

**BEFORE THE EXPERT CONSENTING PANEL APPOINTED BY
THE ENVIRONMENTAL PROTECTION AUTHORITY**

UNDER the Fast-track Approvals Act 2024 (the
FTTA)

IN THE MATTER of an application by Waterfall Park
Developments Limited for the Ayrburn Screen
Hub; a proposed production facility featuring
two studios, accommodation, and supporting
facilities and amenities

MEMORANDUM OF COUNSEL FOR PAUL DOUGHERTY

Dated 10 February 2026

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Purpose

1. This memorandum asks the Panel to exercise its discretion under section 67 of the Fast-track Approvals Act 2024 (FTAA) to request and receive the supplementary statement of Mr Paul Dougherty dated 10 February 2026 (Supplementary Statement).
2. The Supplementary Statement responds to materially new economic evidence and argument introduced by the applicant through the Panel conference process and additional information and evidence after the period for lodging comments closed, including new evidence that visitor accommodation operates as a fall-back/cross-subsidy for the proposed screen hub.¹
3. While I am instructed as counsel for Mr Kidd, I have been assisting a wider group of neighbouring submitters as they traverse this process, including by discussing their shared concerns and observations. In that regard, this memorandum is filed on behalf of Mr Paul Dougherty, who has instructed me for the limited purpose of requesting that the Panel receive (or request) his supplementary statement.

The Panel's current procedural position

4. The Panel has confirmed that it will not accept unsolicited material.² However, the Panel has also:
 - Recognised the natural justice implications where the Panel obtains information from interested parties to which another party has no ability to reply, and has stated it will endeavour to ensure the process is fair to all participants.³

¹ Statement from Mr C Meehan dated 21 January 2026

² Minute 13 at [5]

³ Minute 9 at [8]

- Confirmed the Panel’s discretion under section 67 FTAA to seek further information from any party invited to provide comments at any time prior to release of its decision.⁴
 - Itself raised whether the rules of natural justice/fairness require interested parties to have an opportunity to comment where the applicant advances a revised position late in the process.⁵
5. This request gives effect to those fairness assurances, while remaining consistent with the Panel’s concern in Minute 13 to avoid parties re-opening issues through unsolicited material.

The materially new evidence and argument

6. The new material that engages natural justice is not simply iterative commentary on existing evidence. It goes to the core of the applicant’s benefits case and the statutory gateway of regional significance. In summary:
- New/revised economic modelling: following divergence between the economists, the later evidence introduces revised scenario framing, including a new “lower bound” scenario (e.g. a \$31.5m p.a. figure referenced by Mr Dougherty), together with new argument about the appropriate discount rate and sensitivity testing.
 - A qualitative regional-significance argument where quantification is contested: the applicant’s economist relies on qualitative “uniqueness/additive” considerations to support regional significance, while at the same time the applicant’s own evidence suggests the unique screen element may be volatile and highly uncertain.
 - Divergence between the economists and contradiction between submissions and subsequent discussion at the Panel’s conference regarding the correct framework for appropriately assessing the regional benefits.
 - The project rationale has been materially reframed: the applicant’s evidence now indicates that visitor accommodation is intended to operate as a hedge against the volatility of screen production and to cross-subsidise the studios, and that without

⁴ Minute 9 at [7]

⁵ Minute 9 at [9](i)

visitor accommodation there is “simply no chance of the project proceeding”.⁶ This suggests the proposal may in substance comprise (i) a volatile screen component, and (ii) a separate stabilising visitor-accommodation business that underwrites it. That shift affects how the Panel should assess the likelihood, attribution, and net additionality of the claimed screen benefits.

7. Mr Dougherty was invited to attend the economic conference because of his particular interest in the matters the subject of expert evidence. His Supplementary Statement is drafted to respond to the **new material only**, and is intended to assist the Panel with the proper characterisation of the proposal and the robustness (or otherwise) of the economic benefits evidence.

Natural justice principles

8. The Panel is a public authority exercising statutory powers to determine rights and interests. It must therefore observe the principles of natural justice (including the hearing rule).⁷ A core aspect of the hearing rule is a fair opportunity to respond to significant new material that may influence the decision.
9. Natural justice is flexible and context-dependent. The FTAA’s compressed timetable allows the Panel to adopt efficient procedures, but does not justify reliance on materially new, outcome-relevant evidence where affected parties have had no meaningful opportunity to respond. A proportionate mechanism is to allow a tightly confined supplementary response on the new material, together with a correspondingly confined right of reply for the applicant.

Consistency with Minute 13 – “unsolicited” material

10. Minute 13 concerns are addressed if the Panel requests the information under section 67. Specifically:
 - Section 67(1)(a)(iv) expressly empowers the Panel to direct the EPA to request further information from any person invited to provide comments.

⁶ C Meehan statement dated 21 January 2026 at [12]

⁷ New Zealand Bill of Rights Act 1990 s 27(1)

- If the Panel issues a direction under section 67, the Supplementary Statement is not “unsolicited”. It becomes information formally requested by the Panel for the Panel’s purposes.
- The Panel can define the scope of the request so that it is confined to the particular new economic material summarised above (and can disregard any passage it considers to go beyond that scope).

No prejudice to the applicant

11. Receiving the Supplementary Statement will not prejudice the applicant. The applicant can be given a short but meaningful opportunity to respond. There is sufficient time for this to occur before the Panel finalises its evidence position and issues its decision, and such a process is consistent the general practice of allowing focused replies where fairness requires it. If the Panel also commissions independent economic advice under section 67(1)(b), the timetable can be structured so the applicant provides a single consolidated reply after that advice is circulated (see proposed directions below).

Proposed directions

12. Mr Dougherty respectfully suggests the Panel issue a brief procedural direction along the following lines:
 - a. Pursuant to section 67(1)(a)(iv) FTAA, the Panel directs the EPA to request and receive from Mr Paul Dougherty a supplementary statement responding to the new information and economic evidence.
 - b. The supplementary statement is to be confined to those new matters, and is not to introduce unrelated new issues or any other collateral material.
 - c. The EPA is to circulate the supplementary statement promptly upon receipt to the applicant and any independent economic expert engaged by the Panel.
 - d. Pursuant to section 67(1)(b) FTAA, the Panel commission independent economic advice (a peer review by a suitably qualified economist) on the economic benefits evidence and any revised modelling/assumptions advanced through the conference process and subsequent materials.

- e. The EPA is to circulate any report or memorandum from the Panel's independent economic expert to the parties promptly upon receipt.
 - f. The applicant may file a single focused written reply responding to both (i) Mr Dougherty's supplementary statement and (ii) the Panel's independent economic expert's report, within a short timeframe set by the Panel (for example, within 3–4 working days after the later of the circulation of the supplementary statement and the expert's report).
 - g. No further written evidence or replies are to be filed unless requested by the Panel.
13. For completeness, Mr Dougherty supports the Panel exercising its discretion under section 67(1)(b) to commission independent economic advice (including by way of peer review) to assist the Panel's evaluation of the claimed economic benefits. If the Panel does so, the consolidated reply timetable proposed above will avoid the inefficiency of requiring the applicant to respond in separate rounds to the Supplementary Statement and to the Panel's expert.

Conclusion

14. The Supplementary Statement is a targeted response to new information that goes to the heart of the economic benefits and regional significance case. Requesting and receiving it will assist the Panel, promote procedural fairness for all participants, and reduce the risk of unfairness arising from reliance on late new material. For those reasons, Mr Doherty respectfully requests that the Panel direct the EPA to request and receive the Supplementary Statement under section 67, and (if the Panel commissions independent economic advice under section 67(1)(b)) adopt a procedure that enables the applicant to provide a single focused reply addressing both the Supplementary Statement and the Panel's expert advice.



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