents of the Mitigation Plans. At this point in time this Report has not been amended because it is anticipated that there may be further changes to the Mitigation Plans following receipt of draft conditions for comment under s70(1) (if approval is to be granted). The Applicant anticipates lodging a final updated Ayrburn Design Report (including the final Mitigation Plans) when responding under s70(4) to comments received.

Correction to engineering Sheet 210

18. The previous point also applies to a correction to one page (of 48 pages) of the set of engineering drawings by Patersons to address an error noticed by Bridget Gilbert.[6] The corrected Sheet 210 is lodged in **Schedule C** of this Memorandum. The 48 page set of drawings (including the amended Sheet 210) will be lodged with the Applicant's final response under s70(4).

Trees along southern boundary

19. Items f. detailed in Paragraph 15 above are addressed through proposed Conditions 59A-59C which are set out in **Schedule D** of this Memorandum. Those conditions require some background explanation.

[5] Planning Statement by Karl Cook dated 23 January 2026 at Part 2.6.
[6] Landscape Peer Review by Bridget Gilbert dated 17 December 2025 at paragraphs 2.4 and 4.6.

20. RM171280 (Environment Court Decision dated 10 June 2019[7]) authorised construction of the primary road into and through Ayrburn to the Waterfall Park Zone. That road has been completed and is known as Ayr Avenue. That consent contains the following Condition 21:

"*Maintenance of existing vegetation*

21. This condition applies to the trees and all other vegetation over 2m in height ("Trees") located within the Tree Protection Areas A, B and C ("TPA") shown on approved Plan Q6388-16-6 Revision A dated 26/04/2018 entitled 'Waterfall Park Access Road – Adjacent Parcel Information and Tree Protection Area':

a) The Trees must be maintained, and cannot be removed or trimmed, except as authorised under (b), (c) or (d) below.

b) The consent holder may remove some or all Trees provided that:

(i) the consent holder has first planted replacement Trees which will achieve the same or similar visual screening effect when viewed from the three properties south of and adjoining the TPA; and

(ii) the replacement Trees are evergreen; and

(iii) the replacement Trees have reached a height of 4m above ground level measured at that point on the northern boundary of the TPA which is directly north of the replacement Trees.

c) Trees may be removed or trimmed if the consent holder first obtains the written consent to such removal or trimming from the relevant adjoining landowner to the south. For the purpose of this subclause the 'relevant adjoining landowner' is:

(i) in respect of TPA-A, the owner of Lot 1 DP336908;

(ii) in respect of TPA-B, the owner of Lot 3 DP336908;

(iii) in respect of the TPA-C, the owner of Lot 4 DP336908.

d) This condition does not apply to, or restrict the trimming of:

(i) branches of Trees within the TPA which extend beyond the boundaries of the TPA;

(ii) Trees which, in the opinion of an experienced arborist, need to be removed or trimmed for safety reasons."

[7] *P J & S Beadle v QLDC Decision No [2019] NZEnvC 103.*

21. One consequence of the Environment Court decision,[8] which resolved the current zoning of the subject site, was the inclusion in Chapter 27 Subdivision (of the PDP) of a specific Rule 27.7.32.2.c which effectively replicates the wording from Condition 21 of RM171280 quoted above. The Applicant has recently obtained RM240982 (being the consent in respect of which the Applicant seeks to vary two consent conditions through this process). Implementation of Rule 27.7.32.2.c has resulted in RM240982 containing a consent notice condition effectively replicating the wording from Condition 21 of RM171280 quoted above. That condition will be registered through a Consent Notice when RM240982 is implemented.

22. The background to all of the outcomes detailed in the previous two paragraphs is the consequence of steps taken by the Applicant to ensure that the landowners for the time being of the land located adjoining the Tree Protection Area (**TPA**) (as detailed in Condition 21 quoted above) would always have the ability to retain a landscaping screen within and along the TPA.

23. However that outcome depends upon the owner of the Project site wanting to remove the trees within the TPA (which are mostly evergreen conifers which substantially screen the site from cold southerly winds). Those conifers are 25m-30m in height. They almost completely screen views to the north from, and restrict sunlight access to, the three properties which adjoin the TPA on its southern side (being properties numbered 23, 25 and 26 in the Adjacent Landowner Participants plan in Schedule A). Removal of those conifers would be a significant benefit to those three properties in respect of views to the north and sunlight access from the north. That has been a matter of particular interest to those three landowners who are keen to have those conifers removed, as is evident from the Comments by David Kidd.[9]

24. The effect of Conditions 59A-59C is to provide those three landowners (separately and individually) with:

    a. the choice between the retention (all or in part) of those conifers (and their related screening effects) on the one hand and the removal (all or in part) of those conifers (to achieve the view and sunlight access benefits) on the other hand;

    b. the ongoing right to enter the TPA areas to top vegetation in order to maintain views.

25. Removal of the conifers from Areas A, B and C shown on the Mitigation Plans must be followed immediately by replanting in native vegetation which must then be managed and maintained on an ongoing basis by the consentholder as required by Condition 59A.

26. Three further aspects of this tree control regime are noted:

    a. The benefits accrue to each landowner separately, so that no agreement between any of them is required.

[8] *Waterfall Park Developments Limited v QLDC* [2023] NZEnvC 207.
[9] Refer to Comments by David Kidd (undated) at paragraphs 4, 19, 20, 21 and 54 (sixth bullet point) and the emails in Annexure C.

b. The private access (to top vegetation) benefit arising under Condition 59C is extended to include properties 22 and 19 shown on the Adjacent Landowner Participants plan in Schedule A.

c. The QLDC Parks and Reserves Department[10] records that the existing conifers are large Douglas Fir which are classified in the ORC Pest Management Plan as an invasive wilding exotic species and that Rule 34.4.2 of the QLDC PDP prohibits the planting of Douglas Fir. The Comment further expresses that the removal of those Douglas Firs would be considered a positive environmental outcome that would support the other actions such as native planting and water quality enhancement the Applicant is undertaking on the subject site.

27. The Mitigation Plans and proposed Condition 59A have the following consequences in terms of consents required:

a. Because the TPA is within the OS Area of the subject site, consent is technically required under Rule 24.4.27.6 to plant the native plantings intended to replace the conifers (planting within OS Areas otherwise being limited to pasture grass, crops and grapevines). The Applicant applies for that consent as part of this application.

b. The permitted activity limit for an acoustic barrier fence/wall not to be classed as a building is maximum height 2m. The acoustic barriers are proposed to be 2.4m in height. The acoustic barriers are located partly within the OS Area and partly within the RAA. Consent is therefore required, and is applied for:

i. in respect of that part of the acoustic barriers located within the OS Area over 2m in height, for a building under Rule 24.4.18 and Rule 24.4.27.1;

ii. in respect of that part of the acoustic barriers located within the RAA over 2m in height, for a building under Rule 24.4.18.

Part D: Matters irrelevant to consideration of the application

28. A number of Comments include statements relating to the consent history of the site, including various proposals dealt with under different legislation.[11] Those statements are not relevant to consideration of this application (and, on that basis, will not be responded to). The inappropriateness of considering those statements can be illustrated by the possible scenario that WPDL could have sold Lot 4 DP540788 to an unrelated third party and that third party could have initiated and pursued this application. It would be illogical and inappropriate if matters which could not be taken into account in relation to that unrelated third party's application could be taken into account in relation to this application.

29. While the Panel has a relatively wide discretion under s104(1)(c) RMA[12] in relation to matters which it may consider, such consideration must be: "*… relevant and reasonably necessary to*

[10] QLDC Comments dated 17 December 2025, Appendix 5, Technical Memo dated 17 December 2025 at paragraphs 27 and 31.
[11] For example, refer Comments by James Hadley at paragraph 20 on page 4.
[12] Applicable under the FTAA through Schedule 5 clause 17(1)(b).

determine the application." There is no basis for a contention that consideration of those historical matters would be relevant and reasonably necessary to determine this application.

Removal of visitor accommodation activity

30. A number of Comments seek that, if approval is to be granted, consent for the visitor accommodation aspect should be deleted[13]. That is not an option as far as the Applicant is concerned. [14] The Applicant makes no secret of the fact that the visitor accommodation component is an essential component of the Project. The financial rationale is obvious. Natalie Hampson records her agreement that the visitor accommodation component would help achieve a sustainable and consistent occupancy level and return on investment.[15] She notes that Silverlight Studios sought a similar outcome for commercial feasibility reasons.

31. The purpose of the FTAA is to "*… facilitate the delivery of … projects …*". Granting an approval without an essential component, with the consequence that the Project does not proceed, will not achieve the purpose of the FTAA. The Applicant does not volunteer to delete the visitor accommodation activity, and that is therefore not a scenario which the Panel needs to consider.

Alternatives

32. The Legal Submissions for Jan Andersson contain, and expand on, the statement that "*A notable feature of the application is a lack of any alternatives assessment …*".[16] Consideration of alternatives is a requirement, under some circumstances, under the RMA. It is not a requirement under the FTAA and the Applicant's position is that it would not be of assistance to provide any such assessment in this process.

33. Other than in respect of discharge and coastal permits, the requirement to consider alternatives in an application for consent under the RMA only arises in specific circumstances, as set out in clause 6 of Schedule 4 below:

> *"**6 Information required in assessment of environmental effects***
>
> *(1) An assessment of the activity's effects on the environment must include the following information:*
>
> *(a) If it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:*
>
> *…*
>
> *(d) If the activity includes the discharge of any contaminant, a description of:*

[13] For example, refer Comments by Neil Green at paragraph 47.b on page 8.
[14] Refer Statement of Chris Meehan dated 21 January 2026 at paragraphs 10-12.
[15] Evidence of Natalie Hampson for J Andersson and D Kidd, paragraph 71 on page 26.
[16] Legal Submissions of Simon Peirce dated 17 December 2025 at paragraph 32 on page 10.

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

(ii) any possible alternative methods of discharge, including discharge into any other receiving environment:

…

(h) if the activity will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, a description of possible alternative locations or methods for the exercise of the activity (unless written approval for the activity is given by the protected customary rights group).”

34. By contrast to the RMA, the FTAA provides a code in terms of the application requirements for a substantive application, within clauses 5-9 (most relevantly to Ayrburn) of Schedule 5. This schedule does not import Schedule 4 of the RMA. Rather, it sets out explicitly the information requirements for substantive applications under the FTAA. Clause 5 sets out the requirements of a consent application. The list is specific and exhaustive – it relevantly states an application must include an assessment of the activity's effects on the environment that:

    (a) includes the information required by clause 6; and.

    (b) covers the matters specified in clause 7[17].

35. Clause 6 in turn sets out more particulars as to the information required to assess environmental effects (again, this is consistent with the point above, that Schedule 4 RMA is not imported). It prescribes that an assessment of alternative methods of discharge is required in respect of consent for a discharge of contaminants, but it does not otherwise set out that any assessment of alternatives is required. Clause 6(2) goes on to clarify that '*A consent application need not include any additional information specified in a relevant policy statement or plan that would be required in an assessment of environmental effects under clause 6(2) or 7(2) of Schedule 4 of the Resource Management Act 1991.*' While this exclusion does not refer to the parts of Schedule 4 RMA requiring an alternatives assessment (copied above), this does not have the consequence of importing other requirements of Schedule 4 RMA into clause 6 FTAA including in particular, any requirement to consider alternatives (other than in relation to the discharge of contaminants and then assessment of alternative methods relating to the same).

36. Clause 7 FTAA provides further specifics on the matters to be covered in an assessment of effects required under clause 5(4). This includes specific types of effects, such as hazards and noise. Again, this clause makes no reference to consideration of alternatives.

37. The only other place in the FTAA which refers to 'alternatives' (in this context for assessment of substantive applications) beyond the discharge point noted above, is in clause 12 of Schedule 5 which relates to information required in support of a notice of requirement. Clause 12(1)(h) requires any consideration of 'alternative sites, routes, or methods of undertaking the project or work'. This further strengthens a conclusion that there is no requirement for other types of land

[17] Clause 5(5), Schedule 5 FTAA.

use consent (and variations) to consider alternatives at all. It is certainly not a 'critical gap' as asserted in the legal submissions for Jan Andersson.

Silverlight Studios Consents

38. There are a number of references to the Silverlight Studios consents which apparently will not lapse until 2029.[18] All that appears to be known is that those consents have not yet been implemented. There is no evidence that they are likely to be implemented and there is secondhand evidence which strongly suggests that they will not be implemented.[19] The consents relate to a project of significantly different scale, in a different location, and which does not have the 'back-up' benefit of consent for the visitor accommodation activity which was described as "*… an integral part of the viability and success of the proposal …*".[20] The Silverlight Studio consents are not relevant to consideration of this application.

Precedent

39. The Comments include statements expressing a concern about setting a precedent, either generally[21] or just in respect of projects being processed under the FTAA[22]. That is not a mandatory consideration under the FTAA and the Applicant submits it is not otherwise an appropriate or relevant consideration at the Panel's discretion. Even if it were either mandatory or of assistance for consideration, it is submitted that any detailed substantive assessment would conclude that approval of the Project would not set a precedent.

40. Under the RMA, 'precedent' and 'plan integrity' are closely related and both refer to a concept of upholding the consistency, effectiveness, and intended operation of plan provisions.

41. The concept of plan integrity and its application are succinctly described by the Environment Court in *Brial v Queenstown Lakes District Council*:[23]

> *[37] "…It is well established that public confidence in the consistent administration of a relevant planning instrument can be a factor in the consideration of a proposal.[24] That is particularly in regard to non-complying or discretionary activities. This public confidence consideration can have significance for instance where a proposal would give rise to an "irreconcilable clash" with important plan provisions.[25] Plan integrity has been regarded as carrying greater weight when the plan is newly minted (by contrast, for instance to cases where plan provisions are dated or have been overtaken by other circumstances)."[26]*

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[18] Refer paragraph [7] of Minute 6 dated 18 December 2025.
[19] Refer Statement of Chris Meehan dated 21 January 2026 at paragraph 10 and Addendum to Ayrburn Screen Hub Report by Dave Gibson dated 18 January 2026 at page 1 final paragraph.
[20] Expert Consenting Panel Decision FTC000054 dated 9 December 2021, at paragraph [189] on page 31.
[21] For example, refer Comments by Paul Dougherty at paragraph 15.2 on page 7.
[22] Refer Planning Review of Marcus Langman dated 12 December 2025 at paragraph 47 on page 15.
[23] [2023] NZEnvC 57 at [37].
[24] See for example *Elderslie Park Ltd v Timaru District Council* [1995] NZRMA 433 (HC) at p 19, *Batchelor v Tauranga District Council (No 2)* [1993] 2 NZLR 84; (1992) 2 NZRMA 137 (HC) at p 10, *Hopper Nominees Ltd v Rodney District Council* (1995) 2 ELRNZ 73; [1996] NZRMA 179 (HC) at p 11.
[25] *Beacham v Hastings District Council* W75/2009 at [25].
[26] *Ahuareka Trustees (No 2) Ltd v Auckland Council* [2017] NZEnvC 205, at [116].

42. Despite the RMA making no explicit reference to 'plan integrity' and 'precedent', case law applies the concept of 'plan integrity' as a potentially relevant other matter to have regard to under section 104(1)(c).[27]

43. The Environment Court decision in *Beacham and Hamilton East Community Trust*,[28] referred to in the *Brial* extract above, provided clear guidance on where 'plan integrity' will be imperilled to the point that an application should be declined under the RMA. This is where there is:[29]

    a. a clear, irreconcilable clash with important provisions (when read overall) of a planning instrument; and

    b. a clear proposition that there will be materially indistinguishable and equally clashing future applications.

44. It is questionable whether 'precedent' or 'plan integrity' can have any relevance under the FTAA in relation to a "*… clear, irreconcilable clash with important provisions …*" when that outcome is clearly enabled under (at least) the following FTAA provisions:

    a. under s42(5)(a) a substantive application may seek approval for an activity that is a prohibited activity under the RMA;

    b. under s85(4) approval cannot be declined on the basis that an adverse impact is inconsistent with or contrary to provisions of a specified Act or other relevant document;

    c. s104D of the RMA is excluded from consideration under Schedule 5 clause 17(1)(b) of the FTAA.

45. These specific FTAA provisions appear consistent with the policy intent and overarching purpose of the FTAA, which is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. These provisions also explicitly recognise the FTAA's ability to override subordinate planning documents created under the RMA. It should be noted that s 104(1)(c) of the RMA explicitly refers to other matters relevant and reasonably necessary to determine an application. It is important that in the context of the FTAA, the above factors essentially determine any such aspects of the application, as contrasted with a potentially broader approach to relevant other matters under the RMA.

46. As such, inconsistency with plan provisions alone creating an issue of plan integrity is not considered to be material, nor necessarily relevant and reasonably necessary to determine a decision on an application made under the FTAA. In the FTAA context, it is difficult to see how other matters such as plan integrity and precedent can be relevant to determination of an application.

47. Even if precedent were considered to be a relevant and reasonably necessary other matter for consideration when determining the application, no Comments received have sought to establish a proposition that approval could lead to materially indistinguishable and equally clashing future

[27] *Ahuareka Trustees*, at [105]. Also see *Beacham*, at [19].
[28] *Hamilton East Community Trust v Hamilton City Council* [2010] NZEnvC 176, at [36].
[29] *Beacham v Hastings District Council* W75/2009 at [25]-[27].

applications. As was the case under *Beacham*[30], the Project has features that, individually and collectively, make it very unlikely that a materially indistinguishable proposal would eventuate. Those features include, but are not limited to:

a. the zoned Ayrburn Structure Plan being one of only two such structure plans located within the WBRAZ[31];

b. most of the Project being located within the RAA where development is anticipated;

c. the surrounding topographical context and the surrounding zoning context including in particular the Waterfall Park Zone;

d. the fact that Mill Creek runs through the site (essential to enabling the water quality improvement in Lake Hayes benefit);

e. the scale and nature of the benefits of the proposal;

f. the ORC[32] and Friends of Lake Hayes[33] support for the improvement of water quality in Lake Hayes aspect;

g. the industry support for the film studio aspect.

48. For the above reasons, the issue of precedent is not a consideration relevant and reasonably necessary to determine this application.

Consultation

49. It is alleged that the Applicant's consultation process has been inadequate.[34] That allegation is rejected. The FTAA establishes the required consultation process, which includes the consultation requirements for a referral application at s11. That section does not obligate an applicant to consult with adjacent landowners. Section 13 sets out the requirements for a referral application which includes the requirement to provide a summary of any consultation undertaken in accordance with section 11, as well as 'any other consultation undertaken on the project with persons listed at section 13(1)(j). inter alia, those listed (optional consultees) include a list of persons considered likely to be affected by the project, but does not list adjacent owners. In any event, the EPA has completed its role in confirming the Applicant's referral application was full and complete already in accordance with sections 11 and 13, including in respect of consultation requirements.

50. In addition, the FTAA establishes the process for standing for other parties wishing to comment on an application. That includes requesting Comments from adjacent landowners under s53(h).

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[30] Ibid at [27].
[31] The other being the Wharehuanui Hills East Structure Plan.
[32] Refer Comments by ORC dated 16 December 2025 at page 1, paragraph 7 last sentence, paragraphs 24 and 27 on page 4 and paragraph 31 on page 5.
[33] Refer Applicant's Response to Minute 2, Schedule E, email from Friends of Lake Hayes dated 12 November 2025.
[34] Refer Comments by David Kidd (undated) at paragraph 40.

The Applicant has complied strictly and fully with its consultation requirements, and has duly considered Comments received. No participant has identified any failure to comply with those consultation requirements.

Prior history under s13(4)(u)

51. Allegations are made that the Applicant has failed to comply with s13(4)(u) FTAA in relation to prior development proposals.[35] That allegation is rejected. The Project is a bespoke proposal incorporating film studios and related accommodation. None of the identified prior development proposals would have enabled the Project. That would have required non-complying activity consent as a commercial activity which was not sought under any prior development proposal. There is no breach of s13(4)(u) (and if there was, that would not be a ground for declining approval or a relevant factor when assessing whether approval should be granted).

Noise Complaints

52. Minute 6 issued by the Panel requests a range of information from the Council, including in relation to noise compliance. Specifically, it has requested that Council provide a summary of any noise complaints it has received in relation to activities on the Ayrburn property, the results of any investigations following such complaints, and any subsequent enforcement action it may have taken.

53. The concern appears to emanate from the Panel's observance that: '*…comments also suggest an unsatisfactory level of noise currently received on those properties emanating from the existing hospitality area on the Ayrburn property*'.

54. The Council has apparently not provided the requested information at the time of finalising this Memorandum. WPDL however has made internal enquiries, including with staff who manage Ayrburn Precinct Limited (APL). It understands that, while some complaints have been raised in relation to APL activities (such as use of the hospitality buildings and events), it has not been the subject of any formal enforcement action. In any event, there are two important issues for the Panel to be mindful of if any such further information is received from Council:

    a. Any record of complaints does not necessarily demonstrate a record of non-compliance with resource consent conditions.

    b. Consideration of a separate entity's compliance history in respect of separate land use activities, which are not enabled by the project application under consideration, is not a relevant or helpful matter to take into account.

55. On the latter point, there can be no useful information or assistance taken from, for example, consideration of complaints associated with an event or hospitality building which is not even within the same subject site of this project, nor managed by the same entity. Comments received relating to this concern have not been substantiated with any information as to actual consent

[35] Legal Submissions of Simon Peirce dated 17 December 2025 at paragraphs 16-20.

breaches or enforcement. WPDL remains of the position that its proposed conditions of consent for this project are reliable, certain, and enforceable for future compliance.

Expectation of finality in planning

56. Reference is made to the "*Principle of finality in the administration of justice*"[36]. No caselaw is cited in support of that alleged principle, particularly in relation to planning and resource management law in New Zealand. When one considers a number of recent planning/resource management initiatives, including the Medium Density Residential Standards regime and related Plan Change 78 in Auckland, the Labour government's proposed repeal of the RMA and its replacement by a new legislative regime (and similarly, the current Coalition Government's), Plan Change 120 in Auckland, the Covid-19 fast-track regime and the FTAA regime, it could reasonably be said that nobody in New Zealand can have any expectation or confidence that any planning/resource management outcome which potentially affects them, is final. This is not a relevant consideration.

Part E: Water supply

57. The Comments dated 17 December 2025 received from QLDC raised a concern about the availability of potable water to service the Project. Prior to, and since receiving advice of, that concern, the Applicant has continued to liaise with QLDC and, prior to the 17 December 2025 deadline for Comments, reached agreement with QLDC (as recorded in the QLDC Comments[37]) on a consent condition which will adequately and appropriately address this issue if approval is granted. The agreed condition is Condition 36A in the Draft Proposed Consent Conditions version dated 23 January 2026 which accompanies this Memorandum.

58. The background to agreement on this issue can be summarised as follows:

    a. A significant part of the Wakatipu Basin (including, but much larger than, the application site) has the benefit of a potable water supply owned and managed by QLDC using water sourced from a bore adjacent to the northern end of Lake Hayes. Extraction of water from that bore for the purpose of this water supply is authorised by ORC Water Permit No. 2001-822 (**ORC Water Permit**). The term of the ORC Water Permit expires on 20 May 2027, although that date has recently been extended (by the recent Amendment Act[38]) to 31 December 2027.

    b. In order to reconsent that water supply it is necessary for QLDC to carry out recalibration and modelling to determine water supply requirements for the next 30 year horizon (as recorded in the QLDC Comments[39]). That modelling has been commissioned[40]. That water modelling is therefore not just for the purposes of this application but to address water supply requirements for a wider area over the next 30 years.

[36] Legal Submissions of Jayne Macdonald dated 17 December 2025 at paragraphs 8.8 and 8.9 on page 31.
[37] Refer QLDC Comments dated 17 December 2025, Appendix 6, proposed Condition 36X on page 19.
[38] Resource Management (Duration of Consents) Amendment Act 2025.
[39] QLDC Comments dated 17 December 2025, Appendix 6, draft Advice Note.
[40] Ibid at paragraph 6.2.5 on page 5.

c. Once the modelling has been carried out QLDC will be able to assess its infrastructure requirements. Once that assessment has been completed, that will enable the Development Agreement referred to in Condition 36A to be drafted, finalised and entered into.

59. The process described above has a number of potential outcomes for the Project which cannot be determined at this time. The timing of delivery of water – the extent of infrastructure upgrades which may be required – the contribution which WPDL may have to make to such upgrades – the possibility that WPDL might pre-fund some upgrades in order that water supply may be available earlier than would otherwise be the case – are all uncertain. However WPDL has the comfort of knowing that the QLDC water supply must be reconsented within a short period of time and the agreed Condition 36A will ensure that the Project's water supply requirements will be included in the QLDC upgrading and reconsenting process.

60. Condition 36A effectively requires the subsequent approval by a third party (in relation to the Development Agreement which will have to be agreed with and executed by QLDC). That is an issue which has frequently had to be worked through with respect to consents or planning approvals granted under the RMA in the past. That issue does not cause any difficulties in this case for the following reasons (the first of which is arguably definitive):

a. The recent FTAA Amendment Act[41] has inserted a new Section 84A which reads as follows:

> "*84A Conditions relating to infrastructure*
>
> *(1) The Panel may set conditions to ensure that the infrastructure in the project area or other infrastructure the Project will rely on is or will be made adequate to support –*
>
> *(a) the project; or …*
>
> *(2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act."*

b. The recent Environment Court judgment *Jones v Taupo District Council*[42] has determined that a consent condition requiring a third party approval is not inherently *ultra vires*. It is unusual, it may not occur very often, and it will be dependent upon its particular facts, but it is not illegal. If necessary WPDL would argue that the specific facts of this case, with particular reliance on the agreement reached between WPDL and QLDC, is such that Condition 36A is *intra vires*, acceptable, and appropriate under the circumstances.

Part F: Chapter 27 PDP – Subdivision

61. There still appears to be a degree of confusion about the full suite of consents required under Chapter 27 PDP. Marcus Langman (planner for QLDC) states that further consents may be

[41] Fast-track Approvals Amendment Act 2025, Section 41.
[42] *Jones v Taupo District Council* [2025] NZEnvC 388.

required in relation to Chapter 27 Rules 27.7.32.2.b and 27.7.32.2.d.[43] However he does not explain why he thinks those consents are required (or his explanation is not clear). Carey Vivian (planner for Jan Andersson and others) does not address this issue.

62. The Applicant's position on this issue is as follows:

    a. Chapter 27 is a district-wide chapter which relates only to subdivision and its resultant development (per the purpose statement of Chapter 27).

    b. All new PDP consents required are land use consents which do not involve Chapter 27 as they do not include a 'subdivision' as defined in the PDP.

    c. No new or additional subdivision consents are required which would trigger consideration of Chapter 27.

    d. The only relevance of Chapter 27 arises from the request for variation of two conditions of RM240982 because RM240982 is a subdivision consent originally determined under Chapter 27 and therefore any application to vary consent conditions would logically fall to be considered in relation to relevant objectives and policies of Chapter 27.

    e. Nothing turns upon this issue as far as this application for variation is concerned because any effects relevant to consideration of the variation against Chapter 27 Objectives and Policies have been fully addressed in the evidence presented.

    f. This is therefore a technical issue, not a substantive issue.

Part G: Noise

63. Marshall Day Acoustics has prepared a Supplementary Noise Assessment Memo, dated 20 January 2026, responding to Comments raised in respect of noise concerns, and the Applicant has commissioned a peer review of the same, by Styles Group (dated 22 January 2026). The peer review confirms that the amended proposed conditions of consent will appropriately manage and mitigate any potential noise effects that might be generated by the Proposal, as well as the updated Operational Noise Management Plans (ONMPs) for the Studio and Accommodation activities being adequate for managing the potential noise effects from the Proposal.[44] The Supplementary Noise Assessment Memo reconfirms that the ODP noise limits are also representative of the existing ambient noise level in this area.[45] Operational noise limits will comply with those permitted ODP limits and would apply irrespective of this consent. They are included in conditions for clarity and ease of reference.

64. A summary of additional recommended mitigation measures is included at section 12 of the Supplementary Noise Assessment Memo, detailing the following as being now volunteered:

[43] Planning Review by Marcus Langman dated 12 December 2025 at paragraph 3.b on page 1 and paragraphs 18-25 on pages 7-10.
[44] Styles Group Peer Review dated 22 January 2026, at pages 2 and 3.
[45] Supplementary Noise Assessment Memo by Marshall Day Acoustics dated 20 January 2026 at Table 1.

a. Acoustic Barriers – 2.4m high acoustic barriers be installed adjacent to the southern boundary and on the southern side of the film studio.

b. Inclusion of an Accommodation ONMP.

c. Studio ONMP – key changes made to the monitoring requirements.

d. Refinement of and inclusion of additional recommended conditions relating to noise.

65. No Comment has included countering expert noise assessment to contradict the conclusions expressed in the above reports. While it is accepted that a permitted effect under the planning instruments may nevertheless be an adverse effect worthy of consideration, it is notable that the experts' conclusions are that the ODP noise limits provide appropriate controls over the level of noise that is received by neighbours within the Lifestyle Precinct Zone.

Part H: Significant benefits

66. The purpose of the FTAA (which must be accorded the greatest weight under Schedule 5 clause 17 (1)(a)) reads:

> "*The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.*"

67. Following the passing of the recent Amendment Act[46] the FTAA now contains Section 81(2)(aaa) which provides that the Panel:

> "*(aaa) must, if the substantive application relates to an unlisted project, consider the Minister's reasons for accepting the referral application that are stated in the notice given by the responsible agency under section 28(1):*"

68. Prior to this requirement, the matters for a Panel to consider were those listed in s81(2)(a), being the substantive application and any advice, report, comment, or other information received under prescribed sections of the FTAA. Prior to this amendment there was no specific obligation on the Panel to consider the reasons for a referral application being accepted.

69. The obligation on the Panel to 'consider' the Minister's reasons, as required by s81(2)(aaa), requires an understanding of the meaning of the word 'consider'. Counsel could not find any case law directly on point. The starting point would therefore logically be the relevant dictionary definition. The Concise Oxford Dictionary provides the following meanings for the word 'consider': '*To think carefully about. Believe to be. Take into account when making a judgement*'.

70. There is limited explanation of the policy intent for the insertion of new s81(2)(aaa). However, in considering the context of the Amendment Act 2025, including its preparatory materials, it is submitted the requirement is akin to the obligation to 'have regard to' or 'take into account' in decision making which is developed in case law arising from the RMA. This is supported by the following:

[46] Fast-track Approvals Amendment Act 2025, Section 40.

a. The First Reading of the Amendment Bill (on 8 November 2025) notes, in the introductory reading from Minister Bishop, the following (emphasis added):

> *…The changes clarify that improving regional or national competition in the grocery industry is a valid factor that the Minister for Infrastructure can consider in referral decisions, and expert panels must have regard to the Minister's reasons for referring an application, including those relating to grocery competition*[47].

b. Although not within the wording of the final legislation, the Minister uses the synonymous language of 'have regard to' in explaining this additional requirement for the Panel's 'consideration'.

c. The Environment Committee's final report on the Amendment Bill (presented 4 December 2025) provides further explanation of the policy intent of new s81(2)(aab) relating to consideration of a relevant GPS. At page 8 the report explains:

> *Although expert panels would be required to consider any relevant GPS when making decisions about a substantive application, we understand that it would be just one of several factors that they must consider. The policy intent is not for a GPS to be determinative of certain projects gaining approval. An expert panel could still decline approval if the adverse effects of a project were found to be significantly out of proportion to its regional or national benefits*[48].

d. Finally, the Ministry for the Environment's initial briefing to the Environment Select Committee (November 2025) also explains the intent of this clause as:

> *require expert panels to have regard to the Minister's reasons for referral when considering substantive applications – clause 45(1).*[49]

e. Again, while this final wording did not translate to the Amendment Act 2025 as passed, it aligns with a plain reading of the section which makes the requirement 'to consider' similar or synonymous with 'have regard to' or 'take into account'.

71. In RMA case law, the obligation to "take into account" requires the decision-maker to consider that matter, to weigh it up with other relevant factors and to give it the weight that is appropriate in the circumstances. *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC). That accords closely with the dictionary definition noted above.

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[47] Fast-track Approvals Amendment Bill — First Reading, 6 November 2025, found here: https://www3.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20251106_20251106_24

[48] Environment Committee Final report on Fast Track Approvals Amendment Bill, 4 December 2025, at page 8. Found here: https://bills.parliament.nz/download/selectcommitteereport/7a6b8bed-e586-4bcd-a577-08de32d2faea

[49] Fast-track Approvals Amendment Bill - Ministry for the Environment (Initial Briefing), November 2025, at page 5. Found here: https://www3.parliament.nz/resource/en-NZ/54SCENV_ADV_b59b6261-1db3-47a5-7dc9-08de1a89278c_ENV81984/fe3a7f83873e728d99a204241b2d6575521c4cf8

72. In Sections 81(2)(aaa) and (a) there is no explicit internal hierarchy between the listed matters which decision-makers must take into account. The importance of each matter will vary depending of the factual context of each application, the nature of the environment and consideration of the relevant effects.

73. In this situation, it is submitted that it is appropriate to give the Minister's reasons, for considering the project to be one of regional and national significance, considerable weight. That is particularly so given this is the prime purpose of the legislation and the main consideration that the Minister is charged with determining at the referral stage. The Applicant's referral application provided significant detail of such benefits. That detail has not now changed or been sufficiently rebutted through the substantive stage of the process. The Minister's reasons therefore stand, and the Panel should give considerable weight to the same.

Improvement of water quality in Lake Hayes

74. The Minister's Decision accepting the Ayrburn Referral Application cites two reasons for accepting this Project. One reason states that the Project:

> "*will address significant environmental issues by supporting water quality enhancement of Waiwhakaata Lake Hayes, which has regionally significant benefits due to the importance of this highly valued lake to the community, mana whenua, regional and district councils and visitors.*"[50]

75. The improvement of water quality in Lake Hayes is a central and important component of this Project.[51]

76. References to the Lake Hayes Management Strategy 1995 (**LHMS 1995**) are included in the SLR Ecology Assessment,[52] the Ayrburn Screen Hub Planning Report,[53] and the Comments by Otago Regional Council (**ORC**).[54] A copy of the LHMS 1995 has not been lodged with the Panel. That may be unnecessary, as it is a public document, but to assist the Panel a copy of the LHMS 1995 accompanies this Memorandum.[55]

77. The LHMS 1995 is a document prepared jointly by QLDC and ORC. To avoid repetition, the Panel's attention is respectfully drawn to the Foreword and the Introduction Chapter 1 which provide a succinct summary of water quality problems in Lake Hayes dating back to 1969, the significant contribution of phosphorus to those problems, the role of sediment which transports phosphorous from the land to the lake, the significant role of Mill Creek (being the only waterway which flows into Lake Hayes) in providing the means of transport into Lake Hayes, and

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[50] Notice of Decision dated 13 May 2025 at page 2.
[51] SLR Ecology Assessment dated 25 July 2025, Part 6 Positive Effects at pages 30-32 and Ayrburn Screen Hub Planning Report dated 18 November 2025 at paragraphs 40-42, 63 and 88.
[52] SLR Ecology Assessment dated 25 July 2025, Appendix 12 to the Application.
[53] Ayrburn Screen Hub Planning Report dated 18 November 2025, from the bottom of page 39 to the top of page 40.
[54] Refer Comments by ORC dated 16 December 2025, at paragraph 26 on page 4.
[55] The LHMS 1995 is a non-statutory document and is therefore a document to which regard may be had under s104(1)(c) RMA – FTAA Schedule 5, clause 17(1)(b) cross-references s104.

the high desirability of minimising sediment flows in order to minimise the amount of phosphorous which reaches Lake Hayes.

78. The LHMS 1995 provides the basis for the Waiwhakaata Lake Hayes Strategy 2025 cited and annexed to the Comments by ORC.[56] The existence, and the contents, of those two documents more than demonstrate the high regional and national significance of the issue of improvement of water quality in Lake Hayes (which is an Outstanding Natural Feature as identified under the planning maps and strategic provisions of the PDP).

79. The Comments by ORC record ORC's particular support for the Ayrburn application due to proposed improvement of water quality in the Lake Hayes catchment[57]. ORC concludes that:

> *"31. Based on the information provided by the Applicant, the ORC considers that the Application constitutes a development project with significant regional benefits. The ORC agrees that the Application is likely to generate positive effects meeting the threshold of national significance."*[58]

80. As stated above, the ORC records that its position is based upon the information provided by the Applicant. It is noted that there is no challenge to, or disagreement with, any aspect of the application which relates to improvement of water quality in Lake Hayes.

81. It is not clear from the Comments lodged by QLDC whether QLDC has actually taken any position in relation to this significant benefit. The following are noted:

    a. The letter dated 17 December 2025 containing Comments by QLDC does not contain any mention of improvement of water quality in Lake Hayes.

    b. The Planning Review prepared by Marcus Langman for QLDC records in paragraph 39 on page 14, under the heading '*Positive Effects*':

> "*I concur with the range of positive effects identified by the applicant. Subject to the anticipated return outlined in the economic assessment being correct, it is my opinion that the proposal will have at least significant regional benefits.*"

    c. The statement quoted in subparagraph (b) above, at first glance, appears to take this benefit into account. However that supposition is perhaps put in doubt by the proviso in the second sentence relating to the economic assessment.

    d. National Policy Statements are addressed on pages 19-20 of Marcus Langman's Planning Review. There is no mention of the National Policy Statement for Freshwater Management 2020.

[56] Refer Comments by ORC dated 16 December 2025 at paragraph 26 on page 4.
[57] Refer Comments by ORC dated 16 December 2025 at page 1 paragraph 7 last sentence, paragraphs 24 and 27 on page 4 and paragraph 31 on page 5.
[58] Ibid at paragraph 31 on page 5.

e. Chapter 24 PDP contains Objective 24.2.4 and Policy 24.2.4.2 which directly address the improvement of water quality in Lake Hayes. Neither of those provisions are mentioned in the detailed planning assessment in Attachment 2 to Marcus Langman's Planning Review (although it is noted that this Attachment 2 commences with the statement "*Points of difference regarding the evaluation of objectives and policies of the Queenstown Lakes District Plan*", so the failure to mention those two provisions may signify that Marcus Langman agrees with the Applicant's assessment under those two provisions).

82. The lack of any comment by QLDC on this subject is perhaps surprising, particularly given that:

a. The LHMS 1995 was jointly prepared by ORC and QLDC to address an issue of significant mutual interest to those two local authorities.

b. The importance of the issues within that Strategy has also translated into specific and directive policies in the PDP as to catchment water quality improvement in relation to Lake Hayes (as referred to in subparagraph (e) above).

c. The Waiwhakaata Lake Hayes Strategy, which is dated 5 March 2025, contains the following statement:[59]

> "*This report was written by Kāuati for the Otago Regional Council and the benefit of the Strategy Partners, Kāi Tahu represented by Te Ao Mārama Inc and Aukaha, Queenstown Lakes District Council, Te Papa Atawai/Department of Conservation and Friends of Lake Hayes.*"

83. However it may be that QLDC left Comments in relation to Lake Hayes to its 'partner' ORC [in relation to water quality in Lake Hayes]. As QLDC does not express any overall opinion (in relation to the s85(3) assessment) the lack of any mention by QLDC of this significant benefit appears to be of no legal consequence.

84. On this issue the expert planning evidence of Carey Vivian for Jan Andersson and others arrives at conclusions very similar to the conclusions of the Planning Report for the Applicant. Carey Vivian records his opinion that the inline sediment trap will significantly contribute to the improvement of downstream water quality at Lake Hayes,[60] the development will result in a significantly positive outcome for Mill Creek and Lake Hayes[61], water quality improvements are expected to provide regionally and nationally significant benefits,[62] and the inline sediment trap will make a significant contribution to water quality improvement in Lake Hayes which is commensurate with the nature, scale and location of the proposal.[63]

85. None of the personal Comments by landowners adjoining or adjacent to the application site make any mention at all of Lake Hayes, let alone the benefits for Lake Hayes arising from the proposal. That is perhaps not surprising as their concerns relate (broadly) to effects on their residential amenity values. They are quite entitled to limit their Comments to those effects if

[59] Waiwhakaata Lake Hayes Strategy at page 2 'Brand of Client'.
[60] Evidence of Carey Vivian dated 17 December 2025, page 13.
[61] Ibid.
[62] Ibid at page 18.
[63] Ibid at page 46.

they wish. However when it comes to Comments requesting that the application be declined, which are effectively submissions directed at s85(3), the fact that they have failed to take any account of this significant benefit flowing from the proposal has the consequence that those Comments requesting that consent be declined should be accorded limited, if any, weight.

86. Of considerably more significance is the fact that the Legal Submissions of Simon Peirce for Jan Andersson[64] and the Legal Submissions of Jayne Macdonald for David Kidd[65] are clearly premised on the understanding that the only benefits which arise from the Project are economic benefits. Neither set of legal submissions makes any reference to the improvement of water quality in Lake Hayes. That is particularly important in terms of the proportionality test as to whether adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits. To appropriately consider that proportionality, a fair and full appraisal of all relevant benefits must be accounted for. The conclusions of both sets of legal submissions, that the s85(3) assessment should result in approval being declined, are fundamentally flawed and should be accorded little, if any, weight.

87. There is a statement in the Comments of James Hadley[66] that a four lot subdivision of that part of the subject site contained within the RAA would achieve the same or equivalent ecological benefit requirements (as will result from the Project) demanded by the existing planning instruments. This point is also referenced in paragraph [12] of Minute 6. That statement is incorrect. The four lot subdivision of the RAA would only affect the land contained within (consented) Lot 9 RM240982. Most of the ecological benefits which arise from the Project, particularly the in-line sediment trap in Mill Creek, arise on land outside the RAA and therefore could not be subject to conditions of consent applied to subdivision of land within the RAA.

88. Potentially of more significance to the previous point is the fact that, if approval to the Project is declined, and RM240982 is fully implemented including creation of Lot 9, it seems very unlikely that the resulting balance Lot 4 RM240982 (which would contain the land where those ecological benefits can arise) could be further subdivided or developed. This Project is therefore likely to be the only opportunity for the community to achieve the improvement of water quality in Lake Hayes which will result from approval of the Project.

89. The improvement of water quality in Lake Hayes was cited by the Minister as one of the reasons for acceptance of this Referral Application. It is a central component of the Applicant's case that the Project will give effect to the purpose of the FTAA. No opposing participant has provided any challenge to the case presented for the Applicant on this issue. All expert evidence presented in relation to this issue is in agreement that, at the very least, the project will deliver a significant regional benefit if not also a significant national benefit. Significant weight must be placed on this benefit when carrying out the s85(3) assessment.

[64] Refer Legal Submissions of Simon Peirce dated 17 December 2025 at paragraphs 8, 47, 56 and 57.
[65] Refer Legal Submissions of Jayne Macdonald dated 17 December 2025 at paragraphs 5.24, 5.30, 6.21 and 6.29.
[66] Comments of James Hadley dated 9 December 2025 at paragraph 42 on page 7.

Economic benefits

90. The other reason cited by the Minister for accepting the Ayrburn Referral Application states that the Project:

> "*… will deliver significant economic benefits through its economic impact in the Otago Region, and may also deliver significant economic benefits nationally if it attracts new productions that would otherwise not have occurred in New Zealand."*[67]

91. The word 'significant' is clearly important to the application of the purpose of the FTAA, but that word is not defined in the FTAA and there is no other direct guidance in the FTAA as to how that word is to be applied or interpreted. It is tempting to look for guidance in prior FTAA decisions, as many panels have grappled with the term, but the difficulty there is that each Decision is based on its own factual matrix. There might be situations where factual similarities arise (for example, two mining proposals might have factual similarities) but that does not apply in this application. The combination of significant benefits which arise under this application is likely to be unique.

92. Some prior FTAA Decisions contain general guidance as to how to apply the word 'significant'. The *Waihi North*[68] Decision contains the following:

> "*[842] "Significant" is a word of indeterminate meaning. It can, for instance, be used in the sense of "game-changing". But it can also have meanings along the lines of "worthy of note".*
>
> *[843] In the context of "deliver significant economic benefits" and "development of natural resources including mining", it is not particularly likely that any one mining project will produce game-changing effects, certainly across the country as a whole. The same can be said of any one project to "increase the supply of housing". Indeed, in a large city, even a substantial housing project is unlikely to make a material change to the supply of housing. All of this supports the view that "significance" is not to be determined by reference to whether implementation of the project will appreciably change national or regional gross domestic product or the annual tax revenue of the Government. Rather it is an indication of scale."*

93. The *Kings Quarry*[69] Decision cites the *Maitahi Village* Decision as follows:

> "154. Section 22(2) is a useful reference point. However, in a previous decision under the FTAA, an expert consenting panel has stated[70] *"for a panel deciding whether a particular project is a project with significant regional or national benefits, s22(2) can only provide a flavour of, or guide to, what is required. The question of whether a project is indeed one with significant regional or national benefits remains an*

[67] Notice of Decision dated 13 May 2025 at page 2.
[68] Record of Decisions of the Expert Panel for the Waihi North project [FTAA-2504-1046] at paragraphs [842]-[843].
[69] Record of Decision of the Expert Consenting Panel for the Kings Quarry Expansion – Stages 2 and 3 [FTAA-2502-1018] at paragraph 154.
[70] Record of Decision of the Expert Consenting Panel for Maitahi Village dated 18 September 2025 at [515].

intensely factual determination turning on the particular circumstances of the Application." That panel went onto consider the meaning of "significant" and was content to use the *"sufficiently great or important to be worthy of attention; noteworthy" as working definition.* This approach has subsequently been endorsed by a separate expert panel."

(citations omitted)

94. In his Economic Impact Assessment Tim Heath (for the Applicant) concludes that the project will have significant and positive economic impacts on the Otago regional economy.[71] In her evidence Natalie Hampson (for Jan Andersson and David Kidd) concludes that the project will deliver significant regional economic benefits through at least the three year construction period and moderate economic benefits thereafter.[72] There was therefore agreement between the two economic experts that, in relation to economic benefits, the purpose of the FTAA will be delivered at least in the short term. There was disagreement about the long term.

95. The economics Joint Witness Statement records slightly different outcomes:[73]

    a. Both experts agree that the Project will deliver significant regional benefits in the short term.

    b. Tim Heath (and Phil Osborne) consider that the economic benefits in the long term have the potential to range from moderate to significant given the unique nature of the activities and their economic extent.

    c. Natalie Hampson does not consider that the economic modelling has demonstrated that operational (i.e.: long term) economic activity will be of significance in the context of the district and regional economy.

96. Those positions as between the economics experts will therefore inform the Panel's consideration under Section 81(4). However that does not address the full ambit of the economic benefits identified in the application or cited by the Minister when accepting the Referral Application.

97. To avoid repetition, the Panel's attention is respectfully drawn to Part 5.3.1 Economic Benefits on pages 36-39 of the Ayrburn Screen Hub Planning Report dated 18 November 2025. There are three components of the economic benefits identified in the Application:

    a. Financial contribution;

    b. Alignment with the QLDC's Economic Diversification Strategy;

    c. National benefits to the New Zealand film and television industry.

[71] Economic Impact Assessment by Tim Heath (Appendix 11 to the Application) Part 5 on page 16.
[72] Evidence of Natalie Hampson at paragraphs 56, 92 and 94.
[73] Economics Joint Witness Statement dated 16 January 2026 at paragraph [f] on page 6.

98. The focus of both briefs of expert economic evidence, and the Economics JWS, is on the first component cited above – the 'dollars and cents' aspect. That is appropriate, as the second and third components cited above are more in the nature of planning considerations for evaluation.

99. What this Project actually involves is sequential significant economic benefits. There is an (unchallenged) significant short term economic benefit arising primarily from construction. When that component comes to an end and the film studios are able to operate, the second and third components kick in as a consequence of the unique nature of the combination Screen Hub proposal. When consideration is being given to the extent of the project's regional or national economic benefits in light of the purpose of the FTAA, those three components of the economic benefits must all be taken into consideration.

100. The point just made is directly relevant to that part of the Minister's reason for accepting the Referral Application which reads:

> *"… and <u>may</u> also deliver significant economic benefits nationally <u>if</u> it attracts new productions that would otherwise not have occurred in New Zealand."* [underlining added]

101. A project of this nature, with a 4-5 year construction period, cannot achieve commitments (to use of the film studio facilities) at this point in time before consent has even been granted and 4-5 years before the facility will be available.[74] If Queenstown is going to achieve diversification of its economy, this kind of long-term commitment is required. No-one can provide a guarantee of attracting new productions that would otherwise not have occurred in New Zealand. However the Minister has specifically recognised that possibility as a component of the economic benefits to be generated by the Project. Therefore that component must be accorded appropriate weight when considering the statutory criteria.

102. Applying the guidance from prior FTAA Decisions referred to in paragraphs 92 and 93 above, the combination of the three components of economic benefit can certainly be described as 'worthy of note'. Implementation of the Project will deliver the initial construction based economic boost. On completion, the film studio facilities will be available for use by the film industry and, judging from the level of support from the film industry for this application,[75] it seems very likely to attract considerable film-related use. The permanent nature of the studios component, together with the priority booking regime, will create the basis for development of an industry that could significantly contribute to diversification of the Queenstown economy. The potential to attract productions which would not otherwise come to New Zealand, while not being a certain outcome, could reasonably be described as potentially significant nationally.

103. Jayne Macdonald's Legal Submissions include the statement that "*… The Panel is entitled to discount benefits that are speculative, contingent, or dependent on optimistic assumptions.*" The *Port of Auckland FTAA* Decision is cited as authority for that statement.[76] Putting to one

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[74] Refer Statement of Chris Meehan dated 21 January 2026 at paragraph 15.
[75] Refer Ayrburn Screen Hub Report by Dave Gibson dated May 2025, Appendix 6, and Addendum to Ayrburn Screen Hub Report by Dave Gibson dated 18 January 2026, Appendices A, B and C.
[76] Legal Submissions of Jayne Macdonald dated 17 December 2025 at paragraph 5.1 at the top of page 10.

side the fact that Counsel cannot find that quoted statement (or any wording to similar effect) anywhere within the *Port of Auckland* Decision (and therefore treating that statement as a general submission point), this is an excellent example of the guidance from the *Maitahi Village* Decision quoted in paragraph 93 above that "*… The question of whether a project is indeed one with significant regional or national benefits remains an intensely factual determination turning on the particular circumstances of the Application*".

104. The following points are noted:

a. Any assessment or estimate of demand for use of the film studios in 4-5 years' time (after completion of the construction period) must obviously involve a degree of uncertainty.

b. The possibility of the Ayrburn Screen Hub attracting productions which would not otherwise have come to New Zealand must likewise involve a degree of uncertainty.

c. a. and b. above arise from "*… the particular circumstances of the Application*" referenced in the *Maitahi Village* extract quoted in the previous paragraph.

d. The Minister's reason for accepting the Application include "*… <u>may</u> also deliver significant economic benefits nationally <u>if</u> it attracts new productions which would otherwise not have occurred in New Zealand*" [underlining added].

e. Under s81(2)(aaa) the Panel must consider the Minister's reasons for accepting the application.

f. It follows from the above that these anticipated benefits, although subject to a degree of uncertainty, are relevant to the circumstances of this application, must be considered by the Panel and must be accorded appropriate weight.

Part I: Adverse impacts

105. The decision making process which the Panel must undertake is set out in s81. Having considered all relevant matters, the Panel must turn its mind to s85(3)-(5) which read:

"(3) A 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.

(4) To avoid doubt, 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 that a panel must take into account or otherwise consider in complying with section 81(2).

*(5) In subsections (3) and (4), **adverse impact** means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval."*

106. The reference in s85(3) to whether adverse impacts "*… are sufficiently significant to be out of proportion to the Project's regional or national benefits …*" effectively means that the Panel must first identify any relevant adverse impacts and then carry out some form of weighing or balancing exercise to determine whether or not there is jurisdiction to decline approval, and if there is jurisdiction, whether the discretion to decline should be exercised.

Landscape

107. There is a potential issue relating to the basis for comparison of effects. It is not raised in any of the Comments, and therefore may not be an issue of particular relevance, but for completeness it is addressed.

108. In Minute 2, at paragraph [1][e][i], the Panel queried whether there is any 'permitted baseline' potentially relevant to the assessment of landscape and visual effects. 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.

109. **Schedule E** of this Memorandum contains copies of the limited matters of discretion under Rule 27.5.9 and Rule 24.4.7B. The nature and extent of those matters of discretion are such that the relevant subdivision and land use consents can virtually certainly be obtained provided that those matters of discretion are properly addressed. This is evidenced by the fact that the Applicant has recently obtained non-notified subdivision consent (under RM250242) and land use consent (under RM250715) for three rural living lots and houses within the other RAA shown on the Ayrburn Structure Plan (being Lot 6 consented under RM240982).

110. Recent higher court authorities developed under the RMA have addressed the approach to considering an 'anticipated' environment in both substantive consenting decisions under s104(1) and in terms of notification assessment under s95A-95E. These authorities set out such an approach to be either addressed as part of the relevant 'environment' as it is

expressed in s104(1)(a) or as part of the policy assessment under s104(1)(b) and/or s104D(1)(b) in the case of non-complying activities.

111. In the High Court case of *Frost v Queenstown Lakes District Council*, in the context of assessing effects of buildings where the plan provided for buildings of a certain scale as a controlled activity, the Court determined:

> "*[68] I do not consider the Council treated the site standard as a permitted baseline and ignored its effects. What it has done is used the Zone objectives, and the site standards to give some context to the assessment of effects. In my view, this is sensible. Effects must be assessed in context, and in light of what exists, and is anticipated in the zone. For example, leaving aside any permitted baseline considerations, the erection of a concrete tilt slab building would have different effects in a commercial zone from what it would have in a low density residential area, or in an outstanding natural landscape. It would be entirely artificial to assess effects without considering what exists and what is anticipated in the zone.*"[77]

112. A similar approach to the anticipated environment was even more recently confirmed by the High Court in *The Mahora Residents Society Inc v Hastings District Council* where it confirms there is nothing irrelevant about also taking into account a controlled alternative development scenario for the subject site to assist in the assessment of the effects of a proposal in combination with a permitted baseline[78].

113. In addition to the above authorities, the Environment Court in *Waimarino v Queenstown Lakes District Council* recently took a slightly different approach, although with a similar outcome, in applying the anticipated environment through consideration of the objectives and policies of a district plan, in accordance with s104(1)(b) and s104D(1)(b):

> *"[102] … we acknowledge that under the relevant policy framework, comparison must be drawn with the form of residential development described as "anticipated" within the RRZ and BCSZ policies, with reference to the standards applying to this permitted activity, within the context of our evaluation under ss104(1)(b) and 104D(1)(b).*
>
> *[103] In that policy context we are required to make that comparison, whether or not there are existing consents likely to be implemented for residential activity, within the zone and on Lot 100. In our effects-based evaluation, it would also be wrong to evaluate the proposal against a receiving environment that did not consider the type of rural residential development provided for under the as yet unimplemented consents, even where further consents for ancillary activity such as earthworks and/or vegetation removal may be needed."[79]*
>
> *(citations omitted)*

114. It is not entirely clear from that case what activity status the anticipated environment outcome was, noting that earthworks and vegetation clearance rules were triggered such that 'anticipated' residential buildings were otherwise not entirely permitted.

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[77] *Frost v Queenstown Lakes District Council [*2021] NZHC 1474 at [68].

[78] *The Mahora Residents Society Inc v Hastings District Council* [2024] NZHC 3322, at [70].

[79] *Waimarino Queenstown Limited v Queenstown Lakes District Council* [2024] NZEnvC 176, at [102] – [103].

115. It is accepted that the cases of *Frost* and *Mahora* above both applied the 'anticipated environment' concept in the context of a controlled activity development on the subject site, while *Waimarino* is less clear. The Ayrburn Structure Plan RAA anticipated environment requires restricted discretionary activity consent to be realised. However it is submitted the above authorities are appropriately applied to this context, and Mr Milne's initial assessment is correct to use this comparator, given:

a. 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[80];

b. this area has moderate capacity for further development of residential buildings;[81]

c. subdivision is restricted discretionary to a prescribed density, within which residential buildings subject to Wakatipu Basin-wide standards become anticipated[82];

d. as stated above, the nearby Lot 6 RM240982 RAA area has recently been consented for subdivision and land use development of three lots and houses on a non-notified basis;

e. in respect of all relevant aspects of rural living subdivision and land use, Lot 6 RM240982 (just consented for subdivision and land use) is virtually identical to Lot 9 RM240982 (except that the latter can be subdivided into four rural living lots rather than three).[83]

116. In this specific policy context, and having regard to the value of the land to be realised under an alternative development scenario,[84] it is reasonable to submit that the restricted discretionary outcomes are in fact part of an 'anticipated environment' or an 'alternative development' for the subject site, on a similar footing to a controlled activity scenario addressed in the above higher court cases. While discretion could be exercised in respect of final built form and scale, this has less relevance to the point that it is the introduction of four substantial residential units into the RAA *per se* (rather than specific design and form) which changes the values of openness, etc.

117. An application of the above case law in the context of clause 17(1)(b) of Schedule 5 of the FTAA further reinforces the submission above. This is because considerations under s104 of the RMA are matters to be 'taken into account' and given lesser weight than the purpose of the FTAA itself. In this way, s104(1) RMA (and the case law developed under the same) can be read in light of the purpose of the FTAA. When doing so, it is eminently reasonable and sensible to consider a consenting outcome commercially anticipated and plan-enabled that, by comparison to this Project, would otherwise be less aligned to achieving the purpose of the FTAA.

118. As an alternative to the above submissions, it is submitted the Panel may also consider assessing the RAA anticipated environment as 'any other matter relevant and reasonably necessary to determine the application' under s104(1)(c) RMA. When the matters of the

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[80] Policy 27.3.27
[81] LCU 8
[82] Rule 27.6.1
[83] Refer Statement of Chris Meehan dated 21 January 2026 at paragraph 8.
[84] Refer Comments by James Hadley at paragraph 41 on page 7 and related Schedule 4.

RMA imported to the FTAA considerations by clause 17(1)(b) are read in light of 17(1)(a), it is appropriate to consider this anticipated development alternative as a relevant other matter, given that:

a. it is relevant in the context of a scheme which places greatest weight on the facilitation of regionally and nationally significant benefits, and where the alternative would deliver substantially less of the same;

b. it is reasonably necessary to determine, because one aspect of the Panel's assessment relates to landscape effects which must be assessed by reference to the degree of change from that which is enabled by the PDP;

c. it is relevant when considering a degree of effect on visual amenity values to understand this with reference to a structure plan framework where change is expected and, while different in form, will present a similar effect;[85]

d. if approval for this Project is declined, that alternative zoned development outcome is virtually inevitable, and therefore a comparison of effects which ignores that outcome would be artificial and unrealistic. Such a comparator would not be helpful to the Panel's determination on predictive environmental effects;

e. the purpose of the FTAA, which must carry the greatest weight, will not be achieved by considering an artificial and unrealistic comparison;

f. all Comments relevant to this issue have assumed that the appropriate basis for comparison of landscape related impacts is a comparison between the Project and the four lot rural living development enabled within the RAA.

119. It is important to 'stand back' and look at the facts. The application site contains 26.25ha which comprises 4.22ha within the RAA zoned for rural lifestyle development, 1.5ha containing the film studio related buildings located outside the RAA and within the OS area, with the balance 20.53ha being retained as open space free of buildings. Those figures are important when considering the numerous references to 'open', 'natural', 'pastoral', 'spaciousness' or 'rural' characteristics or values of the landscape. Those characteristics or values are retained over the 20.53ha area. Within the RAA those characteristics or values must be completely discounted because of the zone enabled rural living development. Accordingly those characteristics or values are only adversely impacted within the 1.5ha area.[86]

120. One important consideration in relation to effects on landscape values actually experienced by the general public and relevant to consideration of this application are visual amenity values, or how physical and perceptual attributes of a landscape are experienced visually. There is one important public viewpoint being Viewpoint 5 high on Christine's Hill. The tall film studio related buildings will be fully screened from that viewpoint. Section 6.2 of the landscape JWS confirms that from 5 years and beyond the visual amenity effects in relation to this viewpoint are minor.[87] Such a timeframe is appropriate for consideration of the

[85] Substantive Application, Appendix 22 landscape assessment, at page 29.
[86] Supplementary Landscape Assessment Memo dated 9 January 2026, at paragraph 2.2.
[87] Landscape JWS at paragraph 6.2.

ongoing effects of a proposal. Effects from that viewpoint will be limited to the change from rural lifestyle development to a more urban type development within the RAA.

121. The previous two paragraphs assume that the submissions above (to the effect that the zoned development of the RAA is the appropriate basis for comparison) are accepted by the Panel. Even if that is not the case, when one considers the differing landscape assessments in the round, it is submitted that the difference in outcomes between the two scenarios is not significant as far as landscape values are concerned.

122. The factual aspects addressed in the previous three paragraphs are directly relevant to consideration of the extent of any adverse landscape related effects as far as the general public are concerned. The Applicant considers any such effects to be minor[88], and certainly not sufficiently significant to form the basis for a decision refusing approval under s85(3).

123. There is criticism of the Applicant's Landscape Assessment Report on the basis that effects on views from residential properties to the south of the site were not properly assessed. This is a good example of the increased efficiency achieved by the FTAA. Instead of arranging for a number of visits to various private properties, the owners of which may or may not have concerns about the Project, or may or may not facilitate access, there is no requirement to consult with adjacent landowners at a specific point in the process. Rather, this is facilitated by the generated Comments from landowners who are concerned, which in turn has enabled the Applicant to specifically address those concerns. Therefore any alleged inadequacy in the original LAR is cured through the Comments (and resulting responses) process (refer paragraph 126 below). Furthermore, Mr Milne's comments within the landscape JWS reconfirm his conclusions in respect of effects on neighbour participants and the appropriateness of the assessment methodology relied on.

Adjacent landowner participants

124. When carrying out its s85(3) assessment, under s85(3)(b) the Panel is required to take into account:

> *"(ii) any conditions or modifications that the Applicant may agree to or propose to avoid, remedy, mitigate, offset or compensate for those adverse impacts."*

125. The Applicant does not consider that there are any adverse effects of such significance that approval could be declined under s85(3). However amendments to the application have been made to address concerns expressed in Comments from adjacent landowner participants, as summarised in paragraphs 15-16 above. Those amendments seek to avoid or mitigate any adverse effects on the residential amenities of those neighbours.

126. Two neighbouring landowners have expressed concerns about effects on the views from their relevant properties. To the extent that those effects actually arise (which is difficult to

[88] Landscape JWS at paragraph 6.13 (Mr Milne's conclusions as to the summary of landscape effects).

tell from the (lack of) photographs supplied with the Comments), those effects can and will be fully mitigated, either immediately or over a period of time.[89]

127. The proposed removal of the existing conifers and the provision for neighbour access to top the vegetation which will replace the conifers together comprise a substantial benefit for those southern neighbours whose views and sunlight access are currently significantly compromised by those existing conifers. This constitutes a modification to '*offset or compensate*' for any remaining adverse effects experienced by those southern neighbours.

Other adverse impacts

128. Jayne Macdonald's legal submissions[90] address the difference between 'adverse impact' and 'adverse effects on the environment'. In paragraph 6.4 she then states that:

> "… *Mr Vivian's evidence assists the Panel in identifying a category of adverse impacts that are strategic, spatial and community-based, and which are not adequately captured by a narrow focus on localised amenity effects*".

129. The following paragraph 6.5 then contains the alleged adverse impacts identified (a)-(i). By way of general response, it appears that alleged adverse impacts (c)-(i) are adverse effects on the environment being restated as adverse impacts (for example, '*(e) construction duration, cumulative disruption, and loss of amenity resilience'*). Alleged adverse effects of that nature should be supported by expert evidence, which is not the case in respect of most of the listed alleged adverse impacts.

130. These alleged adverse impacts are listed below in italics, followed by brief responses.

(a) urban development creating non-environmental impacts

131. Refer following paragraph.

(b) growth management impacts

132. When one reads paragraphs 6.6-6.9 of Jayne Macdonald's legal submissions, the alleged adverse impacts (a) and (b) above appear to describe the same alleged adverse impact, or two aspects of the same alleged adverse impact.

133. Alleged adverse impacts (a) and (b) above are both based entirely upon the planning evidence of Carey Vivian which is not supported by any other expert evidence and which reaches conclusions about compliance or otherwise with specific plan provisions. This brings into play s85(4) FTAA which reads:

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[89] Refer Supplementary Landscape Assessment Memo by Tony Milne dated 9 January 2026 commencing at Part 2.15 on pages 11-17.

[90] Legal Submissions of Jayne Macdonald for David Kidd dated 17 December 2025, at paragraphs 6.4-6.29 on pages 21-27.

(4) "*To avoid doubt, 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 that a panel must take into account or otherwise consider in complying with section 81(2).*"

134. Alleged adverse impacts (a) and (b) above fall squarely within the ambit of s85(4) because they are based solely upon planning evidence addressing compliance with PDP provisions. That directly affects the weight that can be accorded to those alleged adverse impacts when carrying out the s85(3) assessment, being none.

(c) scale of earthworks

135. Tony Milne provides a response in respect of this alleged adverse impact.[91]

(d) deliverability and enforceability issues

136. It is well-settled law that:[92]

> "*… a consent authority, when it imposes conditions, is entitled to assume that the applicant and its successors will act legally and adhere to rules and conditions: see Barry v Auckland City Corporation [1975] 2 NZLR 646 (CA) at 651. That is obvious. Nothing could ever be approved if consent authorities had to work on the contrary assumption, namely that its rules and conditions would not be observed.*"

137. Nothing in the FTAA affects the settled law quoted above because resource consents, once granted under the FTAA, are then monitored and enforced under the RMA.

138. This alleged adverse impact can and should be properly and fully addressed by ensuring that conditions of consent are clear and enforceable.

(e) construction duration, cumulative destruction and loss of amenity resilience

139. This alleged adverse impact relates to construction effects which can and should be adequately dealt with through consent conditions. In addition the confirmation that the Project will all be constructed at once will limit the period of construction effects as much as is reasonably possible.

(f) psychosocial and wellbeing impacts

140. The on-line Oxford Dictionary defines 'psychosocial' as "*Adjective relating to the interrelation of social factors and individual thought and behaviour*". It is difficult to see how that adjective can be relevant to consideration of this application. Invited neighbours have been given the opportunity to read the application and make Comments. That process is faced by many people in relation to planning proposals. Issues relating to sleep can and should be

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[91] Ibid at Part 2.3 on page 4.
[92] *88 The Strand Limited v Auckland City Council* [2002] NZRMA 475 (HC) at [19].

addressed by consent conditions in relation to noise, light and similar effects on residential amenity. To the extent that those concerns may be valid, this is not a separate adverse impact.

(g) privacy and security impacts

141. The Applicant has directly addressed this concern (expressed by Geoff Van Deursen) by relocating Trail B.

(h) community character, public experience and loss of openness

142. Tony Milne has responded to landscape related Comments which is what this alleged adverse impact appears to be mostly about (judging from paragraph 6.20 of Jayne Macdonald's legal submissions). A potential adverse impact on public recreational experience relates to the very limited impact on views, primarily from Viewpoint 5. The provision to the public of Trails A and B, and the relocation of the steep part of Trail C, provide an important public recreational benefit which is supported by Queenstown Trails[93] and by QLDC[94].

143. While Bridget Gilbert considers that recreational trail users are generally a more sensitive viewing audience,[95] she does not actually support this with reference to any evidence from recreational trail users (or a community body representing the same) as to such concern about of the visual amenity effect of development from trails. To the contrary, the Queenstown Trails letter is in support of recreational benefits of the proposed additions to the physical trail network. No community group or similar agency has provided evidence addressing adverse effects on public amenity or recreation experiences, or on community character. Rather, the Comments received relating to such themes appear to be more individually-minded.

(i) benefit-credibility issues

144. This alleged adverse impact is a grab-bag of a number of issues which have been responded to above and, in particular, economic considerations which are not relevant to consideration of the Project. By way of summary response:

a. If approval is granted and implemented, the film studio components of the Project must all be built before any accommodation can be occupied.

b. If the approval is exercised, all of the environmental and public recreation benefits of the Project must be fully in place prior to occupation of any buildings. Those benefits will then be ongoing, regardless of the future of the film studios. This particularly applies to the improvement of water quality in Lake Hayes (which is not mentioned in the assessment addressing this alleged adverse impact).

[93] Appendix 33 to the Application – letter dated 1/11/24 from Queenstown Trails.
[94] QLDC Comments dated 17 December 2025 at paragraphs 2.8 and 8.1-8.2.
[95] Landscape Peer Review by Bridget Gilbert dated 17 December 2025 at paragraph 5.16 on page 14.

Evidence

145. Care must be taken when determining weight to be accorded to particular Comments, particularly when assessing lay evidence as against expert evidence. The former is naturally influenced by subjective concerns. While that is understandable, that must be taken into account when that evidence is objectively tested by independent expert evidence. By way of example, the lay evidence of Rebecca Hadley expresses lay opinions in relation to a number of areas of expertise, including:

a. landscape – responded to by Tony Milne;[96]

b. urban design – responded to by Nick Barratt-Boyes;[97]

c. heritage – responded to by Robin Miller.[98]

146. The previous point also applies to the film expert evidence. The Panel's attention is drawn to Dave Gibson's credentials detailed in paragraphs 4-9 of his Ayrburn Screen Hub Report[99], Sean Kelly's credentials as described in paragraphs 1-2 of his Statement,[100] and Dave Gibson's further comment in his Addendum.[101] Based on those credentials, the evidence of Dave Gibson should be preferred over the evidence of Sean Kelly in the event of any disagreement.

Part J: Section 85(3) assessment

147. It is for the Panel to carry out the s85(3) assessment on the basis of evidence presented and taking into account all relevant considerations. The Applicant highlights the following matters as being of particular relevance to that assessment:

a. the undisputed nature and significance of the improvement of water quality in Lake Hayes resulting in a significant benefit;

b. the unique combination of factors relevant to economic benefits, particularly the establishment of the film studios plus accommodation as the basis of a permanent activity which would help diversify Queenstown's economy away from its current reliance on tourism;

c. the fact that, in the real world, landscape related effects are predominantly in relation to built form on 1.5ha of OS Area and a change in view (from Viewpoint 5)

[96] Supplementary Landscape Assessment Memo by Tony Milne dated 9 January 2026 at paragraphs 2.11-2.14.
[97] Refer Supplementary Assessment by Nick Barrett-Boyes dated 15 January 2026.
[98] Refer Heritage Response Report by Robin Miller dated 9 January 2026.
[99] Ayrburn Screen Hub Report by Dave Gibson dated May 2025.
[100] Statement by Sean Kelly dated 17 December 2025 in support of Comments by David Kidd and Geoff Deursen.
[101] Addendum to Ayrburn Screen Hub Report by Dave Gibson dated 18 January 2026, Page 1, Part 1, fourth paragraph.

of the RAA which will have a minor effect only, being a more urban appearance compared to its zoned rural living purpose;

d. modifications to the Project to avoid or mitigate potential adverse effects on the residential amenities of the neighbours to the south;

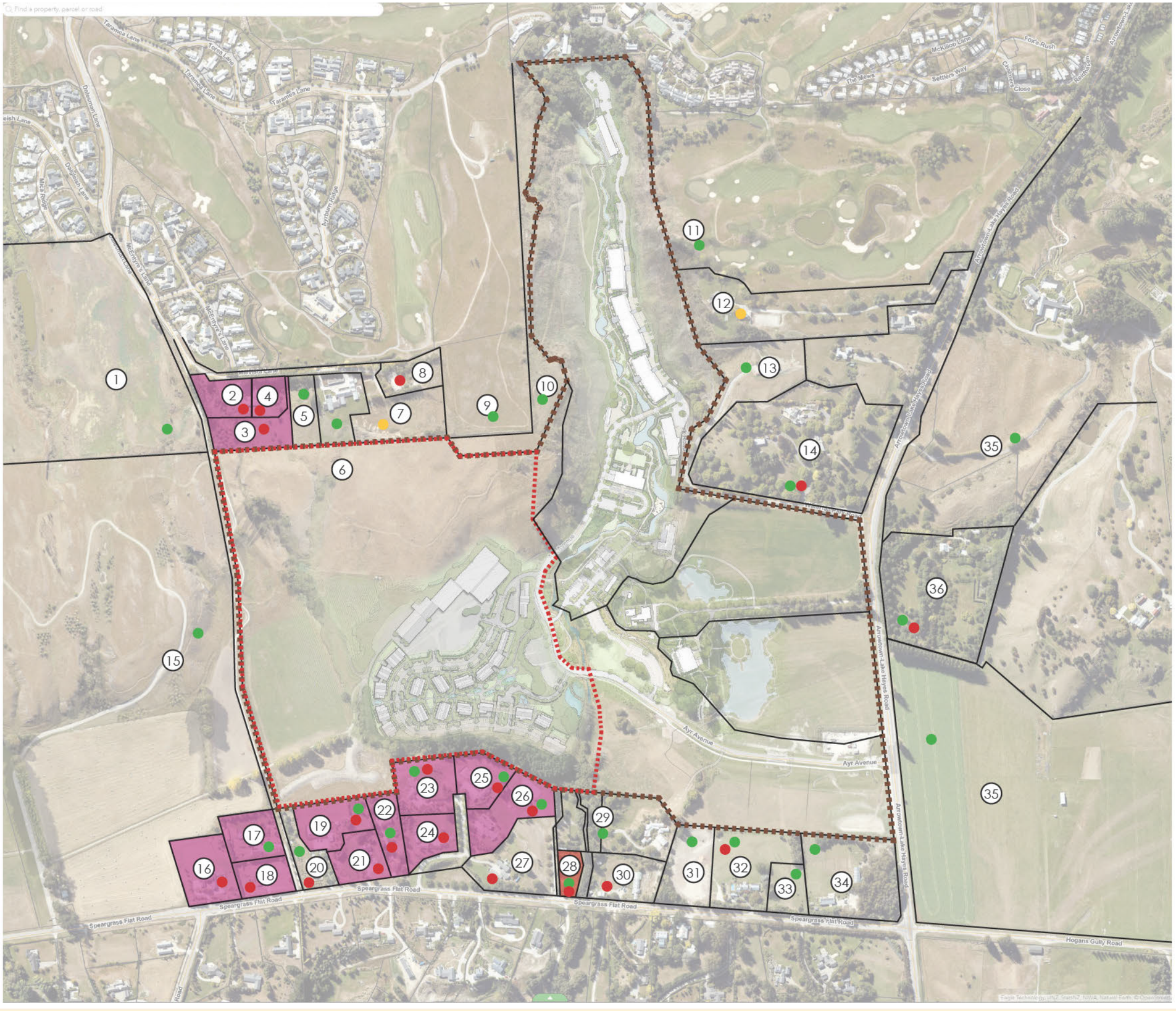
e. the significant benefit for the five adjoining landowners on the southern boundary, arising from implementation of the Mitigation Plans, which will offset or compensate for any residual adverse effects on their residential amenities;

f. the number of people who will reap the benefits, compared to the number of people potentially adversely affected (as one measure of the extent and significance of benefits v adverse impacts).

Warwick Goldsmith
Counsel for the Applicant

SCHEDULE A

Adjacent Landowner Participants Plan



Key:

- Applicant's Land
- Site Boundary
- (X) Refer to Adjacent Land Holder Schedule for Owner / Occupier

Distribution of consultation letter and Drawings

- Email address known - email sent
- Delivered to dwelling letterbox, front door or in person
- Letter sent to rating address

Adjacent Landowner Participants

Property Reference:	Surname:	Participant Response Ref:
23	[redacted]	#2
21		#9
22		#10
16		#11
17		#12 & #14
18		#13
2, 3, 4		#15
19		#17
26		#20
25		#19
28		#21

Ayrburn Screen Hub - **Adjacent Landowner Participants**

12 January 2026

SCHEDULE B

South Neighbours Additional Mitigation Plan
Wilding Tree Removal and Proposed Native Planting Plan

Key:

Crew and delivery trucks limited to this area
To minimise large vehicle movements close to neighbours

Accommodation related vehicles only to this area
To minimise large vehicle movements close to southern neighbours

Acoustic & glare barrier
2.4m high painted Karaka green with Hedge planted to south side to screen.

Hedge plants to be native Pittosporum Tenuifolium PB18 size @ 0.8m ctrs.

To be constructed as per Marshal Day Acoustic Barrier Detail

Realigned public Trail B

Existing trail to be decommissioned

Existing legal boundary

Proposed Easement Area
Access permitted to adjoining land owner to maintain the height of any vegetation.

Planted area
To be cleared of conifers and planted in evergreen native species as per the Wilding Tree Removal and Proposed Native Planting Plan.
All costs to be borne by the consentholder.

A

B

C

D

E

Lot 1 DP 336908
Goulston

Lot 3 DP 336908
Van Deursen

Lot 4 DP 336908
Kidd

Lot 1 DP 304422
Collins

Lot 2 DP 459266
Hart

Lower bank plant species

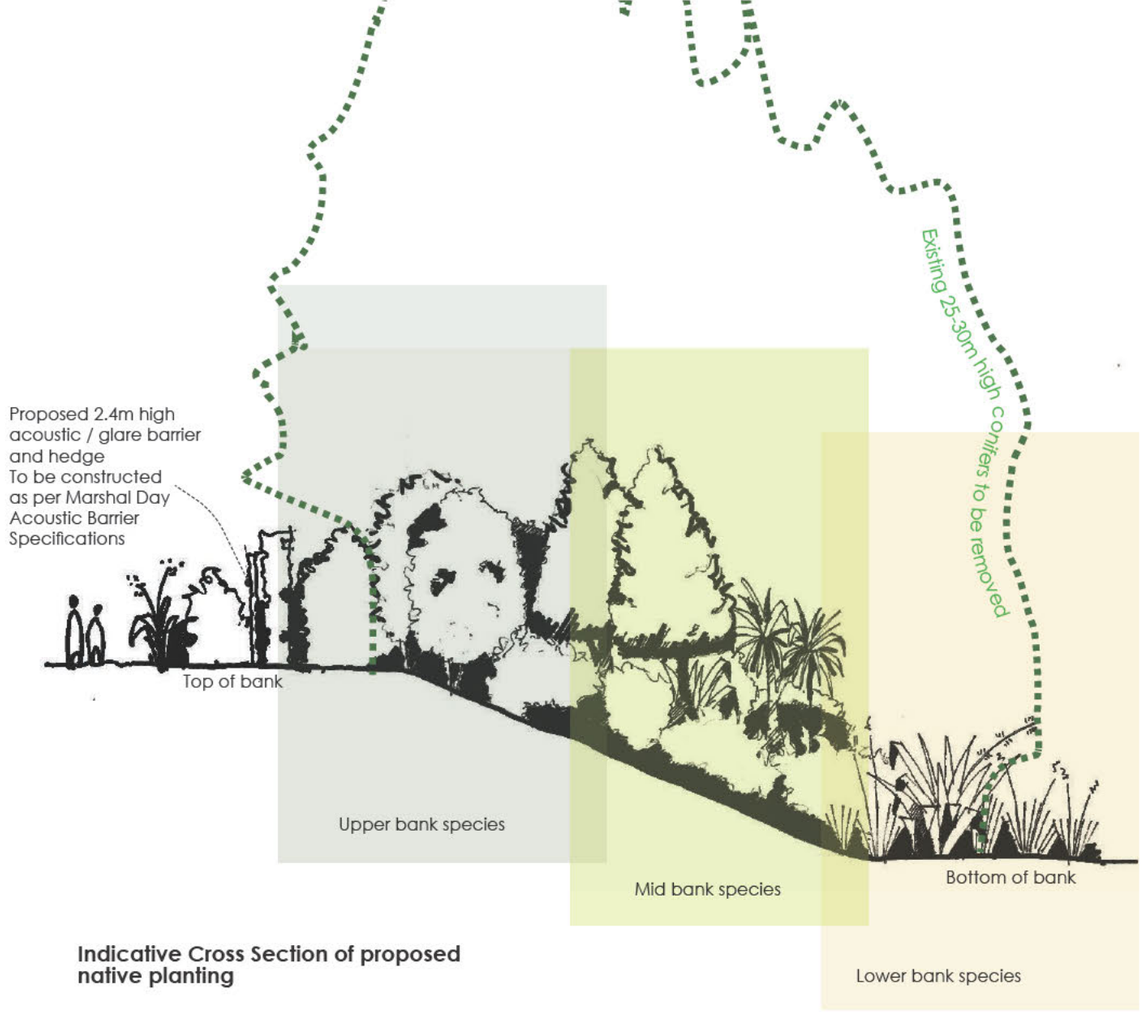
Common Name	Botanical Name	Spacing (m)	Grade	%
Toe Toe	*Austideria richardii*	1.5	PB3 or RT	20%
Mingimingi	*Coprosma Propinqua*	1.2	PB3 or RT	5%
Makura Sedge	*Carx Secta*	1.2	PB3 or RT	5%
NZ Flax	*Phormiun tenax*	1.5	PB3 or RT	30%
koromiko	*Hebe salicifolia*	1.5	PB3 or RT	5%
Kohuhu	Pittosorum tenuifolium	1.5	PB3 or RT	30%
Red Tussock	*Chinochloa rubra*	1.2	PB3 or RT	5%

Mid bank plant species

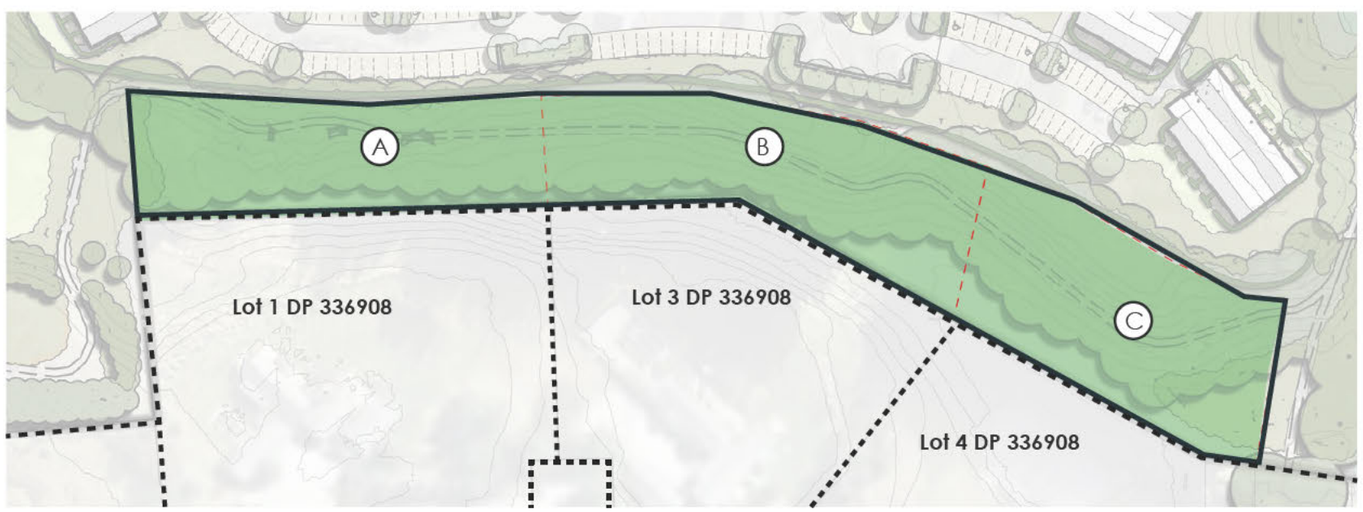
Common Name	Botanical Name	Spacing (m)	Grade	%
Cabbage Tree	*Cordyline Australis*	1.5	PB3 or RT	5%
Mingimingi	*Coprosma Propinqua*	1.5	PB3 or RT	5%
Swamp Flax	*Phormiun tenax*	1.5	PB3 or RT	5%
koromiko	*Hebe salicifolia*	1.5	PB3 or RT	5%
Toe Toe	*Austideria richardii*	1.5	PB3 or RT	5%
Kowhai	*Sophora microphylla*	1.5	PB3 or RT	5%
narrow-leaved tree daisy	*Olearia lineata*	1.5	PB3 or RT	5%
Ribbonwood	Plagianthus regius	1.5	PB3 or RT	5%
Kohuhu	Pittosorum tenuifolium	1.5	PB3 or RT	20%
Mountain Beech	Fuscospora cliffortoides	3m	8L/1.5-2m high +	40%

Upper bank species

Common Name	Botanical Name	Spacing (m)	Grade	%
Ribbonwood	Plagianthus regius	1.5	PB3 or RT	20%
Kowhai	Sophora microphylla	1.5	PB3 or RT	10%
narrow-leaved tree daisy	*Olearia lineata*	1.5	PB3 or RT	10%
Kohuhu	Pittosorum tenuifolium	1.5	PB3 or RT	20%
Cabbage Tree	*Cordyline Australis*	1.5	PB3 or RT	10%
Mountain Beech	Fuscospora cliffortoides	3m	8L/1.5-2m high +	30%



Indicative Cross Section of proposed native planting



Wilding vegetation to be cleared and planted in native species at spacings and sizes as shown.

Vegetation could be cleared and or topped in phases to avoid temporary effects allowing views but still mitigating visual effects until native planting establishes. Specific phasing to be directed by neighbours adjoining Areas A-C.

For specification including maintenance refer to the Bank Planting Specification and Maintenance Plan.

SCHEDULE C

Corrected Patersons Sheet 210

EARTHWORKS IN EPHEMERAL STREAM TO FORM IN-LINE SEDIMENT TRAP. DIMENSIONS AND EARTHWORKS VOLUME TO BE DETERMINED AT DETAILED DESIGN

EXTENSION OF EXISTING SPUR

FINAL CUT BATTER GRADE BEHIND STUDIO IS SUBJECT TO DETAILED DESIGN

EARTHWORKS TO REALIGN CYCLE TRAIL TO REDUCE GRADE. FINAL EXTENTS WILL BE SUBJECT TO DETAILED DESIGN.

EARTHWORKS TO FORM DRY BASIN TO CAPTURE SEDIMENT FROM OVERLAND FLOW. DIMENSIONS AND EARTHWORKS VOLUME TO BE DETERMINED AT DETAILED DESIGN

CREEK REALIGNMENT WORKS TO FORM AN IN-LINE SETTLEMENT POND

NOTES

1. ALL SEDIMENT AND EROSION CONTROLS TO BE ESTABLISHED PRIOR TO COMMENCING WITH EARTHWORKS
2. NO EARTHWORKS TO EXTEND BEYOND THE APPLICATION BOUNDARIES
3. ALL RETAINING WALLS ARE SUBJECT TO DETAILED DESIGN, RETAINED HEIGHTS MAY BE SUBJECT TO CHANGE AS A RESULT
4. ALL BATTERS GREATER THAN 1:3 TO BE APPROVED BY A GEO-TECHNICAL ENGINEER
5. SPUR EXTENSION EARTHWORKS MAY VARY SLIGHTLY TO ACHIEVE EARTHWORKS BALANCE. HEIGHT OF MOUND TO BE MAINTAINED IN ACCORDANCE WITH LANDSCAPE ASSESSMENT

EARTHWORKS QUANTITIES

VOLUMES:

	CUT	
1.	TOPSOIL STRIP	21,400m³
2.	CUT TO SUBGRADE	58,600m³
	TOTAL CUT	**80,000m³**
	FILL	
1.	IMPORTED FILL FOR SUBGRADE IMPROVEMENT	2,900m³
2.	IMPORTED FILL FOR SUB-BASE & BASECOURSE	3,500m³
3.	IMPORTED MATERIAL FOR FOOTPATHS	900m³
4.	IMPORTED BEDDING FOR BUILDING PLATFORMS	5,100m³
5.	BALANCE FILL TO DESIGN SUBGRADE	9,400m³
6.	BALANCE FILL TO DESIGN SPUR EXTENSION	48,000m³
6.	RESPREAD TOPSOIL	9,500m³
	TOTAL FILL	**74,400m³**
	BALANCE	
1.	SPUR LEVELS ADJUSTED TO ACHIEVE BALANCE	0m³
	TOTAL AREA EXPOSED	**91,000m²**
	CUT / FILL DEPTHS	
1.	MAXIMUM CUT	-9.5m
2.	MAXIMUM FILL	+12m

LEGEND

LEGAL BOUNDARY

EARTHWORKS EXTENT

CUT
- 10.0m +
- 8.0m to 10.0m
- 6.0m to 8.0m
- 4.0m to 6.0m
- 2.0m to 4.0m
- 1.0m to 2.0m
- 0.5m to 1.0m
- 0.0m to 0.5m

FILL
- 0.0m to 0.5m
- 0.5m to 1.0m
- 1.0m to 2.0m
- 2.0m to 4.0m
- 4.0m to 6.0m
- 6.0m to 8.0m
- 8.0m to 10.0m
- 10.0m +

patersons. Land Professionals

WINTON BEST BY DESIGN

DRAWING TITLE

AYRBURN SCREEN HUB - LOT 4 DP 540788
CONSENT DRAWINGS
DEPTH CONTOUR PLAN

DATUM INFORMATION	
COORDINATE SYSTEM	NZGD2000
	MOUNT NICHOLAS CIRCUIT
DATUM	DUNEHT1958
ORIGIN OF COORDINATES	IT X DP 23038
ORIGIN OF LEVELS	IT X DP 23038 : 358.566m

REV	DRAWN	DATE	NOTE
A	AH	29.11.2024	-
B	SB	18.07.2025	SUBSTANTIVE APPLICATION
C	SB	15.12.2025	CORRECTED CONTOUR EXTENTS

STATUS **FOR CONSENT**

SURVEYED	PAT	05.09.2024
DESIGNED	AH	06.11.2024
DRAWN	AH	29.11.2024
REVIEWED	SP	18.07.2025
APPROVED	SP	18.07.2025

PROJECT	**P240664**
DRAWING NO	**001**
SHEET	**210**
REVISION	**C**
SCALE (A3)	**1:1500**

SCHEDULE D

Proposed Conditions 59A-59C

59A The following obligations relate to the Wilding Tree Removal and Proposed Native Planting Plan (WT Plan) on page ___ of the Ayrburn Screen Hub Design Report approved under Condition 1:

a. The obligations under this condition in respect of each of Areas A, B and C shown on the WT Plan are subject to the consentholder obtaining the written approval detailed in Condition 59B in respect of each Area (ie: the obligations in respect of each of Areas A, B and C apply separately in relation to each of Areas A, B and C).

b. The consentholder shall:

i. removal all exotic vegetation (excluding grass) from each of Areas A, B and C shown on the WT Plan;

ii. replant each of Areas A, B and C in native vegetation in accordance with the directions detailed in the WT Plan;

iii. plant, and maintain on an ongoing basis, the native planting within Areas A, B and C shown on the WT Plan in accordance with the Ayrburn Screen Hub – Southern Boundary Bank Planting Specification and Maintenance Plan.

c. Vegetation removal and planting required under this condition shall be completed prior to the occupation of any buildings authorised under this consent.

d. Conditions 55-59 apply to the native planting required under this condition provided that, in the event of any inconsistency between Conditions 55-59 and this condition, this condition shall prevail.

59B The consentholder shall not implement any part of Condition 59A without first obtaining the written approvals of the relevant registered proprietors of Areas A, B and C shown on the WT Plan. The following shall apply:

a. The consentholder may deal separately with the registered proprietors of each of Areas A, B and C (ie: there is no obligation for the registered proprietors of Areas A, B and C to agree with each other).

b. When providing their written approval each registered proprietor shall be entitled to identify specific trees and require that they be topped to a certain height and not removed for a period of time which that registered proprietor may specify. If that occurs, the consentholder's obligation to replant native vegetation shall not apply for the specified period in respect of the land within the dripline of the tree(s) being topped and retained. When such tree(s) is/are eventually removed, the replanting obligation must be complied with.

c. If the consentholder requests a written approval for the purposes of this condition, and the relevant registered proprietor does not provide that written approval within two months of that request being made, the consentholder's obligations under Condition [59A] in respect of the Area adjoining that registered proprietor's property shall be at an end.

59C The registered proprietors of each of Areas A, B, C, D and E, as shown on the South Neighbours Additional Mitigation Plan on page ___ of the Ayrburn Screen Hub Design Report approved under Condition 1, shall have the right to enter the relevant adjoining Area (Access Right) upon the following basis:

a. Each Access Right only applies in respect of the adjoining Area. For example, the Access Right created under this condition for the benefit of the registered proprietor of Lot 1 DP336908 only applies to the adjoining Area A and does not apply to the other Areas B, C, D or E.

b. The Access Right shall be for the purpose of topping vegetation to preserve or enhance views or sunlight access. The registered proprietor who tops vegetation under this condition shall remove excess topped vegetation from the relevant Area.

c. The Access Right may be secured through a registered easement over the relevant Area, in favour of the relevant registered proprietor, at the request of the registered proprietor provided that each party shall execute the relevant registration documents and shall meet their own legal costs.

SCHEDULE E

Limited Matters of Discretion under Rule 27.5.9 and Rule 24.4.7B

27.5.9 All subdivision activities, unless otherwise provided for, in the Wakatipu Basin Rural Amenity Zone or the Wakatipu Basin Lifestyle Precinct.

Discretion is restricted to:

a. Location of building platforms and vehicle access;

b. Subdivision design and lot layout including the location of boundaries, lot shape and dimensions (but excluding lot area);

c. Location, scale and extent of landform modification, and retaining structures;

d. Property access and roading;

e. Esplanade provision;

f. Natural hazards;

g. Firefighting water supply and access;

h. Water supply;

i. Network utility services, energy supply and telecommunications;

j. Open space and recreation provision;

k. Opportunities for nature conservation values, and natural landscape enhancement;

l. Easements;

m. Vegetation, and proposed planting;

n. Fencing and gates;

o. Wastewater and stormwater management;

p. Connectivity of existing and proposed pedestrian networks, bridle paths, cycle networks;

q. Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contributions of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.

Advice Note:

Refer to the Wakatipu Basin Rural Amenity Zone location specific rules in 27.7.18 – 27.7.21.

24.4.7B Any new residential activity including the construction of buildings for that residential activity within those areas identified in Rule 24.5.1.6A.

Discretion is restricted to:

a. Effects on landscape character associated with the bulk and external appearance of buildings;

b. Access;

c. Infrastructure;

d. Landform modification, exterior lighting, landscaping and planting (existing and proposed);

e. Natural hazards;

f. Where the site is located within the Lake Hayes Catchment as identified in Schedule 24.9, the contribution of, and methods adopted by, the proposal to improving water quality within the Lake Hayes Catchment.