

**BEFORE THE FAST-TRACK EXPERT PANEL**

**UNDER**

of the Fast-track Approvals Act 2024 (the FTAA)

**IN THE MATTER**

of an application by Waterfall Park Developments Limited under section 42 seeking approval for the Ayrburn Screen Hub project (FTAA-2508-1093)

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT - S 70(4)  
RESPONSE**

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Dated: 02 April 2026

**Todd Walker**

**Solicitor acting**  
R E M Hill  
PO Box 124 Queenstown 9348  
P: 03 441 2743  
rosie.hill@toddwalker.com

## **MAY IT PLEASE THE COMMISSIONERS:**

### **Introduction**

- [1] This memorandum provides a covering summary to the Applicant's response in accordance with s 70(4) of the Fast-track Approvals Act 2024 (**FTAA**), and paragraph 10 of Panel Minute 20.
- [2] The memorandum is accompanied by the following documents, together forming the substantive response by the Applicant:
- (a) WPDL proposed draft conditions – track change 02.04.2026 (PDF and word versions).
  - (b) WPDL proposed draft conditions – clean version 02.04.2026 (PDF and word versions).
  - (c) **Appendix 1** WPDL summary table in response to comments on conditions.
- [3] For clarity, the WPDL proposed draft conditions (track change) document shows further (s 70(4)) track changes (in red), alongside the WPDL version of conditions also proposing track changes and already filed with the Panel on 26 March 2026 (in blue).
- [4] The WPDL proposed draft conditions (clean version) is a clean / accepted version of the above.
- [5] Appendix 1 is for information purposes only and further explains the WPDL detailed responses to comments received on conditions in accordance with s 70(4), grouped according to issues/ themes.

### **Response to David Kidd comments**

#### *Noise conditions*

- [6] WPDL has carefully considered the concern that the noise conditions are reliant on a complaints-based regime and self-monitoring. Similar themes are expressed in the comments from the Speargrass Flat neighbours and addressed further below.

- [7] In response, WPDL proposes drafting for a new 'Adjoining Neighbour' definition to enable identification of adjoining properties who are required to be consulted with / otherwise notified at key stages of the project. This new definition also enables those properties to 'opt in' for such communications.
- [8] This is intended to address the theme of the concerns expressed at paragraphs 2.1 – 2.8 of Ms Macdonald's memorandum. In response to paragraph 2.1 of her memorandum, WPDL has carefully considered removal of the term 'reasonable' from condition 64, however the difficulty with doing so is that it could unintentionally create a mechanism for any complaint (reasonably founded or not, or potentially vexatious) to trigger a potentially onerous and ongoing response and monitoring obligation on the consent holder.
- [9] Reasonableness is a common legal and planning term and is used in the context of management plan objectives. Noise in particular is an effect that is inherently subjective and therefore is appropriately regulated with reference to reasonableness. The condition as worded will enable oversight by Council in terms of when a complaint is reasonably made.
- [10] In terms of the overarching concern that the noise regime is complaints-based or self-monitoring, this is standard practice in respect of any noise management aspect for a consented project. It is appropriate and effective for the consent holder to monitor, ensure compliance, and demonstrate this to the Council where appropriate and required.

*Accommodation issue (Conditions 87-89)*

*Condition 88*

- [11] The central issue of Mr Kidd's comments on draft conditions relates to the matter of controlling the accommodation unit use alongside the film studio aspects of the Project. Ms Macdonald's summary of this issue is that:

The Panel has expressly recognised that there is a legitimate concern that the studio's functional primacy could be eroded if the accommodation

becomes an independent or dominant activity, rather than activity directly supporting the studio use.

...

These submissions in support of comments on conditions below proceed from that starting point

- [12] Counsel considers this ‘starting point’ misses the entire point of the Draft Decision, which does not establish that accommodation use *per se* is an adverse effect. Rather, the possible adverse effect is the operation of accommodation in a way that undermines or does not provide for studio-related activities. The only effects-based and proportionate condition to ensure this does not occur, is a review condition approach (reflected in the findings of the Draft Decision at 554-557), which follows on from an acceptance that limiting the accommodation units solely for studio related activities is not an efficient or effective use of the proposed resource.
- [13] For example, no analysis is provided in terms of why the proposed redraft to Condition 88 (to be tightened to reserve all units for studio-related use in the 53+ and 47–52 week bands, and reduce the remaining caps), is:
- (a) necessary in order to respond to a particular adverse effect (noting the use of accommodation units for general purpose in and of itself is not found to be adverse);
  - (b) not more onerous than necessary, given any adverse effect of undermining studio related activities is effectively addressed by review conditions 90 – 91;
  - (c) not contrary to the obligation on the Panel under s 83 of the FTAA; and
  - (d) not going to result in undermining the effective and efficient operation of all legitimate aspects of the Project’s components.
- [14] The comments on condition 88 have already been made by Mr Kidd and others through the process. The matter has been the subject of

extensive consideration by the Panel and other parties, and WPDL has also provided a substantive response on the matter including the corresponding review condition at 90. In this way, the reintroduction of the issue does not engage with the reasoning of the Draft Decision on these matters, but rather, seeks to fundamentally re-litigate those in contradiction of paragraph 8 of Panel Minute 20.

*New condition - peak holiday period prohibitions*

[15] Mr Kidd seeks to impose a new prohibition on non-studio related accommodation bookings during the peak holiday period months of January, February, July and August. The consequence of this could potentially result in units being empty over those peak holiday periods. That consequence would significantly adversely affect the Project's economic viability. Had this issue been raised previously, WPDL would have presented evidence relating to those economic viability considerations.

[16] This new condition introduces a new substantive matter, contrary to paragraph 8 of Panel Minute 20.

*New condition – frustration of consent*

[17] Mr Kidd seeks to ensure the consent holder cannot intentionally frustrate the consent, for example by providing preferential treatment to non-studio related use of accommodation units. WPDL considers the requirement to maintain and provide identified numbers of accommodation units within identified periods as currently drafted, effectively already prevents any such outcome.

[18] For the above reasons, WPDL has:

- (a) rejected a number of the substantive components of the redrafted conditions; and
- (b) proposed amendments which have a legitimate purpose in achieving transparency, compliance, and administrative workability, as summarised in the attached table.

[19] The proposed amendments include:

- (a) a greater range of definitions for terms referred to in the accommodation suite of conditions;
- (b) more specificity on the required data to be collected in the booking register maintained by the consent holder;
- (c) availability of the register for Adjoining Neighbour inspection; and
- (d) ensuring the specific Condition 88/89 review condition is also ongoing every three years after the initial review of the Condition 90 report.

### **Speargrass Flat neighbours comments**

#### *Community liaison conditions*

[20] A general theme of this response seeks to provide for an enhanced method of two-way communication between consent holder and neighbours. The comment does not seek to support a full community liaison type approach common to large scale consenting projects, but rather, an effective and efficient mechanism for neighbour communications.

[21] WPDL agrees with the sentiment of this comment. It has adopted an approach in the proposed changes to the conditions which now defines 'Adjoining Neighbours' by reference to an existing plan capturing the local neighbouring catchment of properties. The definition applies to a number of conditions which trigger communication or consultation requirements (including management plans, construction notices, monitoring and access to the accommodation register).

[22] While WPDL considered alternative options for community liaison groups or platforms to provide such communication, it considers that this revised approach is proportionate to the scale and effects of the proposal and the size of the catchment of directly affected neighbours.

### *Noise conditions*

- [23] A related theme to community liaison is in respect of noise effects. Specific matters are also addressed above in response to Mr Kidd. WPDL acknowledges the concerns expressed in relation to noise, however notes that the effects of construction and operational noise have been comprehensively assessed by the Applicant's experts and peer reviewed. The experts are in alignment as to the operation of the proposal being in accordance with permitted plan limits, and the temporary construction being effectively controlled by management plans.
- [24] The Speargrass neighbours requested new low frequency noise controls to be included. This new issue was not supported by any expert evidence explaining why such conditions are suitable, necessary, or how those are framed appropriately for monitoring and compliance purposes. WPDL has therefore not included these amendments relating to low frequency controls.
- [25] That aside, WPDL has responded to such concerns by:
- (a) providing for neighbouring consultation and comment on draft ONMPs before being finalised;
  - (b) ensuring the ONMP includes procedures for neighbour notification relating to any 'after hours' outdoor filming;
  - (c) including greater detail in the accommodation ONMP objectives and standards; and
  - (d) Clarifying and strengthen conditions requiring cessation of activities until follow up monitoring demonstrates compliance.

### *Construction traffic*

- [26] The Speargrass Neighbours seek to ensure that heavy vehicles during the construction period do not use Speargrass Flat Road. This issue was raised in initial comments received from adjoining parties on the substantive application however no expert evidence was produced by parties relating to this matter. There is no evidential basis before the

Panel to therefore assess and determine what effect such a condition would have on the surrounding transport network, or how such a control would consequentially affect spatial distribution of traffic effects.

[27] The proposed condition could be difficult to monitor and enforce given it applies outside of the subject site and requires an understanding of which vehicles on the wider roading network are attributed to the construction of the project.

[28] It is also a matter that has previously been raised in comments and is therefore a further comment which seeks to revisit a substantive matter.

**QLDC comments**

[29] Responses to the QLDC comments on conditions are set out in the attached table. Overall, the matters of differences between WPD L and the QLDC on these matters is minor and limited to technical points that are either not substantive, or which WPD L is neutral on.

[30] There is therefore a high degree of alignment between the QLDC and WPD L on conditions, and this is reflective of the fact that WPD L's comments provided on 26 March already was based upon engagement between those parties.

**Dated: 02 April 2026**



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**R E M Hill / W P Goldsmith**  
**Counsel for the Applicant**