Your Comment on the Ayrburn Screen Hub

If you wish to make comments on the application, please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email to substantive@fastrack.govt.nz.

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	[redacted].		
First name	James		
Last name	Hadley		
Postal address	[redacted]		
Home phone / Mobile phone	[redacted]	**Work phone**	[redacted]
Email ***(a valid email address enables us to communicate efficiently with you)***	[redacted]		

2. We will email you draft conditions of consent for your comment			
☒	I can receive emails and my email address is correct	☐	I cannot receive emails and my postal address is correct

Please refer to the attached correspondence.

Thank you for your comments

SpeargrassTrust

9 December 2025

Our Ref: FTAA – 2508 – Ayrburn Screen Hub

ATTN: Expert Panel for FTAA-2508-1093

BY EMAIL ONLY: Substantive@fasttrack.govt.nz

Dear Expert Panel,

PROPOSED AYRBURN SCREEN HUB, NORTH LAKE HAYES, QUEENSTOWN
RESIDENT COMMENT

1. Thank you for the opportunity to comment on the application before you titled FTAA-2508-1093 Ayrburn Screen Hub. The application has been made by Waterfall Park Developments Limited (WPDL).

INTRODUCTION

2. My name is James Hadley and I reside with my wife (Rebecca) at [redacted].

3. I am a Chartered Professional Engineer and have lived and worked in Queenstown and the Southern Lakes area for the last 30 years. I have resided on Speargrass Flat Road, adjacent the development site, for the last 22 years where Rebecca and I have raised our family. Rebecca and I still work in our respective professional disciplines in the Southern Lakes District and across the country.

4. As long term residents and adjacent neighbours to WPDL we have firsthand knowledge of the ongoing and ever evolving development aspirations of WPDL for the subject site. As you will see later in these comments, WPDL have unsuccessfully been trying to upzone the rurally zoned land which is the subject of this application for more than 10 years. We also have direct experience of the conduct of WPDL as a strategic and openly litigious (albeit unsuccessful) claimant and litigant who regularly vary their development proposals, and who explore all avenues to achieve development yield from their land holdings. The Newsroom article attached as Schedule 1 provides some context in this regard.

5. The purpose of the comments herein are simply to provide the Panel with some background to our interest in the latest proposed change in activity on the land and to provide an accurate

record of the numerous development applications already submitted and rejected for the subject site, together with some context to those previously rejected applications.

6. Since the advent of WPDL's ownership interest in the rural farm land across our northern boundary we, as neighbours, have been subjected to and dealt with no less than 10 different development proposals on the subject land. That figure excludes the current Film Studio application before you. Notably these applications have included 3 failed attempts at Special Housing Areas (SHA's) under the 2013 HASHA Act and relevantly a previously failed Fast Track application in 2020.

7. Much like the current application, all previous development attempts by WPDL were large scale (arguably grandiose) and represented significant change to the established rural amenity we had relied on by way of the existing rural zoning under well-tested versions (and reviews) of the Queenstown Lakes District Council (QLDC) District Plan. It is for that reason alone that via the democratic process of the District Plan Review we became involved to ensure that the amenity of the area, being not just the North Lake Hayes area, but also the Speargrass Flat Corridor and public spaces such as Christine's Hill, were considered and protected.

8. From our perspective, nothing has changed with regard to the need to protect and maintain the existing rural zoning and amenity which is now challenged by this latest and even more preposterous proposal for a commercial "screen hub" on the land. For the sake of understanding and common sense, I will no longer use the marketing or branding name of "screen hub" which has been adopted by WPDL as it has no context or relevance in an applied sense. Instead, let's all call the proposal what it is – a commercial Film Studio with Offices and Short Stay, hotel type accommodation.

9. In the context of para 7 above, it is important for the Panel to note that we have never opposed or questioned other development proposals by WPDL such as those which have related to the Waterfall Park Resort Zone (WPRZ) and the Ayrburn Hospitality Precinct.

10. Our view has been, and remains, that the WPRZ has been established for some time, was known to all parties when WPDL purchased the WPRZ land and WPDL should be able to develop that land as they see fit. In that regard they are to be congratulated for investing so much capital in the WPRZ, however that alone does not justify or entitle the spread or spill of other development significantly beyond the WPR zone boundaries to improve WPDL investment returns on other land they have separately acquired – such as the subject site. The point being that we are not, and never have been, serial litigants and our previous comment on earlier applications on the subject land has been entirely principled. That remains the case for the current Film Studio application before the Panel.

11. As neighbours, when faced with something as jarring and unpredictable as a proposal for an industrial film studio on rurally zoned land, it is important to us that the Expert Panel acknowledge that the subject site has already been robustly examined in terms of it's ability to absorb development. In all cases, intensive development on the subject site has been roundly

and repeatedly rejected by not only the local Community, but the Council, Independent Decision Makers and not least, the Environment Court.

12. In the face of highly permissive Central Government legislation, it must be incumbent on any Expert Panel, or Expert Panel Member, to acknowledge and weigh the previous assessments, outcomes and community wishes that have in all instances rejected intensive development proposals on this subject land.

13. Additionally, in our personal case, as residents who have abided by and relied upon planning laws, we believe the Panel has a duty to weigh our comments appropriately as parties who have been shown to have taken a principled and reasoned approach to the swathe of development attempts by WPDL over an extended period of 10 years. More importantly, we submit that the Expert Panel should also weigh the fact that our previous comments and approach on earlier applications have been supported by Independent Decision Makers who have agreed with our assessment of WPDL's various applications, and who have rejected and declined WPDL's various development proposals.

APPLICATION HISTORY & EVENT CHRONOLOGY

14. We understand that in 2015, WPDL (via Ayrburn Farm Estates Limited (AFEL)) established an interest in the land comprising the subject site via an option to purchase. WPDL later settled the purchase of the subject site on 7 April 2017.

15. At the time of WPDL's ownership interest in the land, the site comprised approximately 100 acres of farm land and farm buildings known as Ayrburn Farm. This land had maintained it's rural zoning for several decades and had withstood several District Plan Reviews where upzoning requests were declined.

16. Sometime after WPDL acquired the Ayrburn land, WPDL separately acquired the Waterfall Park resort zoned land. We are unsure of the date of acquisition of the Waterfall Park Resort Zoned land, but certainly it appeared to post date WPDL's ownership interest in the subject site at Ayrburn. We expect the Panel can confirm exact dates by their own inquiry.

17. Clearly, the ownership parties of AFEL and WPDL saw an opportunity to take on development risk on their purchase of the subject site. It is assumed that by the acquisition of the Waterfall Park resort zoned land, WPDL saw an opportunity to extend the resort zoning, or more correctly, the WPRZ zone activities, across the Ayrburn land which they acquired. Indeed, this was one proposal put forward by WPDL during the District Plan Review process, but which did not succeed.

18. In late 2013 the HASHA Act came into force. In early 2015, Ayrburn Farm Developments Limited (AFDL) (under the same control as WPDL) made application for the first of 3 attempts at a Special Housing Area (SHA) on the subject site.

19. Since that first SHA application in 2015, WPDL, or entities with the same control as WPDL, have made numerous failed attempts to develop, upzone or unlawfully improve the subject application site. We have summarised the Application and Event Chronology associated with these various attempts under Schedule 2 attached.

20. Some highlights from the chronology show that in the last 10 years WPDL have achieved the following on the subject site;

    i. No less than 3 failed SHA applications for intensive residential development and retirement villages rejected by QLDC.
    ii. A failed Fast Track application for a Retirement Village rejected for referral by the Minister of the Crown.
    iii. A failed High Court Negligence claim against the QLDC for declining an SHA application.
    iv. Failed zoning relief under the QLDC District Plan Review with the requested zoning declined by the Independent Hearings Panel.
    v. Failed Environment Court Appeal for Zoning Relief under QLDC District Plan Review Decisions, with the Environment Court declining all of WPDL's requested relief.
    vi. Unlawful screen planting to assist WPDL's Environment Court Appeal.
    vii. Failed Environment Court Declaratory Judgment proceedings where the Environment Court found the WPDL plantings to be unlawful.
    viii. Failed High Court Appeal of the Environment Court Tree Planting Decision with Stevens J dismissing the Appeal.
    ix. Failed Arbitration proceedings.
    x. Failed High Court Proceedings against the Hadleys including Nation J citing a misuse of the Court process by WPDL and including an award of indemnity costs.

21. So of all of the various applications and events on the application site an analysis of the history shows that WPDL have been unsuccessful with no less than 8 unique Development Applications heard by different Independent Decision Makers and have lost no less than 5 associated claims through the Courts (both the Environment Court and High Court).

22. Ironically, the only development right secured on the subject site in the last 10 years relates to an area proposed by my wife, Rebecca, during the hearing of WPDL's Environment Court Appeal. Rebecca suggested that the only area capable of absorbing development (being rural lifestyle or rural residential development) was below and south of the existing "farm track". This area was confirmed by the Environment Court as the only area in the western portion of the Ayrburn land which could absorb low intensity development in line with the Wakatipu Basin Rural Amenity Zone provisions.

23. However, that Environment Court (Hassan J) development concession was limited to potentially up to 4 rural dwellings only with residential (not commercial) activity rights. The

approved development level on the site is therefore far removed and significantly less than the highly intensive and industrial Film Studio now proposed by WPDL and before the Expert Panel. The footprint of the proposed industrial Film Studio also extends well north of the "farm track" limit established by the Environment Court. Unsurprisingly, the latest proposal replicates an area, intensity and yield equivalent to that of the many previously declined WPDL proposals. It seems that "No" does not mean "No" if you are WPDL.

RURAL LIFESTYLE AND RURAL RESIDENTIAL LIVING

24. Both Rural Lifestyle and Rural Residential Living areas, loosely defined as lots greater than 1.0ha and between 0.4Ha to 1.0Ha respectively, have been around for several decades throughout New Zealand.

25. Recently, these rural living areas have been much maligned by modern planning and landscape architecture commentary. The experts, particularly the city based experts, like to make light of these rural living areas by mocking residents and owners who they believe do nothing but spend time on their ride on mowers. The experts seem incapable, or at least reluctant, of acknowledging that rural living areas have their own Character and own Amenity. I suggest to the experts that this unique character and amenity is the very reason why such rural living areas exist in the first place – and why such zones are specifically provided for in numerous Plans and Policy documents.

26. The planning and landscape experts derision towards rural living is ironic. History has shown, particularly in the Wakatipu Basin (and even more particularly in the North Lake Hayes/Hogan Gully/Bendemeer areas) that these rural living areas are highly sought after locations – even by Film Studio operators it seems.

27. Prior to the arrival of the Ayrburn Hospitality Precinct only 2 years ago, rural living in the North Lake Hayes area could be characterised as comprising the following;

    - Allotments ranging in size from approximately 0.5Ha to 2.0Ha with generous dwelling separation providing privacy between properties.
    - Few, if any, commercial or industrial operations other than one furniture maker on Hogan Gully Road.
    - Few, if any, public events, typically limited to modest art openings or string orchestra performances in small galleries.
    - Commercial hospitality offerings were controlled and limited to Mora and Amisfield. It is noted that Mora, adjacent existing residential living like the subject application, is not permitted to trade after 5pm. Amisfield is not permitted to trade after 6pm Monday to Wednesday nor 11pm (Thursday to Sunday). And for context, Amisfield is sited adjacent a State Highway.

28. The above characteristics defined the rural living amenity of the area as recently as 2023.

29. The current Ayrburn Hospitality Precinct has evolved as a consequence of WPDL leveraging the resort zoning of the Waterfall Park land which they purchased. WPDL have used the proximity of the Waterfall Park resort zone to creep the enabling nature of the resort zoning further south onto what was original Ayrburn Farm land and is now the Ayrburn Hospitality Precinct.

30. Prior to the creation of the Ayrburn Hospitality Precinct, nearby residents due south of the Ayrburn land enjoyed separation from the southern extent of the Waterfall Park Resort Zone (and the activities which could occur within it) of some 500m.

31. With the advent of the Ayrburn Hospitality Precinct, the nearby residents' separation from bands, crowd noise and traffic has reduced to less than 100m. If the industrial activity of a Film Studio is to proceed, that separation will reduce to less than 50m in some cases. This evidence (and most importantly the track record) of there always being a thin end of a very fat wedge associated with any WPDL development aspiration should be chilling and cause alarm and concern for any Expert Panel.

32. The fraying, frankly the disintegration, of activity boundaries caused by the Ayrburn Hospitality Precinct in a confined landscape like the Lake Hayes basin is already dramatic. You could describe it as the burning front of a scrub fire.

33. If the Expert Panel consider that yet further creep by way of the proposed industrial Film Studio is appropriate at the north end of Lake Hayes, then that fire front will have evolved into a fully blown and uncontrollable bushfire. I am confident that should that occur, in less than one generation, people will look at an unused building with a 15m stud height and high density hotel/apartment accommodation and say "who was it that it approved pushing the nuclear button at the north end of Lake Hayes – what a shame".

34. The point being made here is that the fire front burning at the Ayrburn Hospitality Precinct boundary needs to be thoroughly extinguished and a hard boundary set – as it already has through no less than 8 other expert decisions and 5 court decisions referred to in para 21 above.

35. To reinforce the incongruous nature of the proposal with the surrounds we have requested that Carey Vivian of Vivian + Espie provide an expert planning analysis of the compatibility of the proposal with the current District Plan. Mr Vivian's analysis is included as Schedule 3. It is no surprise that Mr Vivian concludes that the proposal is not compatible with the current District Plan provisions or intent.

WHY A FILM STUDIO – AT THIS PARTICUALR SITE?

36. The imagination of WPDL is to be credited. As evidence of their imagination and the creep they execute, WPDL have already pivoted consent for a Hotel in the Waterfall Park Resort Zone into a Retirement Village. This pivot occurred immediately after Hassan J gave an oral

direction during the WPDL Environment Court Zoning Appeal that WPDL's requested Retirement Village and Urban Growth Boundary Extension relief on the subject site had no prospect of success. This rapid pivot and juxtaposition of a Retirement Village immediately adjacent to what is in all intents and purposes a nightclub and concert zone is breathtaking in terms of marketing gall.

37. The point here is that based on track record, there is a clear risk that any form of approved development on the subject site will be re-purposed in the future to maximise financial returns for WPDL – and will depart entirely from the basis on which it was approved by Decision Makers. The result in this case is the claimed outcomes and benefits during application and assessment are never even attempted, let alone realised.

38. It is not a coincidence that the consent for the Hotel development which was forgone in the earlier pivot to the Retirement Village is now re-appearing in disguise as Film Studio accommodation (but with a tourist and short stay weighting). Anybody who knows the 10 year history of the WPDL journey can see that instead of accepting that they might not get the ambitious development returns they originally envisaged at inception, WPDL prefer to merely move the same pieces of their original development masterplan around on the site and dress them up as new projects with catchy new names and have another attempt.

39. The current proposal for this similarly "Retirement Village adjacent" industrial Film Studio is even more dramatic. To any right thinking person, the continual and ongoing attempts at extension of such intensive and alternative development well beyond established zoning boundaries appears to be almost schizophrenic or fanatical in its nature.

40. Examining the counterfactual is always helpful when considering extreme proposals which are presented as compelling or above question.

41. The relevant counterfactual here is that WPDL could have, as of right, developed 4 rural living allotments on the land they wish to now use for the industrial Film Studio. Indeed, WPDL are already doing exactly that on their land to the east of Mill Stream. WPDL have been in the media (refer Schedule 4 attached) proudly declaring that they are selling these 3 rural living allotments as land only for $9M - $11M each, or under a land and buildings package, for circa $40M each.

42. So in the counterfactual case, WPDL already have the ability to develop (without challenge) the 4 rural living lots achievable on the subject site (and all with the same or equivalent ecological benefit requirements demanded by the existing planning instruments). Their own media statements suggest they could do this for gross revenue of some $40M on land sales alone. Development cost for only 4 allotments would be modest, certainly less than $5M. So the net proceeds to WPDL could be in excess of $30M if the site was developed under it's current development right. Presumably, under the WPDL land and buildings packages with sale prices of $40M each, net returns to WPDL would be even larger.

43. In terms of nearby alternative sites, suitable large lot industrial land already exists on the Frankton Flats, Remarkables Park and in the future within the Southern Corridor. These sites and locations already have suitably permissible building and activity controls in place which would allow WPDL to develop an industrial Film Studio as of right. We suggest a single site purchase at a level of $30M would allow acquisition of more than 1.0Ha if not 2.0Ha of industrial zoned land on the Frankton Flats.

44. A site of this size (even at 1.0Ha) would readily accommodate the facilities proposed by WPDL in their Film Studio. They may not even require the cost of their apartment/hotel complex – and could significantly reduce the building footprint, site size requirements and overall cost as a result. The Frankton area has accommodation. Frankton has existing food and beverage outlets and suppliers that will service film industry staff. The reality is that Frankton, let alone Cromwell, Dunedin or Christchurch are arguably all equally ready and waiting to serve the Film Studio demand which WPDL suggests exist – likely at much lower cost than WPDL's offering.

45. Therefore, outside my generous credit of imagination, the only reason that a Film Studio is proposed on the subject site is that WPDL remain dissatisfied with the development rights they have secured through their 13 previously failed development actions for this site.

46. Instead, they want, or perhaps require, a far more significant financial uplift by creeping yet further beyond the Ayrburn Hospitality Precinct fire front and achieving an expanded "development right" at the expense of nearby residents' amenity. Indeed this is their track record to date with the Ayrburn Hospitality Precinct and the proposed large scale concert events (now subject to an appeal by WPDL to the Environment Court to further increase the number of concerts). This just highlights that WPDL take the singular view that enough is never enough on their land – regardless of the impacts on others.

SOME METRICS

47. Pulling back and taking a helicopter view of some of the basic metrics associated with the industrial Film Studio proposal helps to bring some perspective in terms of scale – and common sense.

48. During our meeting with George Watts of WPDL he proudly and impressively noted that what he referred to as an "existing natural spur" was going to be significantly extended by fill earthworks to "cocoon" the Film Studio development.

49. On in inquiry George confirmed the fill earthworks required to achieve his desired "spur extension" was in excess of 65,000m^3 of fill. To give the Expert Panel some context on that figure, it is the equivalent of placing and stacking no less than 25 Olympic Swimming Pools on the existing farm paddock to achieve the WPDL "cocoon". That is an extraordinary level of

mitigation (even before planting). Such modification of the existing landscape is more akin to a mining operation than a sensibly conceived building project.

50. Similarly, the Film Studio buildings are dense in terms of site coverage and in terms of scale on this site. The density of the building structures is more akin to a city business park or industrial precinct. It is hard to reconcile this with the rural nature of the surrounds west and south of the site, and with the determinations of rural character in the many previous decisions on the land which declined all of WPDL's earlier attempts to intensify development on this site.

51. The proposed studio height of 15m is nearly twice the existing maximum permitted height in the rural area. A building height of 15m is equivalent to a 5 level building. To my knowledge there are no buildings in the Wakatipu basin that have been constructed over 5 stacked levels to this scale (even those adjacent a hillslope) – nor are there any that have an aggregate height of 15m in elevation or the bulk of that height over a such a significant length such as those proposed for the Film Studio.

52. Despite being up to 15m in height, the Architects and Landscape Architects boldly describe the proposed buildings as being in the 'rural vernacular'. Frankly, the vernacular of the buildings becomes somewhat academic in the context of the step change of activity mooted by the industrial Film Studio and apartment/hotel proposal in this location. In that context, the Architects and Landscape Architects boasting of a rural vernacular adds nothing to the debate other than marketing spin and cost for the project.

53. Earthworks akin to mining operations and building heights which are twice that of the majority of the structures in the North Lake Hayes area (and wider rural Wakatipu Basin) bring into stark relief how out of step this Film Studio proposal is in this location. It really does, at an obvious level, illustrate that WPDL's latest proposal is a square peg in a round hole and should rightly be treated as a fantasy.

REGIONAL AND NATIONAL SIGNIFICANCE – OR JUST DEVELOPER BENEFIT?

54. The Regional and National significance of this project is questionable at best. Central government has recently further incentivised film production to encourage offshore production investment, but worldwide large scale film production and their budgets are known to be reducing. To that end, the recent government incentives are more about propping up a failing industry than they are about achieving film industry growth as a significant contributor to national GDP. So in that sense it is hard to reconcile that there would be any net and ongoing national benefit associated with this WPDL Film Studio proposal because it would at best just cannibalize the business of existing Film Studio and production facilities already appropriately established elsewhere in New Zealand.

55. At a Regional, or more correctly a District level, there may be some benefit in the long term operation of a Film Studio, but again the incremental gains from a reducing film industry would be small and would likely cannibalise existing film production offerings locally.

56. By far the greatest economic benefit will arise from the construction activity associated with the construction of the facilities and not the operation of the Film Studio facilities themselves. It is proposed that the Film Studio development will be staged with only one Film Studio constructed initially. The construction budget for that first stage appears to be circa $100M. It is ironic then that if WPDL chose to use their existing development rights on the site and develop 4 rural residential house and land packages as they are currently offering elsewhere – the total construction spend of that would be in excess of $100M and would provide a greater regional economic benefit than the first stage of the Film Studio. Such basic comparison and analysis indicates that something is not right with the Film Studio proposal at this site.

57. The discourse on "benefits" also seems to only concentrate on the "Gross Benefits". That is there is no consideration or valuation of a project's negative effects, be they economic or social. So at no time is a project's "Net Benefit" considered, analysed or reported.

58. Does the degradation of an existing character get valued? Does the reputation of a destination such as Queenstown get harmed by poorly managed growth and permissive development? In my experience having travelled internationally many people in the northern hemisphere may have never heard of New Zealand, but they have heard of Queenstown.

59. Queenstown's reputation is, by association, important to New Zealand. For a long time Queenstown has been the partner that everyone wants to take to the dance. Unfortunately, as the town comes under exponential development pressure, and the opportunity to the make a development buck ever increases, Queenstown is having a shift towards becoming the partner that someone might still take to the dance – but only once. That's not where the existing community wants to be, or where New Zealand needs Queenstown to be.

60. Given that the operational benefits and economic significance of a Film Studio are far from clear cut and the construction benefits and significance of the Film Studio are no greater than the baseline of what WPDL are already permitted to construct by way of rural house and land packages, it is hard to accept that there is a tangible and reliable National or Regional benefit. This is particularly so when the proposal is in such direct conflict with recent and robust Court determinations and other previous decisions declining development on this site. With the risk of significant and lasting negative effects being so high and the economic projections (by definition) are uncertain, the Expert Panel are clearly dealing with bomb that needs to be defused.

61. If approved, the most significant impact and benefit of the proposal will be on the developer's balance sheet by way of increased development rights and an associated re-valuation of their asset. If we have reached a point in New Zealand where this type of myopic corporate welfare to party donors is mandated under the guise of a national growth strategy then that will have

its own political consequence for the current government. Consistent with that comment, my most significant concern if the Expert Panel is minded to approve this latest WPDL proposal is that the project will undoubtedly become regionally and nationally significant – but for all the wrong reasons.

QLDC'S UNENVIABLE AND COMPROMISED POSITION

62. Simply through the volume of development actions on the land by WPDL in the last 10 years it is clear that the parties associated with the land are running a strategy to badger, tire and leverage both QLDC and neighbours.

63. Nation J's judgment (included as Attachment 5) confirms that my family were subjected to that exact strategy. Over the years QLDC have also been subjected to various litigation actions or threats of litigation. It is hard not to tire or be worn down by these types of repeated development attempts.

64. Councils nationwide face difficulty with continuity of staff and maintaining their intellectual property on long term application attempts like those of WPDL. This problem in Queenstown is particularly acute with a high staff churn rate. The nature of the consents already granted by QLDC within the Ayrburn Hospitality Precinct, and in some cases their inability to defend their own independent commissioner's decisions at Hearings, confirms that QLDC regulatory staff processing and commenting on consent applications have not been sufficiently aware of past declined consents or the correct policy framework.

65. There remains a risk that with current staff churn (to be expected over the period of a decade) the same lack of knowledge will prevail in the QLDC reporting on this latest WPDL proposal. To this end we understand that WPDL are even funding QLDC's reporting costs on this Film Studio application. I suggest that this arrangement would sit very uncomfortably with most New Zealanders who believe in independent assessment. With this in mind I encourage the Expert Panel to use their own expertise to critique technical reporting by QLDC, or better still, the Expert Panel use its ability to commission it's own independent reporting or peer reviews.

SUMMARY

66. I am an Engineer. I have worked in the development and infrastructure area for 35 years. For 30 of those years I've done so in Queenstown and the Southern Lakes region and have worked on and successfully assisted very significant property development, tourism and infrastructure projects. Indeed, I assisted the original development of Ayrburn Farm into approximately four 100 acre rural lifestyle properties with protection of pastoral areas over the open space areas now proposed for Film Studio development. I do understand that to move forward and achieve, you have to break some eggs to bake the cake.

67. However, in this case, this is not really about making a cake or even making the cake bigger for everyone. This is simply about a repeated 10 year "want" from the applicant to achieve

upzoning from their current development baseline and a re-valuation (increase) of their asset to justify, "prove" and in fact enhance their initial investment case. Any form of approval of any part of this current industrial Film Studio and Hotel/Apartment application will achieve that outcome for WPDL. If the Expert Panel are minded to approve in this manner it will be at the expense of the local community in terms of an immediate and unjust loss of amenity, and a longer term penalty to the values and character of the Wakatipu Basin and Lake Hayes area.

68. The Fast Track legislation has merit and value in terms of delivering key infrastructure, but I suggest that unless strong Expert Panels identify outliers such as the WPDL application, history will show that the legislation has unintended consequences of providing low cost and poorly conceived upzoning to property developers only to create long term burdens and costs on local communities and Councils.

69. In the case of WPDL perhaps they should be given some credit for their persistence for over a decade in trying to increase the yield out of the development risk they took when they purchased the property. However, at some point it needs to be accepted that something is beyond amplification of the baseline already established by a rigorous planning and evaluative test. Most of all, it should not be that local communities are forced to underwrite developer financial risk by having to surrender their amenity to provide a seemingly insatiable developer with the returns it desires on a risk it took a decade ago. Afterall, the developer does not offer a share of the upside to the local community, so there is no need for sympathy or concession when a developer's risk is crystalised and they do not achieve the outcomes they took the chance on. That is their profession, and they should be capable of living with the outcomes, rather than continually "asking again" at the expense of all those around them.

70. Finally, I want to acknowledge the courage of those in the local community who I have now seen have "spoken up". Given what we were subjected to through the District Plan Review process, Rebecca and I made a conscious choice to be passive over this latest WPDL proposal and have not been actively involved in any resident group discussions or lobbies. There is clear record of intimidation with WPDL (from just our case alone) and as a consequence there is a reluctance in the community to voice opposition or dissent towards WPDL's direction of travel. It is heartening to see that many people have overcome that fear and are now speaking freely and honestly about their own experiences and impacts.

71. Ten years ago, when commenting on one of the previously declined SHA applications, I wrote *"To conclude, in the 20 years I have lived, worked and contributed to the Community in Queenstown, the SHA policy remains the largest single issue to threaten the integrity of the District. On many fronts we are at a key point in Queenstown's growth cycle where the decisions taken will determine the nature of the settlement for years to come. I fully expect that in 30 years time people will be able to look back at Queenstown's evolution and pinpoint the period from 2015 – 2017 as the time when the Decision Makers got it right - or got it wrong. Let's concentrate on the former."* It turns out that a decade on, the words referring to the SHA policy could be substituted with Fast Track legislation.

72. In 2015, the Decision Makers got it right. I request that as an Expert Panel you acknowledge the history and drivers associated with this site and get it right again by declining the WPDL application.

73. I would be happy to discuss any of the matters I have raised should you wish to contact me.

Yours sincerely,

James Hadley

Attach:

A Schedule 1 – Newsroom Article.

B Schedule 2 – Application History and Event Chronology.

C Schedule 3 – Carey Vivian Planning Analysis.

D Schedule 4 – Ayrburn Residences Media Article.

E Schedule 5 – Nation J, Judgment.

Schedule 1

Newsroom Article

INFRASTRUCTURE

Lawyers are the new diggers in property development business

Winton Group is gaining a reputation for litigious behaviour but its chief executive says the courts are the only way to get things done in New Zealand

Property developer Winton is known for taking opponents, competitors and government agencies to court, but says it's all par for the course for property developers.

Its chair, chief executive and majority shareholder Chris Meehan likens lawyers to diggers – an essential part of the property developer's toolkit.

Obviously, litigiousness is contextual. In 2009 serial litigant Jonathan Lee-Riches attempted to sue the Guinness World Records to prevent it from granting him the record for “most litigious individual in history”.

Ultimately, his action against Guinness World Records was dismissed. The annual said it had not been tracking "world's most litigious man" as a category.

Lee-Riches’ other legal activities (of which there are thousands) included a case where he claimed he had met infamous fraudster Bernie Madoff on eHarmony.

Large-scale property developer Winton Group has never filed lawsuits against Britney Spears, Somali pirates or its own mother, but nevertheless, the business' legal behaviour has managed to raise a few eyebrows.

Last month a lawsuit Winton had launched against its Queenstown neighbours, in which it claimed their opposition to its Waterfall Park was “akin to extortion or blackmail”, was dismissed.

Winton was seeking damages of $7.1 million from the neighbours who had opposed the development at every step of the way, claiming they had been wrongly stymying the project to extract a financial benefit.

Winton chair and chief executive Chris Meehan.

The judge concluded that the proceedings were filed not to seek damages for a loss for which they could argue the neighbours are liable, but to “impose the burden” of having to defend such a big claim in what were strong words for a civil case.

“I am satisfied Waterfall Park did that to deter the Hadleys [the neighbours] from continuing to oppose Waterfall Park’s attempt, through their appeals, to obtain relief from the Environment Court which would allow Waterfall Park to develop the Ayrburn land in the way it wants to.

“I am satisfied that is Waterfall Park’s ulterior and predominant purpose of the civil proceedings.”

In September last year, Winton filed for a judicial review of an Overseas Investment Office Decision allowing a rival property developer to purchase land in Havelock North it also wanted to buy.

The review was shut down by High Court Judge David Gendall on all six grounds claimed as illegal by Winton.

The 42-hectare parcel of land was sold to CDL, also listed on the NZX, for $58m. The second highest bidder had offered $49m, while Winton had offered $32m conditional or $25m unconditional for the land.

The vendor's affidavit called Winton's offers "offensive".

Kāinga Ora

Last week Winton announced it was taking legal action against government housing agency Kāinga Ora, alleging it had engaged in anticompetitive conduct by refusing to fast-track the approval process for a substantial Winton development in South Auckland.

The Sunfield development is planned as a 15-minute neighbourhood comprised of 4,400 homes, three retirement villages, and substantial commercial and town centre developments.

The project had also been turned down as a Special Development Project by Housing and Urban Development Minister Megan Woods.

Winton alleged Kāinga Ora was reserving its Urban Development Act (UDA) powers for its own developments, putting other developers at a competitive disadvantage.

Winton said Kāinga Ora had said it was too busy to consider new applications while actively processing its own.

It is seeking substantial damages as well as consideration under the UDA, though acknowledges it could go on for years.

Diggers

Winton's Chris Meehan told Newsroom being in and out of the courtroom was the reality of being a property developer in New Zealand.

"It's just the way it is. It's not specific to Winton, I don't think it's ever changed, it just happens that now we're a public company people seem to be more interested in it.

"It's a bit like if you're an earthmoving company you need to use a digger to move the earth as part of your fundamental toolkit, if you're a property development company you need lawyers and the courts."

Asked about decisions such as Waterfall Park that appeared to go beyond what you'd expect of a developer, Meehan said if the business ever felt a neighbour or opponent was trying to "greenmail" it, it had no choice but to go to court.

In its product disclosure document issued before its December 2021 IPO, the business forecasted for administrative costs of $10.9m in its 2022 financial year, but it ballooned to $13m because of higher legal fees.

Meehan said it was important to look on the “other side of the ledger” and the long-term benefits of having consents in place.

New Zealand Shareholders' Association chief executive Oliver Mander said companies needed to retain the support of the community in which it operates.

This is particularly true for Kāinga Ora which, like it or not, Winton will have to continue to work with in the future.

“While Winton may have felt justified in pursuing these cases, there may be longer-term reputational issues that reduce long-term value for shareholders.”

Schedule 2

Application History and Event Chronology
Rev A

Schedule 2

APPLICATION HISTORY AND EVENT CHRONOLOGY ON SUBJECT SITE

Date	Event/Application	Outcome
May 2015	SHA Application 1 (SHA1) - 150 plus low density residential sites.	**DECLINED** by QLDC.
August 2015	QLDC Notifies Stage 1 Plan Review (PDP) including the subject application site.	
23 October 2015	J&R Hadley submit on PDP Stage 1 in support of maintaining a Rural Zone on the subject application land.	
23 October 2015	AFEL (associated with WPDL) submits on PDP Stage 1, seeking residential zonings similar to SHA1, extending the Arrowtown Urban Growth Boundary and extending the Waterfall Park Zone over the subject application land.	
16 December 2015	J&R Hadley submit in opposition to above.	
Late 2015	WPDL affiliated entities file Judicial Review proceedings against QLDC challenging the Council decision not to advance SHA1.	**DECLINED**/Withdrawn.
Late 2015	WPDL affiliated entities file a High Court Negligence Claim against QLDC associated with the QLDC decision not to advance SHA1.	**DECLINED** by High Court. High Court supports QLDC's Decision to Decline SHA1.
February 2016	SHA Application 2 (SHA2) - a High Density Retirement Village comprising, unusually for a Retirement Village, 201 freehold lots.	**DECLINED** by QLDC.
July 2016	SHA Application 3 (SHA3) - Mixed Density residential lots comprising 140 lots which were further subdivisible to 295 lots.	**DECLINED** by QLDC.
7 April 2017	WPDL settles the purchase of the subject Ayrburn application land.	
November 2017	QLDC notifies PDP Stage 2.	
23 February 2018	J&R Hadley submit on PDP Stage 2 seeking Rural Amenity Zone.	
23 February 2018	WPDL submits on PDP Stage 2 again seeking retirement villages, residential zones and extensions to the UGB.	
March 2019	QLDC Independent Hearings Panel (IHP) Decisions on PDP Stage 2.	**DECLINED** – IHP decline all of WPDL's requested zoning.
May 2019	WPDL appeals QLDC's PDP decision to the Environment Court.	
31 May 2019	J&R Hadley join WPDL's appeal as s274 parties (with others).	
Late 2019	WPDL install unlawful tree plantings against a public walkway on the western boundary of the subject land to aid visual screening for the relief they seek under their Environment Court Appeal.	
April 2020	WPDL make a Fast Track application and request s274 party opposition is removed and approval of the declined PDP proposal for a Retirement Village is granted for the "economic benefit it will provide in a Covid environment".	**DECLINED** – the minister declined to refer the WPDL proposal.
22 April 2020	WPDL advise J&R Hadley of Arbitration proceedings in relation to an Encumbrance. WPDL ultimately amend arbitration claim damages figure..	

5 March 2021	Environment Court declares WPDL tree planting on western boundary of the subject site unlawful.	**DECLINED**.
26 March 2021	WPDL files High Court Appeal against the Environment Court Tree Planting decision.	
25 August 2021	WPDL files High Court claim against J&R Hadley for $7.2M and $7.1M in damages for different causes of action.	
29 & 30 November 2021	Hearing of Encumbrance Arbitration claim by WPDL.	
13 December 2021	Encumbrance Award dismissing the WPDL claim in its entirety.	**DECLINED**.
7 March 2022	High Court Decision dismissing WPDL's Tree Planting Appeal.	**DECLINED**.
29 March 2022	High Court hearing of WPDL's claim against J&R Hadley for $7.2M and $7.1M.	
19 September 2022	Nation J Judgment dismissing WPDL's claim against J&R Hadley citing misuse of the Courts' process by WPDL and awarding indemnity cost.	**DECLINED**.
July 2023	Environment Court Rezoning Appeal Hearing – Retirement Village and UGB relief sought by WPDL on subject land dismissed verbally from the Bench.	**DECLINED.**
25 November 2024	Final Environment Court Decision by Hassan J declining WPDL relied on the subject application land.	**DECLINED**.

Schedule 3

Carey Vivian Planning Analysis

BEFORE THE EXPERT PANEL APPOINTED UNDER THE FAST-TRACK APPROVALS ACT 2024

APPLICATION	**AYRBURN SCREEN HUB**
	FTAA 2508-1093
APPLICANT	**WATERFALL PARK DEVELOPMENTS LIMITED**

BRIEF OF EVIDENCE OF CAREY VIVIAN IN SUPPORT OF THE COMMENTS OF JAN ANDERSSON, DAVID KIDD AND JAMES & REBECCA HADLEY

BRIEF OF EVIDENCE OF CAREY VIVIAN IN SUPPORT OF THE COMMENTS OF JAN ANDERSSON, DAVID KIDD AND JAMES & REBECCA HADLEY

Introduction

1. My full name is Carey Vivian. I am a director of Vivian and Espie Limited, a resource management and landscape planning consultancy based in Queenstown.

2. I have been engaged by the following statutory participants who have been invited to comment on the proposal under s53(2)(h) of the Fast-Track Approvals Act 2024 (**FTAA**):

   (a) Mr Jan Andersson, [redacted] (Lots 1-3 DP 27027 comprised in Record of Title 520807)

   (b) Mr David Kidd, [redacted] (Lot 4 & 6 DP 336908 comprised in Record of Title 151018); and

(c) Mr James Hadley and Mrs Rebecca Hadley, [redacted] (Lot 2 DP 447353 comprised in Record of Title 564544).

Qualification and Experience

3. I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I have been a full member of the New Zealand Planning Institute since 2000. I have been practicing as a resource management planner for over 30 years, having held previous positions with Davie Lovell-Smith in Christchurch; the Queenstown-Lakes District Council (QLDC or the Council), Civic Corporation Limited, Clark Fortune McDonald and Associates and Woodlot Properties Limited in Queenstown.

4. I am familiar with the subject site, and surrounding environment, having presented evidence to the Environment Court on behalf of section 274 parties and appellants on the construction of Ayr Avenue and zoning of the site. I also have undertaken a number of resource consent applications for the adjoining property to the west of the proposed site (Summit Structures Limited) as well as have used the trails in the vicinity of the site many times.

5. I have a detailed understanding of the Proposed District Plan (**PDP**), having been involved in its development and having applied for many resource consents under its provisions.

Code of Conduct

6. Although this is not an Environment Court hearing I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. This evidence is within my area of expertise, except where I state that I am relying on material produced by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of Evidence

7. I have been asked to address the following:

   (a) The Ayrburn Screen Hub project's (**ASH project**) consistency with local or regional planning documents; and

   (b) If the panel is minded to grant consent, make recommendations as to how the conditions of consent can constrain the use of the accommodation units as much as possible so as to ensure the screen hub activity occurs.

8. In preparing this evidence, I have read:

(c) Ayrburn Screen Hub Planning Report dated 18 November 2025 (track changes)

(d) Proposed Draft Consent Conditions, Version 2, 18 November 2025 (track changes)

(e) Ayrburn Screen Hub Architectural Design Report dated 27 June 2025

(f) Ayrburn Screen Hub Design Report dated 3 June 2025

(g) Ayrburn Screen Hub [Film Expert] Report, Dave Gibson, May 2025

(h) Ayrburn Screen Hub Fast Track Economic Impact Assessment, Property Economics, June 2025

(i) Various documents (including Economic Assessments, Economic Memos, Economic Joint Witness Statement, Panel Minutes, Application Responses, Proposed Conditions, Decisions and Final Conditions) relating to the Silverlight Studios Fast Track Consents FTC000027 and FTC000054.

9. I have also read, and rely on, the economic evidence prepared by Ms Hampson on behalf of my clients.

Part (a) The project's consistency with local or regional planning documents.

8. I understand under the FTAA that expert panels and Ministers considering a fast-track application must consider relevant planning documents, including a project's consistency with local or regional planning documents, but these are only one set of criteria. In contrast, the purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. Having been referred under the FTAA, central government has accepted that the project would have such benefits, including as set out in s 22 of the FTAA.

9. In this section of my evidence, I consider whether the ASH project is consistent with the relevant objectives and policies of the Queenstown-Lakes Proposed District Plan (**PDP**).

10. In making this assessment, I have first considered how the PDP defines the ASH project. In my opinion, the ASH project falls squarely within the defined activity of **Urban Development** as follows:

> Means development which is not of a rural character and is differentiated from rural development by its scale, intensity, visual character and the dominance of built structures. Urban development may also be characterised by a reliance on

reticulated services such as water supply, wastewater and stormwater and by its cumulative generation of traffic. For the avoidance of doubt, a resort development in an otherwise rural area does not constitute urban development, nor does the provision of regionally significant infrastructure within rural areas.

11. As such, I consider the following objectives and policies are relevant to the ASH project (as an Urban Development) are contained in the following PDP Chapters:

    (a) Chapter 3 Strategic Directions

    (b) Chapter 4 Urban Development

    (c) Chapter 6 Landscape – Rural Character

    (d) Chapter 24 Wakatipu Basin

12. I have also considered the following PDP Chapters, but I have no comment to make in respect of them:

    (a) Chapter 5 Takata Whenua

    (b) Chapter 27 Subdivision and Development

    (c) Chapter 28 Natural Hazards

    (d) Chapter 29 Transport

    (e) Chapter 36 Noise

13. I have also considered the following Regional Plan and Policy Statement objectives and policies, but I have no comment to make in respect of them:

    (a) Regional Plan Water for Otago

    (b) Partially Operative Regional Policy Statement 2019

    (c) Proposed Regional Policy Statement 2021 (Decisions Version)

    (d) Otago Operative Regional Policy Statement 2019

Chapter 3 – Strategic Direction

14. The Chapter 3 Strategic Issues are overarching. While not intended to be an exhaustive list or description of issues to be addressed in the District's pursuit of sustainable management, these Strategic Issues are identified as warranting to be addressed at the present time and during the lifetime of the Plan (and beyond) to enable the retention of the special qualities including:
    a. distinctive lakes, rivers, alpine and high country landscapes free of inappropriate development;
    b. clean air and pristine water;
    c. vibrant and compact town centres;
    d. compact and connected settlements that encourage public transport, biking and walking;
    e. diverse, resilient, inclusive and connected communities;
    f. a district providing a variety of lifestyle choices;
    g. an innovative and diversifying economy based around a strong visitor industry;
    h. a unique and distinctive heritage;
    i. distinctive Ngāi Tahu values, rights and interests;
    j. indigenous biodiversity and ecosystems.

Provision	Objective/Policy	Applicant's Assessment	My Comment
SO 3.2.1	The development of a prosperous, resilient and equitable economy in the District.	The Ayrburn Screen Hub is considered to significantly contribute to the development of a prosperous, resilient, and equitable economy in the Queenstown Lakes District by delivering substantial, measurable, and sustained economic benefits. As outlined in the Economic Impact Assessment	I agree the ASH project is aligned with the QLDC's Economic Diversification Plan and will likely strengthen New Zealand's global film reputation, increase production capacity, and attract international investment.

		(Appendix 11), the project will generate $258 million in regional activity during its three-year construction phase, supporting over 1,890 full-time equivalent (FTE) job years, with more than 630 jobs each year across Otago. Once operational, it is expected to contribute $462 million in additional economic output over ten years, sustaining more than 370 specialised FTE roles annually. The Project is aligned with Queenstown Lakes District Council's (QLDC) Economic Diversification Plan, and advances key objectives such as growing the local film industry's capabilities. Supported by industry leaders (refer to Appendix 33 for letters of support), the Screen Hub's design ensures flexibility to accommodate both large-scale and smaller productions, serving diverse screen and filming activities. The Project will strengthen New Zealand's global film reputation, increase production capacity, and attract international investment. It is considered that the Project will not only drive short-term construction-	I also note Ms Hampson finds that the screen production infrastructure will have moderate regional economic benefits if delivered when compared to status quo. I agree with Ms Hampson that these moderate benefits relate to the positive effect of the additional infrastructure could have on Otago's reputation as a place for production activity. I am, however, less certain about the ASH projects economic resilience given the acknowledgement of a steady decline in internationally funded productions taking place in New Zealand (refer paragraph 34 of Ms Hampson's evidence), uncertainties whether or not the consented Silverlight Studio in Wanaka will be constructed, the effect of this proposal on the existing Studio at Remarklables Park and what effect Artificial Intelligence (AI) will on the film industry in the future.

		related growth but also create a more resilient economy in the long term. The proposal is considered to achieve this objective.	However, overall, I consider the ASH project is **consistent** with this Strategic Objective.
SO 3.2.1.1	The significant socioeconomic benefits of well designed and appropriately located visitor industry places, facilities and services are realised across the District.	The Ayrburn Screen Hub will realise significant socioeconomic benefits across the district by providing a well-designed, strategically located facility that drives sustained economic growth, creates short- and longterm employment, supports industry diversification, and strengthens the region's position as a premier destination for creative and visitor industries. A dedicated Screen Hub in Queenstown is considered to increase the duration of productions, generating additional economic activity for the wider film industry. The proposal is considered to achieve this objective.	I agree the ASH project is a well-designed, but disagree it is appropriately located within the District. In my opinion, the ASH project is an Urban Development which the PDP discourages from locating in rural areas, such as that proposed. Overall, I consider the ASH project is **inconsistent** with this Strategic Objective.
SO 3.2.1.6	Diversification of the District's economic base and creation of employment opportunities through the development of innovative and sustainable enterprises.	The proposed Screen Hub will offer a range of employment opportunities, and as noted above will support jobs during the construction phase and once operational (refer Appendix 11).	I agree the ASH project will contribute to the diversification of the districts economic base and create employment opportunities through the development of innovative and sustainable enterprise (with the possible exception of advances

		Beyond these direct economic gains, the Project aligns closely with QLDC's Economic Diversification Plan (refer to Assessment of Effects (Section 10.5.2)) by establishing an innovative, future-focused enterprise that responds to critical industry demand in Otago, enabling the district to generate and facilitate film production spending that might otherwise not occur. It will strengthen the Wakatipu Basin's economic resilience, reduce reliance on seasonal industries, and foster high-value creative sector growth. The proposal is considered to achieve this objective	of AI in the film industries as I noted above). Overall, I consider the ASH project is **consistent** with this Strategic Objective.
SO 3.2.1.8	Diversification of land use in rural areas beyond traditional activities, including farming, provided that: a. the landscape values of Outstanding Natural Features and Outstanding	The proposal is not located within any Outstanding Natural Feature and Outstanding Natural Landscape areas. A Landscape Assessment ('LA') prepared by RMM is attached as Appendix 22 and confirms that the Project results in a low level of landscape effects and is considered acceptable due to the retention of key landform features, the continuation of rural land use elements (such as vineyard planting), and the integration of built form within an already modified	For reasons expressed in addressing Chapter 6 objectives and policies, it is my opinion that parts (a) and (b) of this Strategic Objective are not relevant to the ASH project. I consider the ASH project is **consistent** with part (c) this Strategic Objective.

	Natural Landscapes are protected; b. the landscape character of Rural Character Landscapes is maintained and their visual amenity values are maintained or enhanced; and c. significant nature conservation values and Ngāi Tahu values, interests and customary resources, are maintain	and evolving rural environment. Accordingly, the Project is considered to diversify rural land use without compromising the landscape character of Rural Character Landscapes, while avoiding any Outstanding Natural Features and Outstanding Natural Landscapes. Engagement with Ngāi Tahu regarding values, interests and customary resources is ongoing. The proposal is considered to achieve this objective.	
SO 3.2.3	A quality built environment taking into account the character of individual communities.	As detailed in Section 9.1.1 of the Assessment of Environmental Effects (AEE), this proposal will result in a high-quality, architecturally-designed buildings, which will be visually integrated within the environment. The design and appearance of the proposed development has been carefully considered with respect to the characteristics of the	Section 9.1.2 of the AEE states that the studio buildings will reach a height of 15m and to be finished in dark profiled metal to reduce reflectivity and recess the built form into the surrounding landscape; the office and accommodation buildings are smaller in scale and adopt pitched

		receiving environment (refer Landscape Assessment at Appendix 22). The proposal incorporates various mitigation measures to reduce visual dominance and integrate the built form into the character of the surrounding landscape. The proposal is considered to achieve this objective.	roof forms, stained vertical timber cladding, and simplified detailing consistent with rural vernacular building types; and the accommodation buildings are spatially separated toward the southern edge of the site, contributing to a low-density appearance and supporting rural landscape character. The ASH project describes a form of urban development that is typical to most greenfield subdivision in Queenstown. The exception to this is the studio buildings, which at 15m in height, are more typical of an industrial nature building. The scale and density of the ASH project, particularly the studio buildings, does not take into account the character of this community, which is low density (1 ha residential) rural-residential development surrounded by open space. The ASH

			project is a urban development under the relevant definition of the PDP. Overall, I consider the ASH project is **inconsistent** with this Strategic Objective.
SO 3.2.4	The distinctive natural environments and ecosystems of the District are protected.	The Project will ensure that the District's distinctive natural environments and ecosystems are protected, while the proposed measures within the application will enhance the life-supporting capacity of air, water, soil, and indigenous biodiversity.	Agreed. I consider the ASH project is **consistent** with this Strategic Objective.
SO 3.2.4.1	Development and land uses that sustain or enhance the life-supporting capacity of air, water, soil and ecosystems, and maintain indigenous biodiversity.		
SO 3.2.4.4	The water quality and functions of the District's lakes, rivers and wetlands are maintained or enhanced.	As detailed in the AEE (Section 9.7, Page 75), any adverse ecological effects from construction will be low in magnitude and confined to the immediate project footprint. Installation of the proposed sediment trap will cause only localised disturbance to Mill Creek, with fish salvage protocols in place to	As discussed above. I consider the ASH project is **consistent** with this objective.

		maintain aquatic connectivity. Mill Creek, a functioning ecosystem of moderate to high ecological value, will significantly benefit from the proposed sediment traps, riparian planting, and stormwater treatment measures. The inline sediment trap will significantly contribute to the improvement of downstream water quality at Lake Hayes. Stormwater disposal will be managed in accordance with the recommendations of the CKL Stormwater Management Plan (Appendix 13), ensuring the ongoing protection of Mill Creek's water quality. No works are proposed within the immediate vicinity of lakes or wetlands, safeguarding their water quality and ecological functions. Overall, the development will result in a net biodiversity gain through native planting, riparian buffers, and engineered wetlands, enhancing habitat, ecosystem resilience, and water quality while keeping residual effects low and acceptable, with a significantly positive outcome for Mill Creek and Lake Hayes.	

		The proposal is considered to achieve these objectives.	
SO 3.2.3.1	The District's important historic heritage values are protected by ensuring development is sympathetic to those values.	An Archaeology & Heritage Report has been prepared by Origin Consultants Ltd as attached in Appendix 30 to evaluate the potential impacts of the proposed Ayrburn Screen Hub Project on the historic and archaeological values of the site. Overall, the Project is assessed to have a negligible effect on the heritage and archaeological values of the site. The distance from heritage-protected features, the low likelihood of encountering intact archaeological deposits, and the absence of changes to heritage items collectively ensure the protection of the site's historical integrity. The proposal is considered to achieve this objective.	Agreed. I consider the ASH project is **consistent** with this objective.
SO 3.2.5.8	Within the Wakatipu Basin Rural Amenity Zone: a. the landscape character and visual amenity values of the Basin and of its	This objective is addressed in the Landscape Assessment (Appendix 22, page 24-25), which concludes that the existing vineyard and established vegetation will function as a landscape buffer, while the contained nature of the built area will allow it to integrate quickly into the surrounding environment.	This is discussed in more detail under the Chapter 24 Objectives and policies. Generally speaking, any Urban Development in the WBRAZ is highly

	Landscape Character Units, as identified in Schedule 24.8 are maintained or enhanced; and b. the landscape capacity of each Landscape Character Unit and of the Basin as a whole is not exceeded.	Overall, the proposal's effects on the values identified for maintenance and enhancement within Landscape Character Unit 8 (LCU8) are assessed as being very low to low. Based on the findings of the Landscape Assessment (Attachment 22), the proposal is considered to achieve this objective.	likely to exceed the landscape capacity of the relevant Landscape Character Unit. I consider the ASH project is in**consistent** with this objective.
SO 3.2.6.2	A diverse, resilient and well-functioning community where opportunities for arts, culture, recreation and events are integrated into the built and natural environment.	The Ayrburn Screen Hub is considered to align with this objective by creating a purpose-built film and television production facility. The facilities including filming stages, workshops, offices, and dedicated accommodation for crew supports the long-term presence of creative professionals in the region, strengthening the cultural presence within Otago. By providing spaces for collaboration, screenings, and wellness, the Screen Hub facilitates community engagement. The Ayrburn Screen Hub also offers a unique opportunity to enhance the existing network of cycle trails. By linking existing trails and providing	The creation of a commercial purpose-built film and television production facility does not equate to *diverse, resilient and well-functioning community* where opportunities for arts, culture and events are integrated into the built and natural environment. I acknowledge, however, the proposed cycle trails do provide for well-functioning recreation opportunities and the wider site, including the Ayburn hospitality area, which caters for community events.

		improved infrastructure, the Project supports the Queenstown's worldclass cycle network that appeals to both domestic and international visitors. The development has been designed to minimise effects on the built and natural environment, with enhancements including riparian planting, water quality improvements for Lake Hayes, and extensive landscaping. Any effects that remain are proposed to be managed through a comprehensive suite of conditions attached at Appendix 6. The proposal is considered to achieve this objective.	I also acknowledge the proposal integrates this urban development into the natural environment through riparian planting, water quality improvements for Lake Hayes, and extensive landscaping. Overall, on balance, I consider the ASH project is **consistent** with this Strategic Objective.
SP 3.3.17	Identify heritage items and ensure they are protected from inappropriate development.	The Archaeology & Heritage Report completed by Origin Consultants Ltd at Appendix 30 confirms that the wider Ayrburn Farm encompasses several heritage-protected features, including five stone farm buildings located on Lot 1 DP 540788, the Homestead and stone cookhouse on Lot 2 DP 540788, and a protected avenue of trees on Lot 2 recognised under Chapter 26 of the PDP. As detailed above the Project is assessed to have a negligible effect on the heritage and archaeological values of	Agreed. I consider the ASH project is **consistent** with this objective.

		the site and wider environment, therefore it is considered that heritage items are protected from inappropriate development. The proposal is considered to achieve this objective	
SP 3.3.20	Manage subdivision and / or development that may have adverse effects on the natural character and nature conservation values of the District's lakes, rivers, wetlands and their beds and margins so that their life-supporting capacity is safeguarded; and natural character is maintained or enhanced as far as practicable.	The management of stormwater disposal and its effects on water bodies, the protection of natural character, and the scale and intensity of the development in relation to life-supporting capacity have been considered and addressed in Section 11.3.4 of the AEE. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this objective.
SP 3.3.25	That subdivision and / or development be designed in accordance with best practice land use	The proposal will comply with best practice techniques for land development, as recommended in the Geotechnical Investigation Report attached as Appendix 25. The water quality improvements as a	Agreed. I consider the ASH project is **consistent** with this objective.

	management so as to avoid or minimise adverse effects on the water quality of lakes, rivers and wetlands in the District.	result of proposed ecological enhancement measures are expected to provide regionally and nationally significant benefits as detailed in Section 5.3.3 of the AEE. Adverse effects on water bodies, including, Mill Creek and Lake Hayes will be avoided. The proposal is considered to achieve this policy.	

Chapter 4 Urban Development

15. As noted above, I consider the proposal falls within the definition of Urban Development under the PDP. As such, Chapter 4 Urban Development objectives and policies are relevant to the proposal. The purpose of Chapter 4 Urban Development is to elaborate on the strategic direction in Chapter 3 and set out the objectives and policies for managing the spatial location and layout of urban development within the District. Chapter 4 forms part of the strategic intentions of this District Plan and guides planning and decision making for urban growth and development within the District.

16. The objectives and policies in Chapter 4 provide a framework for a managed approach to urban development that utilises land and resources in an efficient manner, and preserves and enhances natural amenity values. The approach seeks to achieve integration between land use, transportation, infrastructure, services, open space networks, community facilities and education; and increases the viability and vibrancy of urban areas.

17. Urban Growth Boundaries are established for the urban areas of the Wakatipu Basin (including Queenstown, Frankton, Jacks Point and Arrowtown), and where required around other settlements, providing a tool to manage anticipated growth while protecting the individual roles, heritage and character of these areas. Specific policy direction is provided for these areas, including provision for increased density

to contribute to more compact and connected urban forms that achieve the benefits of integration and efficiency and offer a quality environment in which to live, work and play.

18. I note the applicant does not appear to assess the proposal under Chapter 4.

Provision	Objective/Policy	Applicant's Assessment	My Comment
4.2.1	Objective - Urban Growth Boundaries used as a tool to manage the growth of urban areas within distinct and defendable urban edges. (from Policies 3.3.13 and 3.3.14)	Not assessed by the applicant.	The subject site is not within an Urban Growth Boundary (UGB). As an Urban Development, located outside of an UGB, I consider the ASH project to be **inconsistent** with this objective.
Policy 4.2.1.1	Define Urban Growth Boundaries, where required, to identify the areas that are available for the growth of urban settlements.	Not assessed by the applicant.	As an Urban Development, located outside of an UGB, I consider the ASH project to be **inconsistent** with this objective.
Policy 4.2.1.2	Focus urban development primarily on land within and adjacent to the existing larger urban areas and, to a lesser extent, within and adjacent to smaller urban areas, towns and rural settlements.	Not assessed by the applicant.	The proposed ASH project is not within or adjacent to the existing larger urban areas or smaller urban areas, towns and rural settlements. Overall, I consider the ASH project is **inconsistent** with this policy.

Policy 4.2.1.3	Ensure that urban development is contained within the defined Urban Growth Boundaries, and that aside from urban development within existing towns and rural settlements, urban development is avoided outside of those boundaries.	Not assessed by the applicant.	The ASH project is not contained within the defined UGB. As such this policy requires the proposed urban development to be avoided. I consider the ASH project is **inconsistent** with this policy.
Policy 4.2.1.4	Ensure Urban Growth Boundaries encompass, at a minimum, sufficient, feasible development capacity and urban development opportunities consistent with: (a) the anticipated medium term demand for housing and business land within the District assuming a mix of housing densities and form; (b) ensuring the ongoing availability of a competitive land supply for urban purposes; (c) the constraints on development of the land such as its topography, its ecological, heritage, cultural or landscape significance; or the risk of natural hazards limiting the ability of the land to	Not assessed by the applicant.	The PDP implements this policy by identifying a number of UGBs throughout the district and avoiding sporadic urban development in rural areas outside of those UGBs. The ASH project is sporadic urban development in rural area. I consider the ASH project is **inconsistent** with this policy.

	accommodate growth; (d) the need to make provision for the location and efficient operation of infrastructure, commercial and industrial uses, and a range of community activities and facilities; (e) a compact and efficient urban form; (f) avoiding sporadic urban development in rural areas; (g) minimising the loss of the productive potential and soil resource of rural land; and (h) a future development strategy for the District that is prepared in accordance with the National Policy Statement on Urban Development Capacity.		
Objective 4.2.2.A & B	A - A compact, integrated and well designed urban form within the Urban Growth Boundaries that: (i) is coordinated with the efficient provision, use and operation of infrastructure and services; and	Not assessed by the applicant.	The ASH project has a compact and well-designed urban form. However, it is not located within a UGB. As such it is **inconsistent** with Part A and B of this objective.

	(ii) is managed to ensure that the Queenstown Airport is not significantly compromised by the adverse effects of incompatible activities. B - Urban development within Urban Growth Boundaries that maintains and enhances the environment and rural amenity and protects Outstanding Natural Landscapes and Outstanding Natural Features, and areas supporting significant indigenous flora and fauna. (From Policy 3.3.13, 3.3.17, 3.3.29)		
4.2.2.1	Integrate urban development with existing or proposed infrastructure so that: (a) Urban development is serviced by infrastructure of sufficient capacity; and (b) reverse sensitivity effects of activities on regionally significant infrastructure are minimised; and (c) in the case of the National Grid, reverse sensitivity effects avoided to the extent reasonably possible and the operation,	Not assessed by the applicant.	It is understood the ASH project can be serviced by infrastructure with sufficient capacity consistent with (a). Clauses (b) and (c) do not appear to be relevant. Overall, I consider the ASH project is **consistent** with this policy.

	maintenance, upgrading and development of the National Grid is not compromised.		
4.2.2.3	Enable an increased density of well-designed residential development in close proximity to town centres, public transport routes, community and education facilities, while ensuring development is consistent with any structure plan for the area and responds to the character of its site, the street, open space and surrounding area.	Not assessed by the applicant.	The proposed Urban Development is not in close proximity to a town centre, community and education facility. The ASH project is not consistent with 27.13.22 Ayrburn Structure Plan. Overall, I consider the ASH project is **inconsistent** with this policy.
4.2.2.4	Encourage urban development that enhances connections to public recreation facilities, reserves, open space and active transport networks.	Not assessed by the applicant.	The ASH project does connect to (and improve) active trail networks, which in turn connect to reserves and open space. Overall, I consider the ASH project is **consistent** with this policy.
4.2.2.5	Require larger scale development to be comprehensively designed with an integrated and sustainable approach to infrastructure, buildings, street, trail and open space design.	Not assessed by the applicant.	The ASH project has been comprehensively design with an integrated and sustainable approach to infrastructure, buildings, street, trail and open space design.

			Overall, I consider the ASH project is **consistent** with this policy.
4.2.2.7	Explore and encourage innovative approaches to design to assist provision of quality affordable housing.	Not assessed by the applicant.	The ASH project does not explore and encourage innovative approaches to design to assist provision of quality affordable housing. Overall, I consider the ASH project is **inconsistent** with this policy.
4.2.2.10	Ensure lighting standards for urban development avoid unnecessary adverse effects on views of the night sky.	Not assessed by the applicant.	The application states that all lighting will be specified to meet the QLDC Southern Light standards to ensure there is no excessive glare. Overall, I consider the ASH project is **consistent** with this policy.
4.2.2.12	Define the Urban Growth Boundary for Arrowtown, as shown on the District Plan web mapping application that preserves the existing	Not assessed by the applicant.	Not relevant to the ASH project as it does not adjoin the Arrowtown UGB.

	urban character of Arrowtown and avoids urban sprawl into the adjacent rural areas.		
4.2.2.13	Define the Urban Growth Boundaries for the balance of the Wakatipu Basin, as shown on the District Plan web mapping application that: (a) are based on existing urbanised areas; (b) identify sufficient areas of urban development and the potential intensification of existing urban areas to provide for predicted visitor and resident population increases over the planning period; (c) enable the logical and sequenced provision of infrastructure to and community facilities in new areas of urban development; (d) protect the values of Outstanding Natural Features and Outstanding Natural Landscapes; (e) avoid sprawling and sporadic urban development across the rural areas of the Wakatipu Basin.	Not assessed by the applicant.	The subject site is not within a defined UGB. As such, the proposal is sprawling and sporadic Urban Development within the rural areas of the Wakatipu Basin. This policy requires this to be avoided. I consider the ASH project is **inconsistent** with this policy.

4.2.2.20	Rural land outside of the Urban Growth Boundaries is not used for urban development until a change to the Plan amends the urban Growth boundary and zones additional land for urban development purposes.	Not assessed by the applicant.	No change to the plan has amended the UGB. I consider the ASH project is **inconsistent** with this policy.

Chapter 6 – Landscapes – Rural Character

19. The purpose of Chapter 6 is to provide greater detail as to how the landscape, particularly outside urban settlements, will be managed in order to implement the Strategic Objectives and Policies in Chapter 3. This chapter needs to be read with particular reference to the Chapter 3 Strategic Objectives and Policies, which identify the outcomes the policies in this Chapter are seeking to achieve. The relevant Chapter 3 Strategic Objectives and Policies are identified in brackets following each policy.

20. Landscapes have been categorised to provide greater certainty of their importance to the District, and to respond to regional policy and national legislation. Categorisations of landscapes will provide decision makers with a basis to consider the appropriateness of activities that have adverse effects on those landscapes.

21. Policy 6.3.1.4 provides a separate regulatory regime for the WBRAZ, within which the ONF, ONL and Rural Character Landscape (RCL) categories and the policies of Chapter 6 related to those categories do not apply. As such, I consider that only the general Chapter 6 objectives and policies are of relevance to the ASH project.

Provision	Objective/Policy	Applicant's Assessment	My Comment
Policy 6.3.2.2	Ensure that the location and direction of lights does not cause excessive glare and avoids unnecessary degradation of views of the night sky and of landscape character, including of the sense of remoteness where it is an important part of that character.	All lighting will be specified to meet the QLDC Southern Light standards to ensure there is no excessive glare. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 6.3.2.8	Encourage any landscaping to be ecologically viable and consistent with the established character of the area.	A comprehensive landscaping plan is attached within the Ayrburn Design Report at Appendix 7. As detailed in Section 5.1.5 of the AEE, the planting is intended to assist with mitigation of the proposed buildings in the landscape. In addition, the planting will enhance the overall ecological values of the site by providing enhancement of freshwater ecology associated with Mill Creek and increasing native plant diversity and habitat.	Agreed. I consider the ASH project is **consistent** with this policy.

		Landscaping is therefore considered to be ecologically viable and consistent with the established character of the area. The proposal is considered to achieve this policy.	
Policy 6.3.4.1	Recognise that subdivision and development is unsuitable in many locations in Rural Character Landscapes and successful applications will need to be, on balance, consistent with the objectives and policies of the Plan.	The Landscape Assessment (Appendix 22, page 24-24), concludes that adverse effects of the proposed development will be mitigated by a range of measures, including retention of existing structural planting and the vineyard to the west of the site, revegetation of the drainage swale, and maturing of newly developed landscaping. It is further considered that the contained nature of the built area will allow the development to integrate into the surrounding environment. Overall, the proposal's effects on the values identified for maintenance and enhancement within LCU8 are assessed as being very low to low. Based on the findings of the Landscape Assessment it is considered that the proposed	I consider this policy is not relevant to the ASH project.

		development is consistent with the objectives and policies in the Plan. The proposal is considered to be consistent with this policy.	
Policy 6.3.4.4	Have particular regard to the potential adverse effects on landscape character and visual amenity values where further subdivision and development would constitute sprawl along roads.	Based on the Landscape Assessment attached at Appendix 22 (page 19), the proposed development will have limited visibility from Arrowtown–Lake Hayes Road (ALHR) and Hogans Gully Road. This is due to the Project being located behind existing exotic trees on the property, which are to be retained. These established trees, along with the landscaped foreground, form a layered visual buffer that significantly reduces the development's prominence from these roads. The location of the development and the proposed and existing screening will ensure that the proposal will not contribute to any perception of sprawl along ALHR or Hogans Gully Road. From these vantage points, the	Agreed. I consider the ASH project is **consistent** with this policy.

		built elements will be largely absorbed into the existing pattern of vegetation and landform. As a result, the landscape character and visual amenity values of the area will be maintained, and the potential adverse effects associated with linear, road-frontage sprawl will be avoided. The proposal is considered to achieve this policy.	
Policy 6.3.4.5	Ensure incremental changes from subdivision and development do not degrade landscape character, or important views as a result of activities associated with mitigation of the visual effects of proposed development such as screen planting, mounding and earthworks.	The Landscape Assessment (Appendix 22) concludes that the proposal will result in a very low to low–moderate level of adverse effects on the existing visual amenity and landscape character within the identified visual catchment, and when experienced from viewpoints 5 – 9 that these will be low-moderate to moderate. The proposed development will not be highly visible from public places and will not form the foreground to any views from public roads towards any ONF or ONL.	Agreed. I consider the ASH project is **consistent** with these policies.
Policy 6.3.4.8	Avoid adverse effects on visual amenity from subdivision, use and development that:		

	a. is highly visible from public places and other places which are frequented by members of the public generally (except any trail as defined in this Plan); or b. forms the foreground for an Outstanding Natural Feature or Outstanding Natural Landscape when viewed from public roads.	The proposal is considered to achieve these policies.	
Policy 6.3.4.9	In the Wakatipu Basin, avoid planting and screening, particularly along roads and boundaries that would degrade openness where such openness is an important part of its landscape character.	The Landscape Assessment (Appendix 22) notes the project involves native margin planting to 'wrap around' the proposed development and border the riparian areas and amenity planting in areas in closer to buildings, infrastructure and private spaces. The native margin planting will, in effect, provide the backdrop to the built form of the proposed development and will clothe the proposed earth mounding and will also provide an ecological benefit. This planting will not be along roads and boundaries. Overall, it is	The ASH project seeks to locate some very large buildings within an area designated for open space. It is considered this open space is important to the openness of this part of the basin. I consider the ASH project is **inconsistent** with this policy.

		considered that planting will not degrade openness to the extent that is part of the landscape character of the site and locality. Based on the Landscape Assessment and assessment above, this proposal is considered to be consistent with this policy.	
Policy 6.3.4.11	Encourage development to utilise shared accesses and infrastructure, and to locate within the parts of the site where it will minimise disruption to natural landforms and to rural character.	Existing infrastructure will be utilised where possible including the existing access to the site from Ayr Avenue. The development is predominantly located within a part of the site that is identified in Chapter 24 of the PDP as having moderate capability to absorb additional development and where it will minimise disruption to natural landforms and natural character. The proposal is considered to be consistent with this policy.	The screen hub buildings are located in an area that the PDP requires to be maintained in open space. A significant amount of earthworks are proposed to site the proposed buildings within this sloping land. I consider the ASH project is **inconsistent** with this policy.

Chapter 24 – Wakatipu Basin Rural Amenity Zone

22. Chapter 24 applies to the Wakatipu Basin Rural Amenity Zone (WBRAZ) and its sub-zone, the Wakatipu Basin Lifestyle Precinct (WBLP). The purpose of the Zone is to maintain or enhance the character and amenity of the Wakatipu Basin, while providing for rural living and other activities.

23. The Rural Amenity Zone is applied to areas of the Wakatipu Basin which have either reached, or are nearing a threshold where further landscape modification arising from additional residential subdivision, use and development (including buildings) is not likely to maintain the Wakatipu Basin's landscape character and visual amenity values. There are some areas within the Rural Amenity Zone that have a landscape capacity rating to absorb additional development of Moderate, Moderate-High or High. In those areas limited and carefully located and designed additional residential subdivision and development is provided for while maintaining or enhancing landscape character and visual amenity values.

Provision	Objective/Policy	Applicant's Assessment	My Comment
Objective 24.2.1	Landscape character and visual amenity values in the Wakatipu Basin are maintained or enhanced.	As detailed in the Landscape Assessment (Appendix 22 Page 25): "Overall, it has separately been established that parts of the Site have the potential to absorb development whilst maintaining the environmental characteristics and visual amenity values of the LCU. It is considered the proposed Screen Hub facility will satisfactorily maintain landscape character and visual amenity values."	The ASH project does not maintain and enhance the landscape character and visual amenity values of this part of the Wakatipu basin. While parts of the site have limited potential to absorb some development (ie. 4 residential units), other parts of the site have no potential to absorb additional development, including the area designated for open space where

		Based on the conclusions of the Landscape Assessment it is considered that the landscape character and visual amenity values in the Wakatipu Basin are maintained, and that this Project is consistent with this policy.	the Screen Hub buildings are proposed. I consider the ASH project is **inconsistent** with this policy.
Policy 24.2.1.2	Subdivision or residential development in all areas outside of the Precinct that are identified in Schedule 24.8 to have Very Low, Low or Moderate-Low capacity must be of a scale, nature and design that: a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and b. ensures that the landscape character and visual amenity values identified for each relevant Landscape Character Unit in Schedule 24.8 and the landscape character of the Wakatipu Basin as tail Assessment a whole are maintained or	The development is predominantly located within a part of the site that is identified in Chapter 24 of the PDP as having moderate capability to absorb additional development. While a portion of the proposal will be located within an areas identified as having low capacity, the Landscape Assessment provided in Appendix 22 concludes: “Rural character and amenity values will remain high and therefore the impact of the proposal on the values identified to be maintained and enhanced within LCU8 are considered to be very low - low.”	This policy is relevant as the ASH project is outside of the Precinct Sub-Zone. The ASH project is not of a scale, nature or design consistent with Objective 24.2.1 and Schedule 24.8 of the PDP. I consider the ASH project is **inconsistent** with this policy.

	enhanced by ensuring that the landscape capacity is not exceeded.	The Addendum Landscape Assessment Memo concludes that: "…adverse effects arising from the proposal on landscape and visual amenity values as experienced in viewpoints 5 – 9 will range from low to moderate" The proposal is considered to achieve this policy.	
Policy 24.2.1.3	Subdivision or residential development in all areas of the Wakatipu Basin Rural Amenity Zone outside of the Precinct that are identified in Schedule 24.8 to have Moderate capacity must be of a scale, nature and design that: a. is not inconsistent with any of the policies that serve to assist to achieve objective 24.2.1; and b. ensures that the landscape character and visual amenity values of each	As detailed in Section 9.1.1 of the AEE and in the Landscape Assessment provided in Appendix 22, this proposal is considered to maintain the landscape character and visual amenity values identified in LCU 8. The proposal is considered to achieve this policy.	As per above, the ASH project is not of a scale, nature and design that is consistent with Objective 24.2.1 and Schedule 24.8 of the PDP. Overall, I consider the ASH project is **inconsistent** with this policy.

	relevant LCU as identified in Schedule 24.8 is maintained or enhanced by ensuring that landscape capacity is not exceeded.		
Policy 24.2.1.6	Ensure subdivision and development is designed (including accessways, services, utilities and building platforms) to minimise inappropriate modification to the natural landform.	The proposal has been comprehensively designed to utilise existing infrastructure where possible and to minimise the effect on the natural landform. Any effects which result from modification to the natural landform are proposed to be managed through a comprehensive suite of conditions attached at Appendix 6. The proposal is considered to achieve this policy.	Approximately 80,400 m³ of material will be excavated, with around 74,400 m³ of fill placed on site over an area of approximately 91,000m². The earthworks will involve cut depths of approximately 9.5 metres and fill depths of approximately 12 metres. (Para 5.1.10 of the AEE). This amount of earthworks, much of it within the area designated under the District Plan as Open Space, does not minimise inappropriate modification to the natural environment. I consider the ASH project is **inconsistent** with this policy.

Policy 24.2.1.7	Ensure that subdivision and development maintains or enhances the landscape character and visual amenity values identified in Schedule 24.8 - Landscape Character Units.	As detailed in Section 9.1.1 of the AEE and in the Landscape Assessment provided in Appendix 22, this proposal is considered to maintain the landscape character and visual amenity values identified in LCU 8. The proposal is considered to achieve these policies.	The ASH project does not maintain or enhance the landscape character and visual amenity values identified in Schedule 24.8 of the PDP. I consider the ASH project is **inconsistent** with this policy.
Policy 24.2.1.8	Maintain or enhance the landscape character and visual amenity values of the Rural Amenity Zone including the Precinct and surrounding landscape context by: a. controlling the colour, scale, form, coverage, location (including setbacks) and height of buildings and associated infrastructure, vegetation and landscape elements.	As detailed in Section 9.8.2 of the AEE, built form has been carefully located mostly within an area zoned and anticipated for residential development and has been treated with architectural design responses that minimise its visual prominence. Recessive cladding, varied rooflines, and articulated building profiles work alongside extensive native planting and vineyard rows to soften the development's edge and reinforce rural character. Shaped landforms, existing vegetation, and proposed planting along	The ASH project does not maintain or enhance the landscape character and visual amenity values of the WBRAZ by adequately controlling the height of buildings (particularly the film studio buildings). I consider the ASH project is **inconsistent** with this policy.

		the site boundaries provide further separation and screening from adjacent landholdings. The proposal is considered to achieve this policy.	
Policy 24.2.1.9	Require all buildings to be located and designed so that they do not compromise the landscape and amenity values and the natural character of Outstanding Natural Features and Outstanding Natural Landscapes that are either adjacent to the building or where the building is in the foreground of views from a public road or reserve of the Outstanding Natural Landscape or Outstanding Natural Feature.	N/A –The proposal is not located within or adjacent to and no buildings are in the foreground of any Outstanding Natural Feature and Outstanding Natural Landscape areas. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.1.10	Provide for farming, commercial, community, recreation, tourism related and other non residential activities that rely on the rural land resource, subject to	The proposal provides for commercial activity, recreation and tourism related activities that rely on the rural land resource of the site as provided for by this policy.	This ASH project does not rely on rural land resource and does not maintain or enhance landscape character and visual amenity values.

	maintaining or enhancing landscape character and visual amenity values.	The proposal is considered to achieve this policy.	There are alternative areas, within the UGB, where this type of urban development could take place (subject to resource consent approval) within the District. Undeveloped land of a similar size to that required by the ASH project, within the UGB, includes Remarkables Park, the Frankton Flats, Frankton Flats North, Kelvin Heights, Ladies Mile and the Southern Corridor (the area south of the Kawarau River which includes Coneburn, Parkburn, Hanley Farm, Jacks Point and Homestead Bay). Other areas, which are located outside of the UGB but zoned something other than Rural, include the Gibbston Character Zone, Gibbston Resort Zone, and various Rural Visitor Zones (also subject to resource consent approval).

			I consider the ASH project is **inconsistent** with this policy.
Policy 24.2.1.13	Control earthworks and vegetation clearance to minimise adverse effects on landscape character and visual amenity values.	Earthworks are proposed to be controlled in accordance with the EMP attached at Appendix 21. The total volume, in the context of the site is suitable and will not result in adverse effects on landscape character and amenity values. The proposal is considered to achieve this policy.	As described above, a significant amount of earthworks is proposed to facilitate this urban development, particularly in that area of the site designated under the District Plan as Open Space. As such, the ASH project does little to minimise adverse effects on landscape character and visual amenity values. I consider the ASH project is **inconsistent** with this policy.
Policy 24.2.1.15	Provide for activities that maintain a sense of spaciousness in which buildings are subservient to natural landscape elements.	As detailed above, open space is proposed to be maintained by locating the development within an area that can be largely screened by well-established	The PDP anticipates four residential dwellings in order to ensure buildings are subservient to the natural landscape elements. Additionally, the

		vegetation, and is located in an enclosed location on the site. This will maintain the sense of spaciousness of the surrounding land and will ensure that the buildings are subservient to natural landscape elements. The proposal is considered to achieve this policy.	PDP anticipates the Open Space areas remain just that. The ASH project will not result in a sense of spaciousness in which buildings are subservient to natural landscape elements. I consider the ASH project is **inconsistent** with this policy.
Policy 24.2.1.16	Manage lighting so that it does not cause adverse glare to other properties, roads or public places, or degrade views of the night sky.	All lighting will be specified to meet the QLDC Southern Light standards to ensure there is no excessive glare. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.1.17	Have regard to the spiritual beliefs, cultural traditions and practices of Tangata Whenua in the manner directed in Chapter 5: Tangata Whenua.	WPDL has engaged with mana whenua and those discussions have addressed landscape, freshwater values, restoration of ecological values and stormwater management principles (refer Consultation	Agreed. I consider the ASH project is **consistent** with this policy.

		Summary Report at Appendix 31). Recommendations on the proposal are included in the CIA attached at Appendix 44 and engagement with Ngāi Tahu regarding values, interests and customary resources is ongoing. The proposal is considered to achieve this policy.	
Objective 24.2.2	Non-residential activities maintain or enhance amenity values.	Based on the Landscape Assessment attached as Appendix 22, the Screen Hub is considered to maintain amenity values through various mitigation measures including the maintenance of existing vegetation, the location of the development within an enclosed area and the comprehensive landscaping proposed as detailed in the Ayrburn Design Report (Appendix 7, page 15 and 26–30). As addressed in more detail in terms of Policy 24.2.2.1, noise and traffic from activities will be manged to maintain	The ASH project proposes to introduce Urban Development into this rural landscape. With that will come a significant amount of domestication, which will in turn, affect amenity values of this part of the WBRAZ. It is very unlikely the ASH project will be able to maintain and enhance these amenity values. I consider the ASH project is **inconsistent** with this objective.

		amenity values of adjoining residential properties. The proposal is considered to achieve this objective	
Policy 24.2.2.1	Ensure traffic, noise and the scale and intensity of non-residential activities do not have an adverse impact on landscape character and amenity values, or affect the safe and efficient operation of the roading and trail network or access to public places.	The effects of the Project relating to noise, traffic, and the scale and intensity of the development have been considered in Section 9 of the AEE. In particular, the Transport Assessment (Appendix 29) confirms that the site will operate safely and efficiently from a traffic perspective and the Noise Assessment (Appendix 26) confirms that the Screen Hub can be operated in compliance with the District Plan noise rules, when taking into account the proposed mitigation measures. The Landscape Assessment (Appendix 22) confirms that landscape character and amenity values can be maintained by this proposal.	The ASH project proposes to introduce Urban Development into this rural landscape. With that will come a significant amount of domestication, which will in turn, affect amenity values of this part of the WBRAZ. It is very unlikely the ASH project will be able to maintain and enhance these amenity values. I consider the ASH project is **inconsistent** with these policies.
Policy 24.2.2.2	Ensure the effects generated by non-residential activities (e.g. traffic, noise, hours of operation) are compatible with surrounding uses.		
Policy 24.2.2.3	Ensure non-residential activities other than farming, with the potential for nuisance effects from dust, visual, noise or odour effects, are located a sufficient distance from formed roads,		

	neighbouring properties, waterbodies and any residential activity.	Dust and odour effects will be further mitigated by the EMP controls (Appendix 21) and the noise effects will be managed by the Draft Operational Noise Management Plan (Appendix 27). In this regard, the proposal is considered to be consistent with these policies.	
Objective 24.2.3	Reverse sensitivity effects are avoided or mitigated where rural living opportunities, visitor and tourism activities, community and recreation activities occur.	Objective 24.2.3 and Policy 24.2.3.3 seek to manage the effects of reverse sensitivity. In this regard, the proposal is well separated well from any other horticultural and agricultural activities on adjoining properties. It is not considered, therefore, that any reverse sensitivity effects will result from the proposal or that the proposal will constrain productive activities. The proposal is considered to be consistent with these policies.	Agreed. I consider the ASH project is **consistent** with this objective.

Objective 24.2.4	Subdivision and development, and use of land, maintains or enhances water quality, ecological quality, and recreation values while ensuring the efficient provision of infrastructure.	As detailed earlier in this assessment, the development will maintain water quality and ecological quality, while ensuring the efficient provision of infrastructure. The inline sediment trap will enhance water quality in Lake Hayes. This proposal is considered to achieve this objective.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.4.1	Avoid adverse cumulative impacts on ecosystem services and nature conservation values.	It is considered that there will be no adverse cumulative impacts on ecosystems due to the proposed Stormwater Management Plan attached as Appendix 13. This proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.4.2	Restrict the subdivision, development and use of land in the Lake Hayes catchment, unless it can contribute to water quality improvement in the catchment commensurate with the	As detailed in Section 9.6.4 of the AEE, the stormwater design will ensure stormwater runoff is effectively managed, that potential adverse effects on Mill Creek and the Lake Hayes catchment are	Agree. I consider the ASH project is **consistent** with this policy.

	nature, scale and location of the proposal.	avoided, remedied, or mitigated to a level that is acceptable, and that water quality generally will be improved. 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. This proposal is considered to achieve this policy.	
Policy 24.2.4.3	Provide for improved public access to, and the maintenance and enhancement of, the margins of waterbodies including Mill Creek and Lake Hayes.	This proposal will provide for improved public access to Lake Hayes and Mill Creek by proposed Trail A (Lake Hayes Trail Connection). The development includes public access easements over the site to facilitate a future trail connection between the Ayrburn Trail and the Lake Hayes Trail via the Mill Creek esplanade reserves. This proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.

Policy 24.2.4.4	Provide adequate firefighting water and emergency vehicle access to ensure an efficient and effective emergency response.	As detailed in Section 9.6.2 of the AEE the Screen Hub, is serviced by a 315 millimetre outside diameter polyethylene trunk main, which connects to a bulk supply from the ALHR corridor. This trunk main provides potable, firefighting and irrigation water to the broader Waterfall Park area. Adequate firefighting water supply, is therefore provided for the development. This proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.4.5	Ensure development has regard to servicing and infrastructure costs that are not met by the developer.	Infrastructure costs will be met by the developer for the proposed Screen Hub. This proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 24.2.4.6	Facilitate the provision of walkway and cycleway networks and consider opportunities for the provision of bridle path networks.	As detailed in Section 9.1 of the AEE, the development includes public access easements over the site to facilitate a future trail connection between the	Agreed. I consider the ASH project is **consistent** with this policy.

		Ayrburn Trail and the Lake Hayes Trail via the Mill Creek esplanade reserve, a connection between the Countryside Trail and Ayrburn Domain, and the realignment of a steep section of the existing Countryside Trail to improve safety, reduce erosion, and provide a more accessible and resilient route. These measures have been developed in consultation with the Queenstown Trails Trust and will support active transport, recreational use, and access to open space across the Lake Hayes and Arrowtown areas. The proposal will make a positive contribution to public recreational infrastructure and local amenity. This proposal is considered to achieve this policy.	
Policy 24.2.4.7	Ensure traffic generated by non-residential development does not	Based on the Transportation Assessment attached as Appendix 29, the proposal will not compromise road safety or efficiency.	Agreed.

	individually or cumulatively compromise road safety or efficiency.	This proposal is considered to achieve this policy.	I consider the ASH project is **consistent** with this policy.
Policy 24.2.4.9	Encourage the planting, retention and enhancement of indigenous vegetation that is appropriate to the area and planted at a scale, density, pattern and composition that enhances indigenous biodiversity values, particularly in locations such as gullies and riparian areas, or to provide stability.	The comprehensive landscaping drawings provided at Appendix 7, which show proposed and existing planting to be retained, are consistent with the scale, density and pattern of existing landscaping on the site and in the wider area. This is based on the Landscape Assessment attached as Appendix 22. This proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.

Chapter 25 – Earthworks

24. Chapter 25 recognises that both rural and urban locations earthworks have the potential for adverse effects on landscape and visual amenity values and require management to ensure the District's Outstanding Natural Features, Landscapes, amenity values, cultural values, waterbodies and their margins are protected from inappropriate development.

25. Chapter 25 also recognises that earthworks associated with construction, subdivision, land use and development can cause erosion of land and sedimentation of stormwater. Unless appropriately managed this could affect stormwater networks, or result in sediment

entering wetlands, rivers and lakes. Earthworks can also create temporary nuisance effects from dust, noise and vibration that require management.

26. The focus of Chapter 25 is therefore on ensuring the adverse effects of earthworks are appropriately managed and minimised. It does not seek to discourage or avoid earthworks in the District.

Provision	Objective/Policy	Applicant's Assessment	My Comment
Objective 25.2.1	Earthworks are undertaken in a manner that minimises adverse effects on the environment, including through mitigation or remediation, and protects people and communities.	As detailed in Section 9.2 of the AEE, appropriate erosion and sediment controls will be in place to minimise sediment run-off, and dust suppressants will be in place to minimise nuisance effects in accordance with the EMP attached at Appendix 21. This proposal is considered to achieve this objective. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this objective.
Policy 25.2.1.1	Ensure earthworks minimise erosion, land instability, and sediment generation and offsite discharge during construction activities associated with subdivision and development.	As detailed above, the Geotechnical Investigation Report prepared by Geosolve (Appendix 25) addresses geotechnical stability. Environmental protection	Agreed. I consider the ASH project is **consistent** with this policy.

		measures will be undertaken to minimise sediment generation. The proposal is considered to achieve this policy.	
Policy 25.2.1.2	Manage the adverse effects of earthworks to avoid inappropriate adverse effects and minimise other adverse effects, in a way that: a. Protects the values of Outstanding Natural Features and Landscapes; b. Maintains the amenity values of Rural Character Landscapes; c. Protects the values of Significant Natural Areas and the margins of lakes, rivers and wetlands; d. Minimises the exposure of aquifers, in particular the Wakatipu Basin, Hāwea Basin, Wānaka Basin and Cardrona alluvial ribbon aquifers; Note: These aquifers are identified in the Otago Regional Plan: Water for Otago 2004. e. Protects Māori cultural values, including wāhi tapu and wāhi tūpuna and other sites of significance to Māori; f. Protects the	The site is well separated from historic heritage as detailed in the Archaeology & Heritage Report at Appendix 30. The proposal maintains public access to and along lakes and rivers, avoids Outstanding Natural Features and Landscapes and maintains the amenity values of Rural Character Landscapes. Environmental protection measures will be undertaken to further minimise any impact on these features, as detailed above. The project has been designed to protect Māori cultural values, including wāhi tapu, recommendations on the proposal are included in the CIA attached at Appendix 44 and engagement with Ngāi Tahu	Agreed. I consider the ASH project is **consistent** with this policy.

	values of heritage sites, precincts and landscape overlays from inappropriate subdivision, use and development; and g. Maintains public access to and along lakes and rivers.	regarding values, interests and customary resources is ongoing. The proposal is considered to achieve this policy.	
Policy 25.2.1.4	Manage the scale and extent of earthworks to maintain the amenity values and quality of rural and urban areas	The scale and extent of the proposed earthworks will maintain the amenity values and quality of rural areas, based on the Landscape Assessment attached as Appendix 22. The proposal is considered to achieve this policy.	A significant amount of earthworks is proposed to facilitate this urban development, particularly in that area of the site designated under the District Plan as Open Space. As such, the ASH project does little to maintain the amenity values and quality of this rural area. I consider the ASH project is **inconsistent** with this policy.
Policy 25.2.1.5	Design earthworks to recognise the constraints and opportunities of the site and environment.	The earthworks will be undertaken to ensure they do not adversely affect surrounding infrastructure, buildings and	Agreed.

Policy 25.2.1.6	Ensure that earthworks are designed and undertaken in a manner that does not adversely affect infrastructure, buildings and the stability of adjoining sites.	stability of the land, and to recognise the constraints and opportunities of the site and environment based on the Landscape Assessment attached as Appendix 22 and the Geotechnical Investigation Report attached at Appendix 25. The proposal is considered to achieve this policy.	I consider the ASH project is **consistent** with this policy.
Policy 25.2.1.7	Encourage limiting the area and volume of earthworks being undertaken on a site at any one time to minimise adverse effects on water bodies and nuisance effects of adverse construction noise, vibration, odour, dust and traffic effects.	The area of earthworks being undertaken on a site at any one time will be minimised in accordance with the EMP attached at Appendix 21. Dust and odour effects will be further mitigated by the EMP (Appendix 21) and construction noise and vibration will be managed by the Draft Operational Noise Management Plan (Appendix 27). The proposal is considered to achieve this policy.	A significant amount of earthworks is proposed to facilitate this urban development. In my opinion, if an urban development such as that proposed is approved in a rural area, it is better to undertake all of the earthworks as quickly as possible, subject to the EMP being able to handle such. Prolonging the effects of earthworks, through staging, just prolongs the time neighbours are exposed.

			I consider the ASH project is **consistent** with this policy.
Policy 25.2.1.8	Undertake processes to avoid adverse effects on cultural heritage, including wāhi tapu, wāhi tūpuna and other taonga, and archaeological sites, or where these cannot be avoided, effects are remedied or mitigated.	WPDL has engaged with mana whenua, including to understand wāhi tapu, wāhi tūpuna and other taonga, and archaeological sites. The applicant will continue to address feedback from tangata whenua within the proposal and earthworks will be undertaken in accordance with the EMP attached at Appendix 21. The proposal is considered to achieve this policy.	Agreed. I consider the ASH project is **consistent** with this policy.
Policy 25.2.1.9	Manage the potential adverse effects arising from exposing or disturbing	As outlined in the Proposed Draft Conditions of Consent (Appendix 6), an	Agreed.

	accidentally discovered material by following the Accidental Discovery Protocol in Schedule 25.10.	Accidental Discovery Protocol will be followed. The proposal is considered to achieve this policy.	I consider the ASH project is **consistent** with this policy.
Policy 25.2.1.10	Ensure that earthworks that generate traffic movements maintain the safety of roads and accesses, and do not degrade the amenity and quality of surrounding land.	As detailed in the AEE at Section 9.4.2, an Integrated Transportation Assessment (ITA) prepared by Carriageway Consulting Limited in Appendix 29 has determined that the ALHR and the Speargrass Flat Road intersection are expected to operate well with the addition of construction traffic, and no road safety issues have been identified in the area. Further, Ayr Avenue has been designed to accommodate large vehicles and includes existing traffic calming. Pedestrian and cyclist access is separated where possible and can be maintained safely during the works. The surrounding roading network has sufficient capacity to absorb construction-related traffic.	Agreed. I consider the ASH project is **consistent** with this policy.

		The proposal is considered to achieve this policy.	
Policy 25.2.1.11	Ensure that earthworks minimise natural hazard risk to people, communities and property, in particular earthworks undertaken to facilitate land development or natural hazard mitigation.	As detailed in Section 9.6.3 of the AEE, it is considered that any potential adverse flooding effects can be appropriately managed through proposed mitigation measures though the recommended conditions. The proposal is considered to achieve this policy	Agreed. I consider the ASH project is **consistent** with this policy.
Objective 25.2.2	The social, cultural and economic wellbeing of people and communities benefits from earthworks.	The proposal enables people and communities to support their social, economic, and cultural well-being. It will generate employment, deliver extensive native planting, enhance recreational cycle trails, and establish a purpose-built Screen Hub to address a critical gap in the production industry, creating substantial economic benefits.	Agreed. I consider the ASH project is **consistent** with this policy.

		The proposal is considered to achieve this policy.	

Conclusion on Objectives and Policies

27. Overall, I consider the ASH project is inconsistent with the objectives and policies of the PDP, in particular, the Chapter 4 Urban Development and Chapter 24 Wakatipu Basin Rural Amenity Zone objectives and policies.

Part (b) - If the Panel is minded to grant consent, make recommendations as to how the conditions of consent can constrain the use of the hotel as much as possible so as to ensure the screen hub activity occurs.

28. I have reviewed the draft conditions and agree, in general, they are appropriate for an urban development of this size in the rural environment (including the Lake Hayes catchment). However, I wish to comment on conditions 62, 67, 68 and 69 as follows.

Condition 62 – External Appearance

29. Proposed condition 62 states:

> 62. Building materials and colours shall be in accordance with the materials and colours approved in the Architectural Design Report under Condition 1 of this consent. Any amendments shall be provided by the consent holder to the Monitoring Planner of the QLDC for certification prior to being used on the building.

30. In my opinion, any amendments to the approved materials and colours approved in the Architectural Design Report under Condition 1 should go through a s127 RMA application, as the Council retains discretion over the external appearance of buildings within the WBRAZ. The applicant has also stated that, in relation to SO 3.2.3, that the proposal will result in a high-quality, architecturally-designed buildings, which will be visually integrated within the environment and the design and appearance of the proposed development has been carefully considered with respect to the characteristics of the receiving environment. The second sentence of this condition does not guarantee that will occur. Accordingly, I consider the second sentence should be deleted as follows:

> 62. Building materials and colours shall be in accordance with the materials and colours approved in the Architectural Design Report under Condition 1 of this consent. ~~Any amendments shall be provided by the consent holder to the Monitoring Planner of the QLDC for certification prior to being used on the building.~~

Condition 67 - Phased Implementation

31. Proposed Condition 67 states:

> 67. This consent may be implemented in phases provided that:
>
> a) Phase 1: contains one of the two studios and associated workshop and workroom spaces, and includes the ephemeral stream riparian planting, the in-line sediment trap, and the public trail connections;
>
> b) Phase 2: Once 100 accommodation units have been constructed, the next stage of development must include the second studio along with

its associated workshop and workroom spaces. For the avoidance of doubt, the second stage of the studio development may also be undertaken before 100 accommodation units have been constructed.

32. In my opinion, the wording of this condition is very important in achieving the economic benefits that the ASH project purports to have. Without a strong condition on phasing or staging development, there is a risk that the ASH project may just become another urban development in the rural area without the regional or national benefits that the FTAA framework requires.

33. My concern with condition 67, as drafted by the applicant, is the consent holder is only committing to the development on one studio building ahead of building the first 100 accommodation units. It is possible, under this condition, that the second studio may never be built, and the purported regional or national benefits of the ASH project may never be realised.

34. I also note Ms Hampson recommends that consideration should be given to a condition that prioritises buildings B1 and B2 to maximise the utility of the Screen Hub as soon as practicable. I agree with Ms Hampson.

35. Accordingly, I consider condition 67 should prioritise the construction of the studio infrastructure (and associated facilities, sediment trap, trails etc), prior to the construction of the accommodation units. In my opinion, this is not fatal to the application, and Buildings B1 and B2 includes accommodation and the Wakatipu Basin has an abundance of accommodation options available for film production staff/crew if booked far enough ahead. I have accordingly redrafted condition 67 as follows:

> 67. This consent shall be implemented in the following stages:
>
> Stage 1 - The construction of the Studio and Shooting Facilities (A) inclusive of Workshop Space, Backlot and Multipurpose Office areas (B1 and B2);
>
> Stage 2 – The construction of the Accommodation (C1 to C9);
>
> Stage 3 – Construction of the Reception, Gym and Wellness facilities (E);
>
> Stage 4 – Construction of the Ayrburn Depot (D).
>
> All of Stage 1 construction must be completed prior to any construction of any buildings under Stages 2 to 4.
>
> All of Stage 1 and 2 construction must be completed prior to any construction of any buildings under Stages 3 to 4.
>
> All of Stage 1, 2 and 3 construction must be completed prior to any construction of any buildings under Stage 4.

Conditions 68 and 69 - Use of Accommodation Units

36. Two key conditions offered by the applicant are 68 and 69 as follows:

68. A proportion of the accommodation units must remain available for booking by person(s) associated with studio activities, in accordance with the Table below:

• **Column A** sets out future time periods, measured from (and including) the date (Booking Date) the booking is made to the date (Commencement Date) of the period during which the accommodation is required.

• **Column B** specifies the minimum percentage of accommodation units that must be available on the Booking Date for booking by person(s) associated with studio activities, for accommodation commencing on the Commencement Date.

Column A – Period of time	**Column B – Percentage of Accommodation Units**
395 days	90%
365 days	80%
270 days	60%
180 days	40%
90 days	30%
45 days	15%

Note: The Table operates on a sliding scale. For time periods falling between those listed, the required availability is adjusted proportionally. For example, if a booking is requested for a Commencement Date 380 days after the Booking Date, the minimum required availability would fall between 80% (for 365 days) and 90% (for 395 days) and would be calculated (rounded if necessary) at 85%.

Advice Note: This condition ensures that a portion of the accommodation remains available for people associated with studio activities when booking in advance. The further ahead the booking is made, the greater the proportion of units that must be available for studio-related use, up to 90% for bookings 395 days in advance.

69. To ensure compliance with Condition 68, the consent holder shall ensure maintenance of a record of all bookings in the form of a register containing details of when the film studio is in use and the number of rooms occupied by a film production at that time. The register shall also include any complaints with regards to availability of accommodation rooms for film production crews. Details of all bookings for at least the preceding 5 years shall be continually maintained. This register shall be made available for inspection by the Council at all times.

37. With respect to condition 68, I understand the purpose of the condition is to ensure a minimum amount of accommodation units are available to be booked by production companies also wanting to book the studios/film facilities. I understand from Ms

Hampson's evidence (paragraph 76) that a portion of the economic benefits stated for the ASH project, including benefits described in industry support letters, are contingent on the ability of production companies being able to access the accommodation they need.

38. I understand the effect of the applicants draft condition 68 is illustrated on Ms Hampson's Figure 1. As Ms Hampson points out in paragraph 80, this means the larger the scale of the production (wanting to use the facility), the earlier they will need (or be encouraged to) book in advance in order to secure accommodation in addition to the studio facilities AND the applicant will need to target short term visitor accommodation where they have the most capacity to work with. That is also my understanding of how condition 68 is proposed to work.

39. My concern with conditions 68 (and 69), as drafted, are their reliability and effectiveness in achieving the stated purpose. In my opinion, condition 68 is confusing and would be hard for the Council to effectively monitor the intent of the condition; even with the register being available for Council to inspect at any time. In my opinion, condition 68 is unlikely to be monitored by the Council in the medium to long-term given the amount of consent conditions the Council has to monitor throughout the district, and its limited resources to do so. The intent of conditions 68 and 69, in my opinion, will most likely become lost in time.

40. A method to ensure this does not happen is simply to require all of the accommodation to be reserved for studios/film facilities. The Silverlight Studio consent contained a similar condition 15 requiring the accommodation units within the buildings Venice, Paris or New York must only be made available persons using the site for film or television productions and ancillary support activities.

41. Ms Hampson recommends at number of changes to condition 68 and 69, which are summarised in paragraph 98 as follows:

> 98. Based on my assessment of the Application, the following are my recommendations for amendments to the proposed consent conditions (some of which have been alluded to above). In my view, these amendments more closely align the accommodation provision on the Site with the functional and operational needs of an integrated screen production studio and the stated intent of the Project. I do not consider that such amendments would materially affect commercial viability of the accommodation facilities.
>
> a. Condition 68 should (for clarity and ease of compliance monitoring) include the counts next to the percentages and include "or less" and "or more" for the lower and upper thresholds.
>
> b. The merits of changing Condition 68 to apply to bedrooms instead of units should be considered as rooms is likely to be a more accurate reflection of production company demand/needs.

c. Consideration should be given, subject to industry expert advice, on whether the priority booking for production companies should apply first to self-catering units/rooms and then standard rooms to make up the balance of the threshold to ensure that the accommodation capacity is best aligned with the needs of production workers.

d. If the purpose of the accommodation is "integral" to the studios as stated, then consideration should be given to the 365 and/or 395 day thresholds being increased to 100%. Else, justification should be provided as to why retaining the opportunity for a number of accommodation units for long term visitor bookings (a year or more in advance) aligns with the intent of only using the accommodation units for tourist when not needed.

e. Consideration of how condition 68 will be effective (for the benefit of production activity) during the construction period when the full number of accommodation units has yet to be reached. This may require a condition for each period (construction period and fully operational period).

f. Consideration should be given to a condition that prioritises buildings B1 and B2 to maximise the utility of the Screen Hub as soon as practicable.

g. The wording of condition 68 should be amended to decouple the priority booking for production activities in the region to only those bookings that include the studio. This will protect accommodation capacity for other types of production activity that may require office and accommodation rooms, but not the studio per se.

h. Condition 69 could be amended to monitor compliance of tourism bookings (ensuring they don't exceed the minimum thresholds required to be protected for production bookings).

i. An alternative approach would be to make buildings B1 and B2 only available to screen production activity and adjusting condition 68 to relate only to 'C' buildings. This may mean that the percentages could change to account for the accommodation units (or rooms) already secured in B1 and B2. I consider that there could be greater economic benefits of this outcome whereby, the studio facility can be marketed as inclusive of those buildings (increasing the critical mass of the production area as portrayed by the precinct plan but not secured through any conditions), production companies benefit from the rooms closest to the studio being assured at all times, and local screen companies may see value in 'leasing' office space/rooms long-term to be actively part of the hub environment (and creating agglomeration benefits by given the local industry a central base).

42. I agree with Ms Hampson that the above changes closely align the accommodation provision on the Site with the functional and operational needs of an integrated screen production studio and the stated intent of the ASH project. With respect to (a) to (g) and (i) I therefore recommend conditions 68 be amended as follows:

68A. The accommodation units within Buildings B1 and B2 must only be made available to employees, contractors or associated personnel associated with

the studios/film facilities. For the avoidance of doubt, Buildings B1 and B2 are prohibited from entering into the visitor activity pool.[1]

68B. In addition to condition 68A, a proportion of the bedrooms[2] within the accommodation units (C1 to C9 inclusive) must remain available for booking by person(s) associated with ~~studio activities~~ the studios/film facilities, (A, B1 and B2), in accordance with the Table below:

• **Column A** sets out future time periods, measured from (and including) the date (Booking Date) the booking is made to the date (Commencement Date) of the period during which the accommodation bedrooms are ~~is~~ required.

• **Column B** specifies the minimum percentage of accommodation ~~units~~ bedrooms[3] that must be available on the Booking Date for booking by person(s) associated with ~~studio activities~~ the studios/film facilities for accommodation commencing on the Commencement Date.

Column A – Period of time	**Column B – Percentage of Accommodation ~~Units~~ bedrooms**
395 days (or more)[4]	~~90%~~ 100%[5]
365 days	80%
270 days	60%
180 days	40%
90 days	30%
45 days (or less)[6]	15%

Note: The Table operates on a sliding scale. For time periods falling between those listed, the required availability is adjusted proportionally. For example, if a booking is requested for a Commencement Date 380 days after the Booking Date, the minimum number of bedrooms[7] required ~~availability~~ to be available would fall between 80% (for 365 days) and ~~90%~~ 100% (for 395 days) and would be calculated (rounded if necessary) at ~~85%~~ 90%.

Advice Note: This condition ensures that a portion of the accommodation bedrooms[8], in addition to those in Buildings B1 and B2, remains available for people associated with ~~studio activities~~ the studios/film facilities, when booking in advance. The further ahead the booking is made, the greater the proportion of ~~units~~ bedrooms[9] that must be available for studio ~~related use~~ activities or

[1] Addresses (c), (e) [in combination with changes I recommend to condition 67 above], (f), (g) and (i).
[2] Addresses (b).
[3] Addresses (b).
[4] Addresses (a).
[5] Addresses (d).
[6] Addresses (a).
[7] Addresses (b).
[8] Addresses (b).
[9] Addresses (b).

production activities based at the screenhub, up to ~~90%~~ 100% for bookings 395 days in advance.

43. Ms Hampson addresses condition 69 in paragraph 91 of her evidence. She states that Condition 69, as she understand it, is to demonstrate to the Council that condition 68 is being complied with. She states, as currently drafted, the focus is demonstrating the amount and timing of the rooms booked/occupied by film productions and it is not necessary to prove how successful the accommodation facilities are at securing production bookings.

44. Ms Hampson considers it is only necessary to be able to demonstrate to Council that tourism bookings (out front) do not exceed the thresholds. Ms Hampson considers what is most relevant is being able to periodically show tourism unit bookings for the next 395 days (for example) do not exceed the condition 68 thresholds.

45. I agree with Ms Hampson that the key information should be the number of tourism unit bookings for the next 395 days. Accordingly, I have amended condition 69 below to do this, but have not gone as far as discounting information on the number of bedrooms booked associated with studios/film facilities, as that information may still be necessary in determining compliance with condition 68.

> 69. ~~To ensure compliance with Condition 68,~~ The consent holder shall ensure maintenance of a record of all bookings in the form of a register containing details of: (i) the number of bedrooms booked (and dates booked) associated with studios/film facilities; and (ii) all other bedrooms booked (and dates) for any purpose: for the proceeding 395 days, presented in a way that demonstrates compliance with condition 68 on any given day.[10] ~~when the film studio is in use and the number of rooms occupied by a film production at that time~~. The register shall also include any complaints with regards to availability of accommodation rooms for film production crews. Details of all bookings for at least the preceding 5 years shall be continually maintained. This register shall be made available for inspection by the Council at all times.

46. While I consider the above amendments to conditions 68 and 69 are improvements, I still have significant concern about their reliability and effectiveness in achieving their stated purpose.

47. In addition to above, I also consider there is merit in prohibiting the further subdivision of the studio buildings from the accommodation units to ensure the ASH project, as a whole, does not separate the operation of the screen hub from the accommodation (thus undermining the intent of conditions 68 and 69). I recommend, if the Panel is minded to grant consent, that the following condition is imposed:

[10] I note a useful way of presenting this information may be actual bookings compared to permitted bookings as illustrated in Ms Hampson's Figure 1.

69A. The Studio buildings (A, B1 and B2) and accommodation units (C1 to C9 inclusive) shall be held in one ownership and shall not be subdivided into individual units or otherwise made available for individual ownership or occupancy (e.g. Individual leasehold).

Carey Vivian

17 December 2025

Schedule 4

Ayrburn Residences Media Article

BREAKING
'This is life-changing' - Lotto player found they'd won $16m checking ticket at supermarket ›

Here's a once-in-a-lifetime chance to buy a freehold property at prestigious Ayrburn

Kylie Klein Nixon
October 22, 2025 · 12:00pm

Just In

Disgraced lawyer James Gardner-Hopkins allowed to practise again
6 mins ago

Food prices still increasing year on year, white bread up 53%
9 mins ago

Nelson man left 'lost for words' after $16 million lotto win
19 mins ago

Summary

It's an opportunity that will never be repeated: a chance to buy a freehold, private section in Central Otago's much-fêted Ayrburn development, near Lake Hayes. It's not an opportunity for everyone, however, with land-only parcels starting at $9 million, and land and house packages starting at an eye-opening $36m.

There are just three sections available at the development, Lot 6 at just under a hectare, Lot 7 at 8,560m² and Lot 8 at about 1.2ha.

There are plans and building packages for residences available to purchase too, or you can build your own dream home on the land, as long as the design adheres to restrictions in keeping with the nature of the luxury location.

Gardens will be key to the residential development, as per this artist's impression. Photo: BAYLEYS

Each of the designs offered have names. Crown Peak will have 9 bedrooms, 9.5 bathrooms and 3 garage spaces, ranged over 844m². Mt Soho has 8 bedrooms, 8.5 bathrooms, an underground bar and theatre and 3 garage spaces, ranged over 905m².

The largest design is Coronet with 8 bedrooms, 9.5 bathrooms, an underground bar and theatre and 3 garage spaces, over 916m².

The largest section will set you back $11m. With the house package, it could cost $40m.

An artist's impression of a living room in one of the proposed homes. The buildings will be completed to a very high spec. Photo: BAYLEYS

"We've certainly been talking to some high-net worth Kiwis, but there's been quite a bit of interest from Australia and abroad as well," says listing agent Sarena Glass of Bayleys.

Completed, these will be "some of the best properties in the country", and will suit buyers with a refined sense of finish and detail, Glass says. "The properties are absolutely top of class."

original 1900s homestead - a bar, bakery, deli, and ice cream parlour.

The homes have up to nine bedrooms. Here's an artist's impression of what one could look like. Photo: BAYLEYS

Also planned for the area is the Northbrook, a high-end retirement village that will offer around 196 residences, a wellness centre with pool and gym, and two hotels - a 100-bed boutique hotel and a 200-bed hotel. The larger hotel will service the film hub/studio also planned for the site.

Joining these spaces together will be extensive, landscaped gardens, already established, which Meehan expects will one day rival

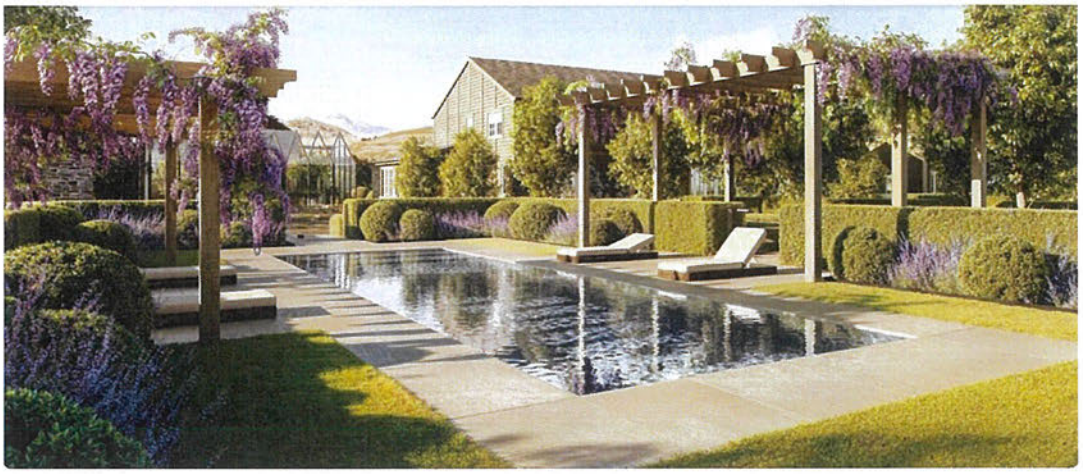
he says. "That's what we've put a lot of effort into. We had a head start - Billy Patterson, who settled the place in 1862, planted a lot of the trees from the seeds he had in his pocket on the boat out from Scotland. So, he's done a lot of that for us."

An artist's impression of the home theatre/bar proposed for two of the designs. Photo: BAYLEYS

At nearly 60 hectares, Meehan believes there is more than enough space to "put all this in, and no one activity interferes with another".

"I think it's going to be a fun place. It just wants to be full of life and full of people."

Planned from the start of the development, the freehold plots are in "the most private part of the property", with views up to Coronet Peak and The Remarkables.



An artist's impression of the pool area at one of the lots. Photo: BAYLEYS

The property is about four minutes by car from Arrowtown, 18 minutes from Queenstown airport, and 25 minutes from Queenstown central. There are also two golf courses near by, one at the late Michael Hill's home, and another at the Millbrook Resort and Country Club about five minutes away.

The designs offered with the land packages are in Meehan's beloved "Central Otago vernacular", designed to look like a high end version of "a collection of old farm buildings", and matching his own home, nearby.

Building is booming in Queenstown Lakes, with figures showing the number of new homes consented in Queenstown Lakes District leaping 76% in the year to June 2025, from 1001 to 1762.

Ayrburn's hospitality precinct is already well established. Photo: BAYLEYS

The district has held it's own in the past 12 months, while property markets in many other parts of the country dipped considerably. According to Opes Partners, the median sale price for the district is $1,613,850.

Estate agent Serena Glass says the buyer will be someone who appreciates what Ayrburn is, "and understands the value of being within a stone's throw of the precinct".

"It's obviously someone that's incredibly discerning."

Mortgage tips from the experts

VIDEO CREDIT: KYLIE KLEIN NIXON

Schedule 5

Nation J, Judgment

IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE

CIV-2021-425-000080
[2022] NZHC 2221

BETWEEN	WATERFALL PARK DEVELOPMENTS LIMITED Plaintiff
AND	JAMES WILLIAM PETER HADLEY and REBECCA HADLEY Defendants

Hearing:	29 March 2022
Appearances:	M G Colson QC, M Eastwick-Field and G A Lamb for the Plaintiff M E Casey QC and A J Casey for the Defendants
Judgment:	1 September 2022
Reissued:	19 September 2022

JUDGMENT OF NATION J

Introduction

[1] The plaintiff (Waterfall Park) is the owner of land in the Wakatipu Basin near Arrowtown. Since 2017, it has taken various steps to obtain zone changes and subdivision consent which would enable it to subdivide land for residential development. The defendants (the Hadleys) own and live on a rural lifestyle property diagonally adjacent to the Waterfall Park land.

[2] Waterfall Park claims, through the tort of abuse of process, the Hadleys have wrongly stymied Waterfall Park's plans to develop its land. In civil proceedings filed in August 2021, Waterfall Park asserts that, as a result of the Hadleys' actions, Waterfall Park lost the opportunity to commence development of its land in June 2021. In that way, it says it has suffered a loss for which it seeks damages in excess of $7 million.

[3] Through an interlocutory application, Waterfall Park seeks an order under s 57 of the Evidence Act 2006 allowing it to put in evidence communications or documents subject to privilege under s 57 of the Evidence Act.

[4] The Hadleys have applied for an order striking out Waterfall Park's claim or for summary judgment on the statement of claim.

Statement of claim

[5] In its statement of claim dated 25 August 2021, Waterfall Park pleads that the Hadleys' property is subject to an encumbrance which prohibits the owners of the Hadleys' land from objecting to any application to the territorial authority to undertake cluster developments on the relevant part of the Waterfall Park land (the Ayrburn land).

[6] Waterfall Park pleads that the Hadleys:

(a) filed submissions in opposition to submissions made in 2015 by the owners of the Ayrburn land for a change to the zoning of the Ayrburn land that would permit residential development on that land (the PDP submission);

(b) after the Queenstown Lakes District Council (QLDC) in March 2019 zoned the Ayrburn land "Wakatipu Basin Rural Amenity Zone" under the Proposed District Plan and Waterfall Park appealed that decision to the Environment Court (the PDP appeal), filed a notice under s 274 of the Resource Management Act 1991 (RMA) so they could join and oppose the appeal;

(c) in May 2021, terminated the Environment Court directed mediation over the PDP appeal;

(d) after Waterfall Park in 2019 and 2020 planted trees along a boundary of the Ayrburn land, around May 2020, filed an application in the Environment Court for a declaration that the planting of the trees was a non-complying activity under the QLDC Proposed District Plan (the tree planting proceedings);

(e) after the Environment Court on 5 March 2021 made a declaration that the tree planting was a non-complying activity and Waterfall Park filed an appeal in the High Court against that decision, opposed Waterfall Park's appeal in the High Court (the tree planting appeal);

(f) when Waterfall Park filed an application with the QLDC for a resource consent to subdivide parts of the Ayrburn land to create titles for a road which had been consented and built and a title for historic stone buildings that sat on a distinct part of the land (the subdivision application), filed submissions in opposition to that application; and

(g) after the QLDC on 27 October 2020 declined the subdivision application and Waterfall Park appealed that decision to the Environment Court, filed a notice under s 274 of the RMA to join and oppose that appeal (the subdivision appeal).

[7] Waterfall Park pleads that the Hadleys, through these actions, acted with the predominant purpose of obtaining a benefit that was not an achievable outcome in any of the proceedings and was not reasonably related to the relief that might have been available to them in those various proceedings.

[8] As a first cause of action, Waterfall Park claims the Hadleys are liable in tort for having abused both the High Court and the Environment Court processes.

[9] Waterfall Park claims, as a result of the Hadleys' abuses of process, Waterfall Park has lost the opportunity to resolve the PDP appeal at mediation. It therefore lost the opportunity to commence development in June 2021 (with a net impact on the net present value of the development of $6.7 million) and has or will incur costs associated with previous and continuing proceedings in the total sum of $556,974 plus GST. For all that, Waterfall Park seeks damages of $7.26 million.

[10] As a second cause of action, Waterfall Park claims the Hadleys breached obligations to act in good faith and to cooperate in the Environment Court mediation. As a result, Waterfall Park claims it lost the opportunity to resolve the PDP appeal and thus the opportunity to commence development in June 2021. Waterfall Park says this has diminished the net present value of the development by $6.7 million, and Waterfall Park will have to incur legal costs associated with the PDP appeal of approximately $326,000 plus GST and has incurred other costs associated with the mediations of $70,974 plus GST. For all that, Waterfall Park seeks damages from the Hadleys in the sum of $7.1 million.

[11] Waterfall Park applies for an order allowing it to put in evidence communications and documents from the Environment Court mediation and from the ensuing without prejudice settlement negotiations, and thus for the Court to disallow privilege as to such communications and documents. Waterfall Park says admission of such evidence will be in the interests of justice as referred to in s 57 of the Evidence Act or because the communications are for a dishonest purpose, as referred to in s 67 of the Evidence Act. The application also sought leave to file an amended statement of claim which referred to the detail of further negotiations between Waterfall Park and the Hadleys.

[12] In its statement of claim, Waterfall Park referred to negotiations between 6 May and 26 May 2021 with the allegations that "[t]he terms put forward by the Hadleys through these discussions were such that no resolution to the PDP Appeal could reasonably be reached between the Hadleys and Waterfall Park", but said further

particulars would be provided following the determination of Waterfall Park's interlocutory application to disallow privilege.

Waterfall Park's application as to disallowance of privilege

Legal principles

[13] Relevantly, s 57 of the Evidence Act states:

> **57 Privilege for settlement negotiations, mediation, or plea discussions**
>
> (1) A person who is a party to, or a mediator in, a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of any communication between that person and any other person who is a party to the dispute if the communication—
>
> (a) was intended to be confidential; and
>
> (b) was made in connection with an attempt to settle or mediate the dispute between the persons.
>
> (2) A person who is a party to a dispute of a kind for which relief may be given in a civil proceeding has a privilege in respect of a confidential document that the person has prepared, or caused to be prepared, in connection with an attempt to mediate the dispute or to negotiate a settlement of the dispute.
>
> …
>
> (3) This section does not apply to—
>
> …
>
> (d) the use in a proceeding of a communication or document made or prepared in connection with any settlement negotiations or mediation if the court considers that, in the interests of justice, the need for the communication or document to be disclosed in the proceeding outweighs the need for the privilege, taking into account the particular nature and benefit of the settlement negotiations or mediation.

[14] Before the Evidence Amendment Act 2016, there were legislated exceptions to the privilege for settlement negotiation or mediation in civil proceedings in s 57(3)(a)-(c), none of which are relevant here.

[15] Section 67(1) said, and still says:

67 Powers of Judge to disallow privilege

(1) A Judge must disallow a claim of privilege conferred by any of sections 54 to 59 and 64 in respect of a communication or information if satisfied there is a prima facie case that the communication was made or received, or the information was compiled or prepared, for a dishonest purpose or to enable or aid anyone to commit or plan to commit what the person claiming the privilege knew, or reasonably should have known, to be an offence.

[16] The Environment Court of New Zealand Practice Note 2014 includes Appendix 2 – Protocol for Court assisted mediation. Clause 8(c) of that appendix provides:

(c) Subject to (e) below, what is discussed or disclosed in a mediation shall not be referred to or relied upon in any other proceedings in the Court. Specifically, a party shall not, without the written consent of all other parties, introduce as evidence in any proceedings:

(i) documents prepared expressly for the mediation;

(ii) a document disclosed at the mediation on terms that it remain confidential to those present;

(iii) admissions made by a party in the course of the mediation;

(iv) views expressed or suggestions made by any party concerning a possible settlement of the dispute;

(v) proposals made or views expressed by the mediator; or

(vi) the fact that a party had or had not indicated willingness to consider a proposal for settlement.

[17] In various judgments, courts have held that the common law continues to set boundaries to the privilege protecting settlement negotiations.[1]

[18] In *Sheppard Industries Ltd v Specialized Bicycle Components Inc*, the Court of Appeal listed common law exceptions to the privilege as supplementing exceptions listed in s 57(3) of the Evidence Act as it was.[2] Relevant to the issue in this case, one

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1 *New Zealand Institute of Chartered Accountants v Clarke* [2009] 3 NZLR 264 (HC) at [44]; *McCulloch v Quinn* [2012] NZHC 1850 at [30]; and *Westgate Transport Ltd v Methanex New Zealand* (2000) 14 PRNZ 81 (HC) at [20].

2 *Sheppard Industries Ltd v Specialized Bicycle Components Inc* [2011] NZCA 346, [2011] 3 NZLR 620 at [15].

of those common law exceptions was "where the exclusion of the evidence would act as a cloak for perjury, blackmail or other serious impropriety".[3]

[19] In *Rollex Group (2010) Ltd v Chaffers Group Ltd*, Kós J carefully considered judgments from a number of jurisdictions in deciding whether the s 67 exception would apply for a court to disallow privilege as to communications between clients and their legal advisors.[4] Kós J applied a statement he made in an earlier case:[5]

> So the protection is not absolute. But a very high threshold applies before one can enter the s 67 exception, including the "dishonest purpose" aspect. Clearly that can be less than an offence. But at common law at least, inducing a breach of contract did not qualify. What is needed is fraud, sham or trickery …

He said the rationale for setting that threshold was based on public policy considerations, namely the general societal importance in protecting legal advisor communications.[6]

[20] Section 57 of the Evidence Act confers privilege for a communication by one party to a dispute to the other which was intended to be confidential and was made in connection with an attempt to settle it. In *Bradbury v Westpac Banking Corp*, the Court of Appeal held the High Court had been right to say the privilege did not afford protection to a threat contained in a letter marked "without prejudice".[7] The Court of Appeal cited the following statement from the English Court of Appeal:[8]

> … one party may be allowed to give evidence of what the other said or wrote in without prejudice negotiations if the exclusion of the evidence would act as a cloak for … 'unambiguous impropriety' (the expression used by Hoffman LJ in *Forster v Friedland* [1992] CA transcript 1052) … the exception should be applied only in the clearest cases of abuse of a privileged occasion.

[21] In *Morgan v Whanganui College Board of Trustees*, the Court of Appeal stated:[9]

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3 At [24], citing *Oceanbulk Shipping and Trading SA v TMT Asia Ltd* [2010] UKSC 44, [2011] 1 AC 662 at [32].

4 *Rollex Group (2010) Ltd v Chaffers Group Ltd* [2012] NZHC 1332, [2012] NZAR 746.

5 At [32], citing *Red Bull GMBH v Manhaas Industries Ltd* HC Wellington CIV-2010-485-1866, 29 July 2011 at [40].

6 At [33].

7 *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [83].

8 At [83], citing *Unilever Plc v Proctor & Gamble Co* [2000] 1 WLR 2436 (CA) at 2444 per Robert Walker LJ.

9 *Morgan v Whanganui College Board of Trustees* [2014] NZCA 340, [2014] 3 NZLR 713.

> [11] The rule protecting without prejudice communications from admission as evidence in Court proceedings is well settled. Its existence is justifiable on two complementary bases. First, as a matter of public policy, the rule is designed to encourage parties to negotiate settlements of disputes (using that phrase in the broad sense), secure in the knowledge of two things – that whatever is said openly and honestly for that purpose will remain confidential; and that if those negotiations are unsuccessful any statements or offers made adverse to the maker cannot be considered in determining liability in later litigation. Second, as a matter of contract, the law should recognise the sanctity of the parties' agreement to communicate on a without prejudice basis with its underlying expectations of absolute confidentiality and protection.
>
> [12] The law has allowed exceptions to this rule, again based largely on considerations of public policy, and we shall return briefly to them. But the guiding precept is that "the Court should be very slow to lift the umbrella [of protection] unless the case for doing so is absolutely plain".
>
> (footnotes omitted)

[22] Since the Evidence Amendment Act, s 57(d) now mandates the interests of justice test for negating privilege as to settlement negotiations and mediation.

[23] Section 57(3)(d) and its application were discussed by Fitzgerald J in *Smith v Shaw*.[10] She referred to the rationale for importance of settlement privilege as discussed by Robert Walker LJ in *Unilever Plc v The Proctor & Gamble Co*,[11] and Lord Clarke's statement for the Supreme Court in *Oceanbulk Shipping and Trading SA v TMT Asia Ltd* that the importance of the without prejudice rule had been stressed on many occasions.[12]

[24] Fitzgerald J referred to the statutory settlement privilege in New Zealand not being limited to "admissions" but applying to "any communication" intended to be confidential and made in connection with an attempt to settle or mediate the relevant dispute.[13]

[25] She referred to courts in earlier decisions having "warned that the exception should be applied only in the clearest cases of abuse of a privileged occasion" and that,

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10 *Smith v Shaw* [2020] NZHC 238, [2020] 3 NZLR 661.

11 At [35], citing *Unilever Plc v The Procter & Gamble Co*, above n 8, at 2448–2449 per Robert Walker LJ.

12 At [36], citing *Oceanbulk Shipping and Trading SA v TMT Asia Ltd*, above n 3, at [27] per Lord Clarke.

13 At [36].

because of the importance of the without prejudice rule, its boundaries should not be lightly eroded.[14]

[26] Fitzgerald J concluded:

> [46] Accordingly, given the very clear policy reasons for and benefits of settlement privilege, it is right that any exceptions to it are narrow. ... I merely observe that the inquiry as to the "interests of justice" mandated by s 57(3)(d) no doubt envisages a broad and flexible approach on the facts of any given case. But I nevertheless expect it would be rare for a Court to set aside settlement privilege unless there was a very clear or at least very seriously arguable case for doing so.

[27] In *Spackman v Martin*, Associate Judge Lester had to decide whether to disallow legal advice privilege in relation to communications between the defendants and their solicitors.[15]

[28] Mr Colson QC, for Waterfall Park, referred to Associate Judge Lester's decision as if it suggested a lesser threshold for the disallowance of legal professional privilege than Kós J adopted in *Rollex Group (2010) Ltd v Chaffers Group Ltd*, being "fraud, sham or trickery".[16]

[29] I do not consider there was a distinction. Associate Judge Lester referred to the "sharp practice" test described in *Cross on Evidence* as "intentionally taking advantage of a misapprehension".[17] This was what was alleged in the case Associate Judge Lester was dealing with. Associate Judge Lester also referred to the legislature requiring dishonesty, meaning not acting as an honest person would in the circumstances.[18] Associate Judge Lester disallowed privilege because the defendants misled the plaintiffs to believe that the intellectual property rights in a product were to be owned by the company the plaintiffs were investing in. In reality, one of the defendants was to own the rights in his personal capacity. On the facts, as Associate Judge Lester found them, there was dishonesty.

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14 At [37], citing *Unilever Plc v The Procter & Gamble Co*, above n 8, at 2444 per Robert Walker LJ; and *Oceanbulk Shipping and Trading SA v TMT Asia Ltd*, above n 3, at [30].

15 *Spackman v Martin* [2021] NZHC 157.

16 *Rollex Group (2010) Ltd v Chaffers Group Ltd*, above n 4.

17 *Spackman v Martin*, above n 15, at [41], citing Mathew Downs (ed) *Cross on Evidence* (online ed, Thomson Reuters) at [EVA67.3].

18 At [39] and [40], citing *Cityside Asset Pty Ltd v 1 Solution Ltd* [2012] NZHC 3162, [2013] 1 NZLR 722 at [44] and [45].

[30] The communications and documents Waterfall Park seeks to put in evidence were either part of the Environment Court mediation or were intended to be confidential and were made in connection with an attempt to settle or mediate the dispute for which relief may be given in a civil proceeding between the parties. Privilege thus attaches to them unless, applying the s 57(3)(d) approach, Waterfall Park has established a clear case for disallowing that privilege.

Waterfall Park's allegations in summary

[31] Mr Meehan is the chief executive and a director of Winton Property Ltd, the parent company of Waterfall Park. In his affidavit in support of Waterfall Park's application, Mr Meehan said "I view the defendants' conduct through these 'without prejudice' communications as amounting to extortion or blackmail. That is why Waterfall Park seeks to have any claims of privilege set aside to allow these issues to proceed to trial."

[32] Waterfall Park alleges the predominant purpose of the Hadleys' involvement in various proceedings under the RMA and in opposing the various steps Waterfall Park has taken to develop the Ayrburn land has been to extract a commercial benefit from Waterfall Park. Essential to that allegation is that, in the course of settlement negotiations between the Hadleys and Waterfall Park's counsel after the Environment Court mediation, the Hadleys sought a financial benefit described as a facilitation fee as one of the terms of settlement.

[33] Mr Colson filed submissions dated 22 February 2022 in support of Waterfall Park's application to disallow privilege. He submitted the Hadleys "have consistently sought to oppose Waterfall Park's development of the Ayrburn Land" through initiating the tree planting proceedings, submitting to the QLDC against the subdivision application, and opposing the PDP, tree planting and subdivision appeals. He submitted these actions have been "persistent and unreasonable" because the Hadleys:

(a) filed, and persisted with, their opposition to the PDP appeal even when reminded of the encumbrance;

(b) singled out Waterfall Park's tree planting by ignoring similar tree plantings on neighbouring properties and the Hadleys' land. This was done after the Hadleys were reminded of the encumbrance;

(c) have contradicted themselves by opposing Waterfall Park's tree plantings (which would screen new dwellings from the Hadleys' property), but insisting on [position B] for the property; and

(d) continued to oppose the subdivision application and appeal despite the subdivision being for purely practical reasons, having no impact on the future use of the Ayrburn land and the QLDC no longer opposing the subdivision.

Background narrative

[34] The evidence as to those allegations is largely, if not entirely, undisputed. It is drawn from the affidavits filed from the parties or from the determinations already made either in the Environment Court or High Court in the tree planting proceedings and appeal or from the award in the arbitration to which Waterfall Park and the Hadleys were the parties.

[35] In 2006, the owners of the Hadleys' land wished to subdivide that land into two parcels. Ayrburn Farm Estate Ltd owned a large rural property behind the Hadleys' land used as a sheep and cropping farm. To obtain Ayrburn Farm Estate Ltd's consent to the subdivision, the owners of the Hadleys' land agreed to that land being subject to the encumbrance. The encumbrance reads:

> 5.1 The Encumbrancer of the Land from time to time covenants that the Encumbrancer will not object directly or indirectly or in association with any other party, to any application or applications made by the Encumbrancee to the territorial authority to undertake the following on the Encumbrancee's Land:
>
> (a) A cluster development of residential dwellings on the Homestead Block described in CT 78212.
>
> (b) A subdivision of three (3) residential blocks on the balance land described in CT 177645 and 177646.

(c) Form the presently unformed road adjoining the Encumbrancee's Land to service a cluster development of not more than fifteen (15) dwellings on the land described in CT 78212.

[36] As successors in title to the encumbranced land, the Hadleys agreed to not object to Ayrburn Farm Estate Ltd, and by succession Waterfall Park, carrying out developments on the Ayrburn land as referred to in the encumbrance.

[37] In 2006, the area of land that had the benefit of the encumbrance was zoned "Rural General" under the then partially operative District Plan. The relevant land was categorised as a visual amenity landscape. Subdivision and the erection of new buildings were discretionary uses under that zoning. There is a paper road which includes a walking and cycling trail that partly separates the Hadleys' property and Waterfall Park's land.

[38] In February 2015, the Winton Group entered into an agreement for sale and purchase to acquire the Ayrburn Farm, with Waterfall Park as the nominated purchaser.

[39] In August 2015, the QLDC notified its stage 1 plan review.

[40] On 23 October 2015, the previous owners of the Ayrburn land filed a submission seeking a zoning change for a Rural Residential Zone option involving up to 30 rural residential lots, or a Waterfall Park Special Zone allowing up to 125 units or a similar Ayrburn Residential Zone. On the same day, the Hadleys filed a submission seeking to retain the existing Rural General Zone over the Ayrburn land.

[41] On 16 December 2015, the Hadleys filed a submission opposing Ayrburn's submission of 23 October 2015.

[42] On 7 April 2017, Waterfall Park settled the purchase of Ayrburn land.

[43] In November 2017, the QLDC notified its stage 2 plan review.

[44] On 23 February 2018, the Hadleys filed a submission on the stage 2 plan review, seeking a Rural Amenity Zone which would effectively mean little change to the previous rural zoning.

[45] On the same day, Waterfall Park filed a submission seeking changes to the existing zoning for part of the Ayrburn land for residential uses, and an extension of the urban growth boundary. This added to, rather than replaced, the submission made by the previous owner of the Ayrburn land. In a decision of 5 March 2021, a Judge in the Environment Court, with reference to an affidavit from Mr Meehan, recorded that Waterfall Park was, in submissions in the plan review, seeking a rezoning that would enable up to 200 residential homes, a retirement village of equivalent size, or rural lifestyle development.[19] Mr Meehan had said the future of Ayrburn Farm was dependent on the outcome of the plan review process.[20]

[46] On 27 April 2018, the Hadleys made a further submission opposing Waterfall Park's proposed zonings.

[47] In March 2019, the QLDC declined Waterfall Park's requested zonings for the Ayrburn land.

[48] In May 2019, Waterfall Park appealed that decision to the Environment Court. The Hadleys and some of the earlier submitters joined the appeal as parties under s 274 of the RMA. This was the PDP appeal.

The Hadleys' involvement in the tree planting proceedings and appeal

[49] As recorded in a decision of the Environment Court of 5 March 2021, during 2019 and 2020 Waterfall Park planted two parallel rows of evergreen tree species bordering the flat and straight section of the Queenstown Trail used for walking and cycling.[21] The Hadleys live adjacent to that trail. The Hadleys, supported by the QLDC, sought a declaration in the Environment Court that the planting of the trees was a non-complying activity under the QLDC District Plan because it was not a permitted farming activity.

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19 *Hadley v Waterfall Park Developments Ltd* [2021] NZEnvC 18 at [21].
20 At [22].
21 *Hadley v Waterfall Park Developments Ltd*, above n 19.

[50] Judge Hassan in the Environment Court made a declaration that the planting was not a permitted activity under relevant rules in the District Plan and defaulted to a non-complying activity.[22] He also stated the evidence demonstrated that the planting could adversely affect the quality of the trail.[23]

[51] Judge Hassan noted the planting was on an area of the Wakatipu Basin Rural Amenity Zone under the Proposed District Plan.[24] The land was located within an area described as having a low absorption capacity in terms of additional development.[25] The Judge identified relevant provisions in the plan that recognised the landscape character and visual amenity values. Provision for farming and other activities that relied on the rural land resource, and rural residential subdivision and development were "subject to maintaining or enhancing landscape character and visual amenity values".[26]

[52] After a detailed consideration of quite extensive evidence that he referred to, Judge Hassan found that the tree planting, having regard to both established farming activities on the site and the realistic potential of the site for farming purposes, was not for the primary purpose of farming on the site.[27] For completeness, he also recorded his agreement with evidence that the planting had no value in terms of existing residential activity and any future residential activity on the site would be contingent on a successful plan change.[28]

[53] In its statement of claim in these High Court proceedings, Waterfall Park pleads that the Hadleys singled out Waterfall Park when they did not issue the same proceedings as to similar plantings by other neighbours and the Hadleys themselves. In his affidavit in support of Waterfall Park's interlocutory application, Mr Meehan included evidence as to these other plantings.

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22 At [59].
23 At [60].
24 At [7].
25 At [44].
26 At [45].
27 At [55].
28 At [58].

[54] In his affidavit in reply, Mr Hadley said the Hadleys' concern about the planting was not so much the impact on them but on the decade-old public walking and cycling trail alongside the planting and, in particular, the increased likelihood of frost forming in the shade created by the trees which he said posed a health and safety risk on the steeply sloping section of the trail. Mr Hadley said the other plantings were not comparable to the planting undertaken by Waterfall Park. He said it was much lower deciduous hedging, typical of the area, not evergreen screen planting such as that undertaken by Waterfall Park. Mr Hadley said their reasons for objecting to Waterfall Park's planting was specific to the nature of the planting, not because of who had done it. He said the planting Mr Meehan described as being carried out by the Hadleys was over 10 years old, was planted by the QLDC and the Wakatipu Trails Trust and was not unlawful. The planting was done as part of the construction of the countryside trail on the unformed road adjacent to the Hadley property.

[55] Before the Environment Court, the evidence of a former farm manager at Ayrburn Farm was that the planting did not serve any useful farming shelterbelt purpose, that the evergreen species chosen would create frost issues in the winter and block the wind that helps keep stock cool in summer.[29] Mr Cleland, a landscaping expert, said the planting was neither necessary nor suitable as a shelterbelt.[30] He said this planting would block warming from the sun, impede the drying of the trail, give rise to "frost heave" and make the trail muddy.

[56] In his decision, Judge Hassan said:[31]

> The evidence demonstrates that the Planting could adversely impact upon the quality of the Queenstown Trail. The site visit revealed it is already having some impact at least as a plainly visible edge to the site.

[57] The Environment Court decision indicates that the Hadleys' application was made because of the concerns Mr Hadley had referred to in his affidavit and not for the ulterior or dominant purpose of impeding Waterfall Park's development plans. There is nothing in the decision to indicate that the Hadleys' motive in making the application was ultimately to obtain some financial benefit from Waterfall Park.

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29 At [23].
30 At [24].
31 At [60].

[58] Waterfall Park appealed the Environment Court's tree planting decision to the High Court. This is the tree planting appeal. The appeal was opposed by both the Hadleys and the QLDC.

[59] On 7 March 2022, Dunningham J in the High Court gave judgment on Waterfall Park's appeal over the tree planting decision.[32]

[60] Dunningham J referred to evidence from Mrs Hadley that the QLDC's refusal of Waterfall Park's PDP submission to rezone the property was, in part, influenced by landscape evidence she gave at the hearing before the QLDC, which "drew attention to the importance of [Waterfall Park's] property to the maintenance of the landscape values … as described in … the Proposed District Plan".[33]

[61] On the tree planting appeal, Mr Colson for Waterfall Park argued there had been errors of law in the Environment Court's decision. Dunningham J referred to five that had been set out in the notice of appeal as being wide-ranging but said they could be summarised as being whether the Judge erred in:

(a) determining the planting was not a permitted "farming activity"; and

(b) determining, on a proper reading of the proposed district plan, the planting defaulted to a non-complying activity.

[62] Dunningham J found there had been no error of law and dismissed the appeal. In doing so, Dunningham J rejected submissions that the Judge applied the wrong legal test, had regard to irrelevant considerations, failed to have regard to relevant considerations and made findings for which insufficient evidence existed. She also rejected the submission that the Judge had come to an unreasonable conclusion in finding that the planting fell outside the definition of "farming activity".

[63] In light of both the Environment Court and High Court judgments as to the tree planting, it cannot be said that the Hadleys' actions in objecting to Waterfall Park's tree plantings were "persistent and unreasonable".

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32 *Waterfall Park Developments Ltd v Hadley* [2022] NZHC 376.
33 At [7], quoting Mrs Hadley.

The arbitration award

[64] The issue for arbitration was whether certain of the Hadleys' actions were in breach of the encumbrance. The actions Waterfall Park complained of in the arbitration included the Hadleys' PDP submission, their joining and opposing the PDP appeal, their tree planting proceedings and their involvement in the Environment Court mediation.

[65] Mr Asher issued his arbitration award on 13 December 2021. In his award, Mr Asher held the submissions of Waterfall Park/Ayrburn Farm Estate Ltd for zoning changes to the Waterfall Park land were not an application to undertake a development in terms of the encumbrance. Mr Asher said:

> The purpose of making a submission on a DPB is far more than to just stop a particular application. It addresses the underlying zoning of land, which could affect its use for decades to come. Very specific words could be expected, if a resident in a rural area was prohibited from resisting a fundamental zoning change which opened an area to more residential development.

[66] And further:

> There is no doubt that the Hadleys' submissions from 16 December insofar as they responded to the Waterfall/Ayrburn submissions did resist them. However, as I have set out, expressing opposing views to a developer's submission on a PDP is neither directly nor indirectly opposing an application to undertake a development, because there is no application for resource consent to oppose.

[67] Mr Asher also found that none of the Waterfall Park/Ayrburn Farm Estate Ltd proposals were for a cluster development. He was satisfied:

> … that the concept of clustering, when used in the Wakatipu Basin, entails a relatively small group of dwellings which will be closely spaced to minimise their impact on a rural site, surrounded by a larger area of open space. It is a method of maintaining the character of a landscape as rural, while providing for some limited residential development by allowing pockets of relatively dense housing which do not significantly damage that overall rural landscape character.

[68] Mr Asher was of the view that none of the developments envisaged by the submissions filed by Waterfall Park/Ayrburn Farm Estate Ltd fell within the definition or concept of a "cluster development".

[69] Mr Asher said "[t]here was therefore no possible breach of the clause that could arise from the Hadleys opposing this zoning change".

[70] In his award, Mr Asher said Waterfall Park had also asserted that the Hadleys' participation in the Environment Court directed mediation over the PDP appeal was a breach of the covenant. Mr Asher said he had found there was no "application" and, if there had been an application, it was not for a cluster development. The Hadleys' participation in the mediation could not give rise to any claim that they were in breach of the encumbrance. Mr Asher said the Hadleys "were entitled to participate in a mediation about proposed zoning changes".

[71] Mr Asher also found the Hadleys' actions in commencing the tree planting proceedings and then opposing Waterfall Park's tree planting appeal were not a breach of the encumbrance. He found the planting of trees was not an application for a cluster development.

[72] The issue in the arbitration was whether the Hadleys had been in breach of the encumbrance. Nevertheless, the arguments advanced for the Hadleys in the arbitration and the arbitrator's determinations were consistent with the arbitrator finding that the Hadleys were seeking to uphold the rural zoning and associated visual landscape and amenity values of land which adjoined their property, as they were entitled to do. There is nothing in the award which suggests the position of the Hadleys, or other parties who made submissions opposed to Waterfall Park's submissions, were unreasonable or that they were for any purpose other than to retain the rural zoning on the Ayrburn land and the associated landscape character and visual amenity values.

[73] In his submissions dated 22 February 2022, Mr Colson submitted that amongst the Hadleys' actions, which were "persistent and unreasonable", was the way they objected to Waterfall Park's tree plantings "shortly after the Hadleys were reminded by Waterfall Park of the existence of the encumbrance". When Mr Colson made that submission, the arbitrator had already determined that the Hadleys' actions over the trees were not in breach of the encumbrance. The Environment Court had also agreed with the Hadleys and the QLDC that Waterfall Park's planting of the trees was a non-complying activity under the District Plan.

The Hadleys' submission in opposition to the subdivision application and opposition to the subdivision appeal

[74] Mr Meehan's affidavit also referred to the Hadleys' opposition to Waterfall Park's subdivision application. It appears it had never been suggested that the Hadleys' submissions in opposition to this application or their opposition to the subdivision appeal were breaches of the encumbrance. The steps the Hadleys took as to this were not discussed by the arbitrator in his award.

[75] Waterfall Park filed the subdivision application with the QLDC on 1 April 2020. In his affidavit, Mr Meehan said this application sought to create titles for a road which had been consented and built (to allow it to be vested in QLDC or private owners in due course), and a title for existing historic stone buildings that sit on a distinct part of the eastern Ayrburn land (approximately 542 m from the Hadleys' property). Mr Meehan said the subdivision application did not seek any change in use of the Waterfall Park land.

[76] In his affidavit, Mr Meehan said the application was made for practical and financing reasons and did not involve any perceptible physical change to the land. He said the Hadleys had objected to the subdivision application by filing a submission with the QLDC opposing the subdivision application and then filing a notice pursuant to s 274 of the RMA in respect of the subdivision appeal to join and oppose the appeal.

[77] In his submissions, Mr Colson again referred to the Hadleys' opposition to the subdivision as indicative of their "persistent and unreasonable" opposition to Waterfall Park's development of the Ayrburn land.

[78] However, in his affidavit, Mr Meehan said the application for subdivision consent was originally declined by the QLDC on the basis that the relevant provisions of the QLDC Proposed District Plan did not permit a subdivision of less than 80 ha. That, in itself, would suggest the Hadleys' initial opposition to the subdivision application was not unreasonable. In his affidavit, Mr Hadley said the Hadleys were concerned the outcome of the subdivision appeal would impact the PDP appeal, particularly the precedent it would set for a minimum lot size of less than 80 ha.

[79] Mr Meehan said the subdivision was sought to create "titles for a road which had been consented and built (to allow it to be vested in QLDC or private owners in due course)". The High Court is familiar with the need for roads that are part of a proposed subdivision to be vested in local councils through the numerous applications that are made to the Court under s 317 of the Property Law Act 2007 to vary covenants so this can happen.[34]

[80] It thus seems clear from Mr Meehan's affidavit that consent to the subdivision was being sought in anticipation of a development being allowed for the land on which the road had been built. That development and associated subdivision of land had not been consented to and was not permitted with the land as it was then zoned. The need for a separate title for the road was thus contingent on Waterfall Park obtaining the relief it wanted in the PDP appeal.

[81] The Hadleys' submission in opposition to the subdivision consent application and their seeking joinder on the appeal was thus consistent with their earlier approach in seeking to retain the existing rural zoning for the Ayrburn land.

[82] In his affidavit, Mr Meehan said the QLDC had subsequently agreed to abandon its defence of the subdivision appeal as a result of Waterfall Park agreeing to protect a small area of land as open land, a small public easement along Mill Creek and a restriction on buildings on the proposed historic building site. The fact Waterfall Park agreed to such concessions suggests Waterfall Park's subdivision application was going to have an impact on landscape character and visual amenity values consistent with the concerns the Hadleys and others had as to Waterfall Park's attempts to obtain a rezoning of the Ayrburn land so as to permit residential subdivision of that land.

[83] Mr Meehan said "despite being informed of QLDC's decision to abandon defending the subdivision appeal, the Hadleys have advised that they intend to continue defending the appeal". He said Waterfall Park had sought to resolve the subdivision appeal with the Hadleys without the need to proceed to a hearing, but these

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[34] For example, see *Re Avlis Ltd* [2022] NZHC 1157; *Re Templeton Pegasus Ltd* [2022] NZHC 424; *Taurikura Holdings Ltd v Tauranga City Council* [2022] NZHC 994; and *Fair v Fair* [2019] NZHC 2349, (2019) 20 NZCPR 652.

attempts had been "futile as the Hadleys have made unreasonable demands in exchange for withdrawing their objection". He said, for example, the Hadleys had previously offered to withdraw their objection if Waterfall Park agreed to retain one of the lots comprising the Ayrburn land (totalling 28.49 ha) as an open space area. Mr Meehan said Waterfall park did not consider this to be a genuine offer because, in his view, "the Subdivision Application is both inconsequential and several hundred metres distant to the lot which the Hadleys required to be maintained as an open space area".

[84] While Mr Meehan may have considered this an unreasonable requirement, it is consistent with the Hadleys wanting to preserve landscape character and visual amenity values associated with the then zoning of the land, not with their wanting to extract some financial benefit for themselves.

[85] As Mr Casey QC, for the Hadleys, pointed out in his submissions, counsel for the Hadleys had filed a memorandum with the Environment Court on 30 September 2021 for the s 274 parties as to the subdivision appeal. In that memorandum, they pointed out that the position of the s 274 parties as to that appeal overlapped with the PDP appeal by Waterfall Park. Through that memorandum, the s 274 parties said the outcome of the PDP appeal had the potential to significantly alter the parties' position with respect to the subdivision appeal. The s 274 parties, including the Hadleys, said, if Waterfall Park obtained the relief in part or in full on the PDP appeal, it would have "significant ramifications for the determination of [the subdivision appeal] and would require the s274 parties to reconsider their position and possibly lead to a withdrawal of their interest". They said this was particularly so with respect to the relief sought to rezone the Ayrburn domain from Wakatipu Basin Rural Amenity Zone to Waterfall Park Zone because the new allotment is entirely located within that area.

[86] The s 274 parties said, if Waterfall Park did not obtain the relief it sought in the PDP appeal, "then the findings of the Court on that issue (from a landscape and planning perspective) would be instrumental in considering the parties position in [the subdivision appeal]". In that memorandum, the s 274 parties sought a deferment of case management directions for the subdivision appeal until such time as the Environment Court had determined appeals on the 80 ha regime in the Proposed District Plan and determination of the PDP appeal.

[87] Mr Goldsmith, as counsel for Waterfall Park on the subdivision appeal, filed a memorandum on 13 October 2021 also asking that the appeal be placed on hold. In that memorandum, he referred to the way the PDP appeal was being progressed, the possibility that a relevant aspect of the PDP appeal might be successful and, if that proved to be the case, the subdivision appeal would not have to go to a hearing.

[88] On my assessment of undisputed evidence, there was no evidential basis to support the submission that the Hadleys' conduct as to the subdivision application and appeal was indicative of unreasonable and persistent opposition to Waterfall Park's development aspirations for its land.

The mediation and settlement negotiations

[89] Mr Meehan's affidavit included a narrative of what occurred during the Environment Court mediation and in some negotiations afterwards which Waterfall Park argues justifies the disallowance of privilege. Nearly all that narrative is hearsay and inadmissible as evidence. Mr Meehan was not present at the mediation. The post-mediation negotiations were not between Mr Hadley and him.

[90] The affidavit includes numerous statements of argument, submission, opinion and initially the pejorative statements that he considered the Hadleys' conduct through "without prejudice" communications amounted to extortion or blackmail.

[91] Mr Meehan began his discussion by saying he had been involved in numerous mediations and negotiations as to applications for resource consent and similar. He said that, as chief executive of the Winton Group, he knew they needed to accommodate various parties' interests as part of a development, and "we have a demonstrably great and longstanding track record of doing this".

[92] Given he made this claim, observations as to Mr Meehan's negotiating approach in a judgment concerning another property development of the Winton Group are relevant. The observations as to Mr Meehan's conduct in that case are also relevant to the determination I have to make as to whether the civil proceedings brought by Waterfall Park are, themselves, an abuse of process.

[93] Mr Meehan's negotiating approach, as referred to by the High Court, is also relevant to my determination as to whether it is seriously arguable that the failure for the parties to settle matters at mediation was because of the Hadleys' alleged failure to participate in the mediation in good faith. Another possibility was that the mediator had decided that Waterfall Park had insisted a settlement could be reached only on Waterfall Park's terms, the terms were not acceptable to those in opposition and so there was no prospect of compromise.

[94] In his judgment in *Northlake Investments Ltd v Wanaka Medical Centre*, Mr Meehan's negotiating approach was described in some detail by Osborne J with reference to negotiations that took place between the Winton Group (through Northlake Investments Ltd) and doctors associated with a prospective commercial development of a medical centre.[35] Osborne J stated:

> [100] Mr Meehan's approach at the meeting had introduced into the relationship between Northlake and [Wanaka Medical Centre] a very different tone and approach to that which had previously flowed from Northlake personnel. Dr McLeod, a person not inexperienced in matters of commerce and not as a witness displaying a delicate or nervous disposition, described a feeling of having been "bruised" by the meeting. That reaction was not at all surprising in light of the approach Mr Meehan had adopted at the meeting. And, in the absence of evidence from Mr Meehan, I have no basis to conclude that Mr Meehan did not intend to cause such a response in the doctors. I conclude it was, on his part, a deliberate strategy to try to procure the lease terms he wanted.

[95] While not describing it as a "clash of cultures", Osborne J described the meeting between the doctors and Mr Meehan:[36]

> What happened at the meeting was quite simply that someone who adopted an aggressive negotiating style brought both verbal and non-verbal aggression to the discussion. Whether that is viewed in terms of creating a cultural divide or otherwise, the material fact is that Mr Meehan's message was delivered in such a manner as to be believed by the doctors – they understood they had to accept the 6 per cent return on investment (on whatever floor space area [Wanaka Medical Centre] might take) or "the deal would be off".

[96] In the Northlake litigation it was submitted that the prospective tenant's conduct, in breaking off negotiations after Mr Meehan had set the Winton Group's bottom line for a commercial return was not negotiable, was unconscionable. This was

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35 *Northlake Investments Ltd v Wanaka Medical Centre Ltd* [2019] NZHC 3443.
36 At [108].

somewhat akin to Mr Meehan's allegations here, that the Hadleys' conduct in the negotiations was in breach of good faith negotiations. Osborne J accepted the evidence of two principals of the prospective tenant that, largely as a result of what they had seen of Mr Meehan, they had "come to have genuine concerns about the style and future performance of Northlake (and in particular Mr Meehan) in the lessor/lessee relationship" and:[37]

> Whether a particular landlord shapes up as a landlord with whom a prospective long-term tenant can confidently anticipate a satisfactory working relationship is a matter that any tenant will reasonably consider as part of its decision whether or not it should enter a particular lease. [Wanaka Medical Centre] was in December 2017 entitled to bring into consideration its up-to-date, informed view of Mr Meehan and Northlake.

[97] In *Northlake Investments Ltd v Wanaka Medical Centre Ltd*, Northlake also pleaded the commercial tenant was in breach of contract in failing to negotiate an agreement to lease in good faith. As to that, Osborne J referred to the crucial period of negotiation as being the period after 27 November 2017 and said:[38]

> And within that focus, Mr Meehan's own approach to negotiation at the meeting the following day, 28 November 2017, is the most significant feature. It was Mr Meehan's approach to negotiation which caused the disengagement which followed.

[98] In his affidavit, Mr Meehan referred, firstly in general terms, to the Hadleys' opposition to the development. In doing so, he referred to the encumbrance and expressed his opinion:

> While Waterfall Park could have relied on the Encumbrance following its acquisition of the Ayrburn land … to object to the Hadleys having filed submissions with QLDC opposing the [PDP] submission, we did not consider it an appropriate strategy at the time given we would also need to deal in any event with a number of other submitters.

[99] Mr Meehan said he did instruct Waterfall Park's barrister to raise with the Hadleys that the encumbrance prohibited their objection to the development when they sought to join the PDP appeal.

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37 At [132].
38 At [171].

[100] Mr Meehan said, despite what he said were "the clear terms" of the encumbrance, the Hadleys did not accept that the encumbrance prevented them from objecting to the development. Mr Meehan said he believed there was no prospect of resolving the dispute through mediation or negotiation because of his previous dealings with these sorts of disputes and with the Hadleys. He requested to waive the requirement in the encumbrance to mediate and then go to arbitration if the mediation fails. The Hadleys refused to waive the dispute resolution requirements. Mr Meehan said "such refusal was entirely consistent with the Hadleys' approach to dealing with Waterfall Park. In my view, the Hadleys take every opportunity to delay and cause disruption to the Development."

[101] Mr Hadley, in a reply affidavit, said the Hadleys filed their s 274 notice seeking to join the PDP appeal on 31 May 2019. Waterfall Park's barrister did not contact them until 11 May 2020 threatening that, if the Hadleys did not immediately withdraw the s 274 notice on the PDP appeal, Waterfall Park would take proceedings against the Hadleys in the High Court.

[102] As already referred to, the arbitrator found that the Hadleys' response to Waterfall Park's PDP submissions and appeal were not in breach of the encumbrance. Waterfall Park's barrister's threat is however consistent with the purpose of Waterfall Park's civil proceedings in the High Court being to pressure the Hadleys into dropping the opposition they had to the PDP appeal.

[103] An informal mediation took place on 10 June 2020 at Mr Hadley's office in Queenstown. A formal mediation took place on 29 July 2020.

[104] Because of the privilege attaching to all that occurred in those mediations and the Environment Court directed mediation, I refer to what happened during the mediations in only the most general of terms. In the publicly available version of this judgment, reference to one specific matter over which there was no agreement has been expressed in terms that do not disclose what that related to or the parties' respective positions.

[105] Mr Hadley said that Waterfall Park's position at the 10 June 2020 mediation was that the Hadleys had to withdraw the s 274 notice by which they were opposing Waterfall Park's PDP appeal. He said Waterfall Park's representative at that meeting had no authority to settle.

[106] Mr Meehan said Waterfall Park was represented at the meeting by Lauren Christie. In an affidavit in reply, Ms Christie said she disagreed with the statement that she had communicated to the Hadleys that the only acceptable outcome for Waterfall Park was the withdrawal of their s 274 notice. She said the meeting terminated when the parties agreed they had opposing views and the meeting was not going to resolve the dispute. She did not suggest in her affidavit in reply that the meeting was not a meeting over the encumbrance.

[107] I do not need to resolve the conflict between Mr Hadley and Ms Christie as to what had been Waterfall Park's position as conveyed by Ms Christie at the meeting. The mediation took place shortly after Waterfall Park's barrister had asserted that the filing of the 274 notice on the subdivision appeal was a breach of the encumbrance and had demanded that the Hadleys withdraw the s 274 notice.

[108] I do not consider there is any evidence to suggest that the Hadleys' insistence that the parties enter into mediation over their encumbrance is indicative of their unreasonably opposing Waterfall Park's development proposals for its land. Mr Meehan's approach to the required mediation was consistent with his considering there would be no utility in mediation unless the Hadleys were willing to cooperate over what he wanted.

[109] There was then the formal Environment Court ordered mediation as to Waterfall Park's PDP appeal. The mediation began on 10 February 2021 and was adjourned after the first day. The mediation resumed on 4 May 2021.

[110] Ms Christie attended the mediation with Waterfall Park's barrister Mr Goldsmith. In her affidavit, Ms Christie said she provided information to Mr Meehan as to what happened at the mediation, which was included in Mr Meehan's affidavit. His affidavit referred to Waterfall Park, during the course of the mediation, providing

revised plans for a subdivision to address the concerns of the Hadleys and others involved in the mediation.

[111] Mr Meehan said, when the mediation reconvened, he understood progress had been made and resolution was expected.

[112] Ms Christie said, by mid-afternoon on the second day of mediation, she expected to reach an acceptable solution for all. Both Mr Meehan and Ms Christie said in affidavits they were shocked when Mr Hadley suddenly terminated the mediation.

[113] Mr Hadley's evidence was that the meeting was attended by approximately 22 people representing six parties plus the mediator.

[114] Mr Hadley's evidence was that a compromise plan had been discussed on the first day of the mediation, 10 February 2021. The Hadleys were concerned to maintain land between a stream and the public walkway/cycleway free of development to protect the rural landscape as experienced by the public, consistent with the concept of a cluster development. Mr Hadley also said the stream had been identified by both their and the QLDC's landscape experts as a defensible landscape boundary and therefore important in the context of maintaining landscape relief.

[115] Mr Hadley said, at the reconvened mediation, it was clear to everyone in the room that there was still some distance to go before agreement could be reached. He noted that Mr Meehan, in his affidavit, referred to an onsite meeting with the Friends of Lake Hayes and had implied that the proposed amended plan had been agreed with them. Mr Hadley said the Friends of Lakes Hayes did not indicate acceptance of what was proposed, consistent with an email he received from a senior member of that group advising him they and Waterfall Park were "a long way apart at the moment".

[116] Mr Hadley said Waterfall Park's representatives left the room to discuss their proposal. When they came back, the lawyer described verbally (with no plan) some changes to certain matters which Mr Hadley said were inconsequential. He said Mr Goldsmith, for Waterfall Park, also said Waterfall Park would not move from its

[position A]. While Waterfall Park's representatives were out of the room, other parties had discussed their position. The agreed position based on expert advice, with the exception of one party whose position was fixed at an even [lesser position], was they would not go [beyond position B] and this would be subject to an expert site visit to confirm. Mr Hadley said this was a compromise position as their preference had been for a [lesser position].

[117] Mr Hadley said, following this, the mediator asked Mr Hadley for his response as to Waterfall Park's [position A]. Mr Hadley stated, if Waterfall Park's stated position was their final position — and Mr Goldsmith indicated at that point it was — then he could not agree, and that meant all parties would have go to a hearing. He said, with that, the mediator immediately declared the mediation was at an end and he would so advise the Court. Mr Hadley said he was also surprised at "this abrupt termination of the mediation".

[118] An affidavit was filed for Mr Peirce, a solicitor representing Mr Andersson. He was the neighbour who wanted a [lesser position] which Mr Peirce said was [much less than the position A] proposed by Waterfall Park and the [position B] offered as a compromise by the Hadleys and other parties. In his affidavit, Mr Peirce said, immediately after Mr Hadley's response, the mediator declared the mediation had concluded and he would inform the Court that the matter would proceed to a hearing.

[119] Ms Christie and Mr Goldsmith both said, before terminating the mediation, the mediator asked Mr Hadley to explain his position over [position B] and Mr Hadley had refused. That was contradicted by the evidence of both Mr Hadley and Mr Peirce.

[120] Neither Mr Goldsmith nor Ms Christie in their affidavits denied that, before the mediation was terminated, Waterfall Park had said it would not move from its [position A], and the Hadleys and other parties opposing had said [they would not move from position B]. Neither contradicted the evidence of Mr Peirce that the mediation had not ended with the Hadleys leaving the mediation, as Waterfall Park had alleged in their statement of claim. The mediation had ended with the mediator terminating the mediation.

[121] In his affidavit, Mr Meehan purported to give hearsay evidence as to the further settlement discussions that occurred between Mr Hadley and Mr Goldsmith. In doing that, he referred to Mr Hadley maintaining his position for [position B] and other aspects of a subdivision that could be acceptable to the Hadleys. Mr Meehan said, as to "[a]ll these matters, with the exception of [position B], were reasonable and Waterfall Park would have agreed to them".

[122] I find, from the undisputed evidence, that the mediator ended the mediation when he determined the parties were unable to agree on a matter which was of fundamental importance to them so the issues would have to be the subject of a hearing in the Environment Court. In the evidence as to what happened at the mediation, there is no basis for Waterfall Park's allegation, as pleaded, that the Hadleys did not participate in the mediation in good faith. There is also no basis for suggesting that, in the way the Hadleys and others refused to compromise on the terms Waterfall Park wanted at the mediation, the Hadleys were participating in the Environment Court proceedings for an ulterior purpose or to obtain relief which was not available to them through the proceedings.

[123] Waterfall Park has not established or shown that it has a seriously arguable case that the Hadleys or other parties breached any obligation to negotiate in good faith at the mediation, or that there was anything dishonest in their conduct at the mediation which requires the Court to disallow the privilege that attaches to all the communications that took place during the mediation.

[124] The Environment Court mediation ended on 4 May 2021.

[125] The further communications at issue were between Mr Goldsmith and Mr Hadley. They began on 6 May 2021 when Mr Goldsmith contacted Mr Hadley. They ended on 27 May 2021 when Mr Goldsmith emailed Mr Hadley and told him he was instructed not to respond to Mr Hadley's counter-proposal. Shortly afterwards, Mr Goldsmith advised the Environment Court that Waterfall Park wished to proceed to hearing on the appeal.

[126] It is clear, throughout that time, the parties were in negotiation about a settlement of the PDP appeal and related matters. The communications were all without prejudice.

[127] It is also clear from the communications that both parties were concerned with the detail of the development that might be consented to if there was going to be no opposition to the PDP appeal. Consistent with that, on 7 May 2021, Mr Hadley met with Mr Goldsmith and showed him a plan which Mr Hadley had discussed with the QLDC.

[128] There is no dispute that in their discussions on 7 May 2021 Mr Goldsmith and Mr Hadley discussed the possibility of including in the settlement a commercial element. Mr Goldsmith said he doubted his client would entertain one but said he would discuss it and get back to Mr Hadley.

[129] There is no dispute that on 12 May 2021 Mr Goldsmith told Mr Hadley that Waterfall Park would consider a commercial element and, on that basis, they should continue to see if they could reach agreement. In accordance with that, Mr Hadley asked that he and his wife have access to the Ayrburn land. They erected profile poles on the land consistent with their concern as to how a residential development on Ayrburn land would impact on views of the area, landscape and visual amenities.

[130] On 18 May 2021 Mr Hadley emailed Mr Goldsmith his proposals. The email began by thanking Mr Goldsmith for confirmation that "commercial terms are indeed now on the table from [Waterfall Park's] perspective in order to achieve a settlement".

[131] Mr Hadley provided detailed plans and drew Mr Goldsmith's attention to certain aspects. He referred to Waterfall Park's required [position A]. The plans were accompanied by photographs to support the points he was making. Mr Hadley said Waterfall Park's agreement to the matters he raised was fundamental to reach agreement between Waterfall Park and the Hadleys, and the Hadleys getting agreement from the QLDC and the s 274 parties. Mr Hadley also sought confirmation as to a number of other matters including the withdrawal of the arbitration proceedings and the tree planting appeal, and the removal and relocation of planted trees along the

walkway. There was also reference to a facilitation fee and possible ways to calculate it. Mr Hadley said he invited Waterfall Park to consider an appropriate value and present it to the Hadleys for consideration.

[132] On 21 May 2021, Mr Goldsmith responded to Mr Hadley with comments as to various aspects of the proposed development plan. He also proposed a payment at a specific level based on costs the Hadleys had incurred and "cost savings to [Waterfall Park] if a hearing is avoided". The email response concluded "[i]f you have a counter-proposal (as indicated by you) please respond to each element listed above, so that my client can consider a package".

[133] Mr Hadley responded on 26 May 2021. Again, as with all the correspondence from both parties, it was "confidential and without prejudice". That response referred to various aspects of the plan but also had a figure for payment of a facilitation fee with a proposal as to how that might be provided through the sale of a particular lot to the Hadleys at a stipulated price.

[134] The following afternoon, Mr Goldsmith emailed Mr Hadley stating:

> I am instructed not to respond to your email below.
>
> [Waterfall Park] will go to hearing.
>
> I will advise the other parties.

[135] In his affidavit, Mr Meehan gave reasons as to why he considered the facilitation fee proposed by the Hadleys was unacceptable. It is however somewhat ironic that Mr Meehan and Ms Christie in their affidavits represented what they claimed had been Mr Hadley's refusal to explain at mediation [their position B] and abruptly ending the mediation as being in breach of an obligation of good faith. That is precisely how Waterfall Park proceeded after rejecting the settlement proposal that had been put forward by the Hadleys.

[136] I do not consider there was any impropriety or any abuse of the privilege attaching to settlement negotiations in the Hadleys seeking payment of a facilitation fee as part of a settlement of all issues between the parties. There was nothing

underhand or misleading in what they were seeking. Waterfall Park was free to accept or reject the proposal or to make a counter-proposal.

[137] Derek Nolan in *Environmental and Resource Management Law* says "[i]t is acceptable to make payments to potential submitters to avoid objection to resource consent applications".[39] In 1995, the Planning Tribunal was concerned with the grant of a resource consent to enable a service station to be built on a particular site.[40] A number of neighbours close to the site had consented to the proposal. The Tribunal said:[41]

> There was some unsubstantiated suggestion that consents were obtained by unconscionable means, but even if that were true, (and we have no evidence to suggest it is) that is of no concern to the Tribunal under the [RMA]. One consent was effectively paid for but this is open to a developer in terms of the Act because a person who considers he may be adversely affected can effectively be compensated for that fear. The obtaining of consents by all persons nearby can facilitate the obtaining of a resource consent because the strength of allegations of adverse affect tend to fade the further one goes from the scene of activity.

[138] In *MacKay v North Shore City Council*, the Tribunal said:[42]

> We record that it is not unusual in terms of the [RMA] for a payment to be made in return for a consent because the Act appears to contemplate recompense for perceived loss of amenity value as one of the costs of obtaining a consent, the consent operating to negate consideration of amenity effects on the consenting party.

[139] The Hadleys had incurred significant costs in pursuing rights they had to oppose Waterfall Park's PDP submission. Waterfall Park were wanting concessions from the Hadleys so that Waterfall Park would be able to proceed with a development which would likely have an impact on the visual amenity values and landscape character of Waterfall Park's rurally zoned land which the Hadleys had consistently shown was of importance to them. If the Hadleys were willing to compromise over such matters and were able to obtain the agreement of other parties, that would have been of significant financial benefit to Waterfall Park. There was nothing unlawful in

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39 Derek Nolan *Environmental Law and Resource Management Law* (7th ed, LexisNexis, Wellington, 2020) at [4.57].

40 *BP Oil New Zealand Ltd v Palmerston North City Council* [1995] NZRMA 504 (PT).

41 At 508.

42 *MacKay v North Shore City Council* PT W 146/95, 14 November 1995.

the Hadleys seeking to have that recognised in a tangible way. Waterfall Park had agreed that commercial terms could be on the table with any settlement. Mr Meehan's objection was not to the fact the Hadleys were seeking a facilitation fee or a settlement on commercial terms, but to the amount they were seeking.

Conclusion on application to disallow privilege

[140] The evidence and previous relevant decisions of the QLDC and Environment Court establish that, at all stages, the Hadleys filed submissions supporting the retention of rural zoning or similar for the Ayrburn land, when they joined the PDP and subdivision appeals as a s 247 party, and when they began the tree proceedings, they were doing so to protect their interest in maintaining the open and visual landscape character of the Ayrburn land and their immediate environment. If admitted, the evidence as to the settlement negotiations would indicate there was a prospect of settlement through the Hadleys agreeing to accept concessions on what they had originally wanted and that the Hadleys then sought to obtain some financial benefit in acknowledgement of those concessions. The fact they did so does not mean their earlier involvement in the proceedings was an abuse of those proceedings. Nor does it mean, if there was no settlement, their continuing involvement in proceedings in the Environment Court would be an abuse of those proceedings.

[141] Waterfall Park has failed to provide evidence which would meet the threshold of a clear or seriously arguable case for setting aside the privilege which attaches to communications made in the course of a mediation or in genuine settlement negotiations. Waterfall Park's application to disallow privilege and admit evidence as to what occurred during mediation and in settlement negotiations is declined. The application for leave to file the draft amended statement of claim referring to those communications is declined.

The Hadleys' application for strike out or, in the alternative, summary judgment

The pleadings

[142] The Hadleys seek strike out and summary judgment on Waterfall Park's statement of claim on the basis the claims are not reasonably arguable because:

(a) Waterfall Park instigated the encumbrance arbitration, the PDP appeal and the subdivision appeal. The Hadleys' involvement was either as a defendant or as s 274 parties;

(b) the Hadleys' application in the tree proceedings was and continues to be supported by the QLDC;

(c) the tree proceedings were determined in the Hadleys and QLDC's favour in the first instance;

(d) the appeal in the tree proceedings was instigated by Waterfall Park;

(e) Waterfall Park's claims do not disclose, on the face of them, any alleged predominant and improper purpose for which the Hadleys have allegedly conducted the various proceedings in abuse of the High Court or the Environment Court's processes;

(f) the claim for breach of good faith and constructive obligation is not a reasonably arguable cause of action as it is not a recognised cause of action;

(g) Waterfall Park's claims are an abuse of process because the subject matter of the claims was already at issue in the other proceedings;

(h) the claims are an abuse of process because their predominant purpose is to coerce the Hadleys into withdrawing their opposition to Waterfall Park's PDP appeal and subdivision appeal, and to coerce them into ceasing their pursuit of claims or asserting their rights in the tree proceedings and encumbrance arbitration; and

(i) the claim is an abuse of process because it purports to adduce evidence which is confidential and/or privileged under s 57 of the Evidence Act, s 14B of the Arbitration Act 1996, the Environment Court's Practice Note, common law and cl 6.5 of the encumbrance.

[143] In its notice of opposition, Waterfall Park said:

(a) its first and second causes of action are at least reasonably arguable because the Hadleys were voluntary participants as to the PDP and subdivision appeals, and they commenced the first instance tree planting proceedings in the Environment Court;

(b) as pleaded or would be pleaded in the amended statement of claim, the Hadleys' purpose in pursuing those proceedings was to extract a significant "facilitation fee" from Waterfall Park, an object not achievable in the relevant court proceedings and therefore an abuse of those proceedings;

(c) its second cause of action as to a breach of terms that apply to the Environment Court mediations allege a breach of terms which the parties are deemed to accept and are those owed to the mediator and to other parties;

(d) Waterfall Park has legitimate claims for loss caused by the Hadleys' abuse of process and breach of mediation terms which it is entitled to pursue in the current proceeding. In doing so, it does not seek to usurp the other courts' decision-making in their respective process nor to challenge the merits or findings of those processes; and

(e) there are material disputes of facts between the parties on key matters (including as to the motivations of the Hadleys in seeking the "facilitation fee") such that the matter is unsuitable for strike out and/or summary judgment.

Applicable legal principles

[144] In submissions for the Hadleys, counsel set out the legal principles applicable to the applications to the strike out and summary judgment applications. Mr Colson said there was no dispute as to those.

[145] As to strike out, the application proceeds on the assumption that facts pleaded in the statement of claim are true and any document relied on was to be construed in

the way most favourable to the impugned pleading.[43] On the material before the Court and in light of the current state of the law, the Court must be satisfied that the causes of action are so untenable that they cannot succeed.[44] However, the onus is on the plaintiff to show a reasonable cause of action in relation to each allegation.[45]

[146] The jurisdiction is to be exercised sparingly and only in a clear case where the Court is satisfied it has the requisite material.[46] The fact that an application may raise difficult questions of law and require extensive argument does not exclude jurisdiction.[47]

[147] The principles for determining a summary judgment application are:

(a) The onus is on the defendant to show that none of the causes of action can succeed.[48]

(b) The court will not hesitate to decide questions of law where appropriate and should be prepared to determine, after adequate argument, even difficult legal questions.[49]

(c) Summary judgment will not be appropriate where there are genuine conflicts of fact and, in particular, credibility issues that cannot be resolved on the basis of affidavit evidence.[50]

(d) In determining whether there is a genuine and relevant conflict of facts, the Court is entitled to reject plainly contrived factual conflicts. It is not required to accept uncritically every statement put before it, however

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43 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) at 267; and *Wilkins v District Court at Auckland* (1997) 11 PRNZ 232 at 238.

44 *Takaro Properties Ltd v Rowling* [1978] 2 NZLR 314 (CA) at 317 per Richmond P.

45 *M v Attorney-General* HC Wellington CP 70/00, 25 October 2002 at [21]; *Worldwide NZ LLC v QPAM Ltd* HC Auckland CIV-2006-404-1827, 1 December 2006 at [87].

46 *Attorney-General v Prince*, above n 43, at 267.

47 At 267.

48 High Court Rules 2016, r 12.2(2).

49 *Zurich Australian Insurance Ltd v Cognition Education Ltd* [2014] NZSC 188, [2015] 1 NZLR 383 at [37], citing *International Ore & Fertilizer Corp v East Coast Fertiliser Co Ltd* [1987] 1 NZLR 9 (CA) at 16 per Cooke P.

50 *Sandman v McKay* [2019] NZSC 41, [2019] 1 NZLR 519 at [97].

equivocal, imprecise, inconsistent with other statements or inherently improbable.[51]

(e) In weighing these matters, the Court may take a robust approach and enter judgment even where there may be differences on certain factual matters if the lack of a tenable defence (or, as here, claim) is plain on the material before the court.[52]

(f) The court retains a discretion to refuse summary judgment but does so in the context of the general purpose of the High Court Rules, which provide for the just, speedy and inexpensive determination of proceedings.[53]

(g) Although tortious claims are usually unsuitable for disposal on a defendant's application for summary judgment, they may be dismissed where the essential facts are not in dispute and they do not support the imposition of a duty.[54]

Claim as to the tort of abuse of process

[148] As to the tort of abuse of process, it was contended for Waterfall Park that the essence of the tort is the abuse of civil proceedings for a predominant purpose other than that for which they were designed.[55] It was also submitted that the tort is available against a defendant to court proceedings where the defendant uses the process (even with an honest belief in his or her defence) for the predominant purpose of achieving an object outside the proper scope of the litigation. Waterfall Park submitted it was therefore no answer to Waterfall Park's claims that the Hadleys did not themselves commence the PDP, subdivision or tree plantings appeals.

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51 *Minister for Canterbury Earthquake Recovery v Ace Developments Ltd* [2015] NZHC 1027, [2015] NZAR 964 at [15](e), citing *Attorney-General v Rakiura Holdings Ltd* (1986) 1 PRNZ 12 (HC).

52 *Beech Cover Properties Ltd v Bernard Property Investments Ltd* (2010) 12 NZCPR 626 (HC) at [12](g).

53 At [12](i).

54 *Martel v Auckland City* [2012] NZHC 241 at [68].

55 *Crawford Adjustors (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd* [2013] UKPC 17, [2014] AC 866 at [149] per Lord Sumption; and *Williams v Spautz* [1992] HCA 34, (1992) 107 ALR 635 at 653 per Brennan J

[149] Counsel for the Hadleys referred to statements from the Privy Council in *Crawford Adjustors (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd* that the tort was on the verge of an extinction,[56] and also comments from the English Court of Appeal in *Land Securities Plc v Fladgate Fielder*, the tort was limited to circumstances of compulsion by arrest, imprisonment or other forms of duress.[57] In that case, Etherton LJ said, even if the tort could be committed outside such circumstances:[58]

> … there is no reasonably arguable basis for extending the tort beyond the other particular heads of damage which must exist for invocation of the tort of malicious prosecution. ... It makes no sense severely to limit the cause of action for malicious prosecution, an essential ingredient of which is that the proceedings had been brought without reasonable or probable cause, to three particular heads of damage, but to extend to all cases of economic loss a tort of abuse of process which can apply even where the alleged "abuser" had a good cause of action. The dangers of parallel litigation and—echoing the concerns of Slade LJ in the *Metall* case [1990] 1 QB 301 deterring the pursuit of honest claims are obvious. The wider descriptions of the tort of abuse of process in cases prior to *Goldsmith v Sperrings Ltd* must be reappraised in the light of the decision of the House of Lords in that case and the policy considerations underlying it.

[150] Mr Colson submitted that English, Canadian, New Zealand and Australian courts had all recently recognised that the tort remains a valid cause of action.[59]

[151] It is not necessary for me to determine whether the tort of abuse of process should be limited to the circumstances suggested and in the manner indicated by the English Court of Appeal in *Land Securities Plc v Fladgate Fielder*.

[152] The ingredients of the tort of abuse of process are:[60]

(a) the use of illegal process;

(b) an order to accomplish an ulterior process;

(c) which is the predominant purpose; and

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56 At [149] per Lord Sumption.

57 *Land Securities Plc v Fladgate Fielder* [2009] EWCA Civ 1402, [2010] Ch 467 at [68] per Etherton LJ.

58 At [68].

59 *Kings Security Systems Ltd v King* [2021] EWHC 325 (Ch); *Oei v Yan* [2020] BCCA 214, [2020] BCJ No 1174; *Martin v Norton Rose Fulbright Australia* [2021] FCAFC 216, (2021) 395 ALR 413; and *Paterson v Lepionka & Co Investments Ltd* [2020] NZHC 2184.

60 *Paterson v Lepionka & Co Investments Ltd*, above n 59, at [86]; and *Deliu v Hong* [2013] NZHC 735 at [50].

(d) which causes damage to the plaintiff.

[153] The tort is concerned with the improper use of the court's processes to affect an object outside their legitimate scope.[61]

[154] It is not necessary for a party making a claim based on the tort of abuse of process to establish that the defendant's involvement in court proceedings had no merit or for the defendant to have been unsuccessful in seeking a judgment in those proceedings.[62] Nevertheless, the fact that the QLDC and the Environment Court saw merit in the Hadleys' submissions and tree planting application makes it more likely that the Hadleys' involvement in the various proceedings was for the purpose of obtaining relief available through proceedings.

[155] The steps the Hadleys have taken in court proceedings are steps the Hadleys were entitled to take as a neighbour with genuine concerns as to Waterfall Park's attempts to obtain a rezoning of the Waterfall Park property and its planting of trees in a manner that did not comply with the relevant QLDC District Plan.

[156] To succeed with its claim as to the tort of abuse of process, Waterfall Park has to be able to put in evidence the Hadleys' requirement for Waterfall Park to pay them a facilitation fee as part of a settlement of all proceedings they were involved in. The necessity for that evidence was apparent from the pleadings in the original statement of claim, was confirmed by the proposed pleadings in the draft amended statement of claim and acknowledged in the interlocutory application for orders disallowing privilege. In his affidavit, Mr Meehan said Waterfall Park was seeking the lifting of privilege so it could succeed in the claim it had made.

[157] I have ruled that this evidence is privileged, so is not available to Waterfall Park. On that basis, Waterfall Park's claim against the Hadleys for abuse of process has no prospect of success.

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61 *Paterson v Lepionka & Co Investments Ltd*, above n 59, at [87]; *Robinson v Whangarei Heads Enterprises Ltd* [2015] NZHC 1147, [2015] 3 NZLR 734, at [30]; and *Williams v Spautz*, above n 55, at 645.

62 *Paterson v Lepionka & Co Investments Ltd*, above n 59, at [87]; *Robinson v Whangarei Heads Enterprises Ltd*, above n 61, at [30].

[158] Even if evidence as to the Hadleys' requirement for a facilitation fee was admissible, it would not be enough to establish that the Hadleys' engagement in the various proceedings over the Proposed District Plan and the tree planting was for the purpose of obtaining a financial payment from Waterfall Park. At the time they sought such a payment, it was in conjunction with the Hadleys and others having a continuing concern as to the nature and scope of Waterfall Park's proposed development and seeking to limit the way that development could detract from the visual amenity values and landscape associated with the existing rural zoning for the Ayrburn land.

[159] If Waterfall Park was able to establish that the Hadleys' involvement in various proceedings had been, in part, to obtain some financial recompense in return for their consenting to, or at least not opposing, what Waterfall Park was seeking, that would not be enough to establish that they would be liable to Waterfall Park in tort for abuse of process.

[160] I accept the submission for the Hadleys that the pursuit, via negotiation, of financial recompense not available within the scope of the proceeding is not an ulterior or collateral purpose as contemplated with the tort of abuse of process. The tort is not concerned with every advantage sought or obtained by a litigant which is beyond the Court's power to grant.

[161] I accept the submission that, to succeed, Waterfall Park would have to establish that the Hadleys were continuing to pursue an ulterior purpose unrelated to the subject matter of the litigation and, but for that ulterior purpose, they would not have commenced their participation in the various proceedings complained of or maintained their continuing involvement.[63]

[162] In *Robinson v Whangarei Heads Enterprises Ltd*, Gilbert J noted, with approval, the judgment of the majority of the High Court of Australia in *Williams v Spautz* where he said "[t]he majority noted that proceedings might properly be pursued

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63 *Ullrich v Ullrich* (1996) 10 PRNZ 253 (HC) at 258; *Goldsmith v Sperrings Ltd* [1977] 1 WLR 478 (CA) at 503; *Crawford Adjusters (Cayman) Ltd v Sagicor General Insurance (Cayman) Ltd*, above n 55, at [153] per Lord Sumption; and *Land Securities Plc v Fladgate Fielder*, above n 57, at [73] per Etherton LJ.

if the immediate object of them is desired, albeit it as a step towards achieving some other end".[64]

[163] In *Land Securities Plc v Fladgate Fielder*, Etherton LJ extensively considered a number of judgments dealing with the tort of abuse of process. He said:[65]

> What, in my judgment, emerges clearly from the authorities is that the tort is not committed by a person who institutes proceedings with a genuine interest in, and an intention to secure, their successful outcome, even if the claimant's motives are mixed and they hope that they may also achieve an objective not itself within the scope of the proceedings.

[164] There is no evidence to indicate the Hadleys' involvement in the relevant civil proceedings was not for the purpose of maintaining and/or protecting the rural zoning of the Ayrburn land, an outcome and relief which was within the scope of the proceedings to which they were a party.

[165] I have also not been satisfied that Waterfall Park has a seriously arguable case that, even if there had been an abuse of process, it has suffered a loss through a diminution in the value of the Ayrburn land. To have any prospect of succeeding with that aspect of its claim, Waterfall Park would have to establish that, but for the Hadleys' submissions in opposition to their proposed development, the zoning of the Ayrburn land would have been changed to permit Waterfall Park's various development plans. The evidence before me does not satisfy me that Waterfall Park has even a seriously arguable case in that regard.

[166] Waterfall Park did not either plead or provide any evidence as to the precise basis on which it says it would have been able to obtain the consents or plan changes required for it to be able to develop the Ayrburn land so as to significantly increase its value.

[167] As detailed earlier in this judgment, there were other parties in the mediation over the PDP appeal who disagreed with Waterfall Park on material matters with which Waterfall Park needed to reach agreement. Further, as noted by Judge Hassan in the

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64 *Robinson v Whangarei Heads Enterprises Ltd*, above n 61, at [40], citing *Williams v Spautz*, above n 55, at 646.

65 *Land Securities Plc v Fladgate Fielder*, above n 57, at [73] per Etherton LJ.

tree planting proceedings judgment, the Ayrburn land is currently located in an area described as having a low absorption capacity for additional development.[66]

[168] In the Environment Court decision for the tree planting proceedings, Judge Hassan referred to a submission from Waterfall Park's counsel, Mr Goldsmith, that the Ayrburn land:[67]

> … presently has very limited capacity to be developed for residential activity. Unless it is rezoned as [Waterfall Park] seeks, its future potential would be largely confined to farming usage." He points out that Waterfall Park "… faces significant opposition to its rezoning submission, including from QLDC and Otago Regional Council and a number of other submitters. Hence it is far from certain that [Waterfall Park] would realise its rezoning ambitions.

[169] For the above reasons, both separately and cumulatively, the Hadleys have established that Waterfall Park has no prospect of succeeding on its claim again them in tort for abuse of process.

Breach of alleged good faith obligations in mediation

[170] Waterfall Park's pleaded second cause of action was that the Hadleys, through their involvement in the various proceedings, were in breach of good faith and the obligation to cooperate in the mediation under the Environment Court's Practice Note as a result of which Waterfall Park says it suffered loss and damage through losing the opportunity to resolve the PDP appeal at mediation.

[171] The Hadleys submit there is no such recognised cause of action. They argue that, for the cause of action as pleaded to be available, Waterfall Park must establish that the Environment Court's Practice Note gives rise to enforceable duty against the Hadleys in respect of which damages can be awarded.

[172] I accept there is no recognised cause of action as asserted by Waterfall Park in its statement of claim. Obligations to cooperate or act in good faith may be express or implied terms in contract, for instance in insurance contracts.

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66 *Hadley v Waterfall Park Developments Ltd*, above n 19, at [44].
67 *Hadley v Waterfall Park Developments Ltd*, above n 19, at [36].

[173] Here, it is not pleaded that the Hadleys were, by contract, bound to negotiate in good faith with Waterfall Park in the Environment Court directed mediation.

[174] It was submitted for Waterfall Park that the binding protocols in the Environment Court's Practice Note impose an obligation on the parties to cooperate in good faith with the mediator and the other parties in attempting to settle the dispute and an obligation to actively and constructively assist the mediation process by genuinely participating in it. It was submitted that the nature of these obligations:

> … are in substance the same as contractual obligations that would apply under the customary mediation agreement that would have been put in place had this mediation occurred other than as an Environment Court ordered mediation.

[175] Mr Colson however acknowledged that this cause of action "to the extent it relies on deemed obligations accepted pursuant to the Environment Court's Practice Note rather than an express bilateral contract, is potentially novel".

[176] It was submitted for the Hadleys that, for this cause of action to lie, Waterfall Park must establish that the Environment Court's Practice Note gives rise to an enforceable duty against the Hadleys at the suit of the other party to the litigation, in respect of which damages can be awarded.

[177] It was submitted for the Hadleys that practice notes are the means by which a court controls its own processes. They are only guidelines and do not operate to give rise to a legitimate expectation that they will be followed, even against the court itself.[68]

[178] It was submitted the practice note is not even secondary legislation and therefore does not impose a statutory duty. Even if a practice note were to be treated as akin to legislation, the policy considerations which would count against the imposition of a statutory duty would count against the imposition of an obligation.

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[68] *Karori Golf Club v Wellington City Council* EnvC Wellington W24/2006, 24 March 2006 at [24]; and *Canterbury Regional Council v Waimakariri District Council* [2004] NZRMA 289 (HC) at [21].

[179] There are compelling policy reasons against my holding that, through a novel cause of action, parties could be liable in damages for a breach of a duty to negotiate in good faith in a mediation. Courts, including the Environment Court, recognise the way in which parties and the interests of justice generally can benefit from the parties being given the opportunity to resolve a dispute by agreement, potentially through an outcome which would not be available if the dispute had to be resolved through a judgment from the Court, with all the associated costs and risks. Parties would be seriously deterred from participating in such a process if they had to be advised that the law would allow another party to such a mediation to sue for damages on the basis another party had, in rejecting a proposal, been in breach of an obligation to negotiate in good faith.

[180] I can however deal with the pleaded second cause of action without deciding whether the cause of action is available.

[181] For Waterfall Park to succeed with such a claim, it would have to be able to present relevant evidence as to what happened at the Environment Court mediation. In accordance with the Environment Court's Practice Note, everything that occurred at the mediation was confidential and privileged.[69] I have upheld that privilege. Waterfall Park thus has no evidence available to support this cause of action.

[182] Even if such privilege had been disallowed, I would have found there was no evidence available to Waterfall Park to support this pleaded claim. No agreement was reached at the mediation as to a matter crucial to the participating parties and Waterfall Park had said it would not move from the position it had put forward. Other parties would not move from the position they had arrived at. The parties had demonstrated to the mediator that they were unable to reach agreement. It was the mediator who then ended the mediation. There was no evidence that the Hadleys or other parties who had supported the Hadleys' position failed to participate in the mediation in good faith.

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69 Environment Court of New Zealand Practice Note 2014, appendix 2 cl 8.

The Hadleys' application to strike out Waterfall Park's statement of claim as an abuse of process

[183] The Hadleys also asked for the Court to strike out Waterfall Park's statement of claim on the basis it was an abuse of process. That application was made on the basis the subject of Waterfall Park's claim is or was already at issue in other proceedings, being:

(a) the encumbrance arbitration (initiated by Waterfall Park);

(b) the Tree Planting appeal (brought by Waterfall Park);

(c) the PDP appeal (initiated by Waterfall Park); and

(d) the subdivision appeal (initiated by Waterfall Park).

[184] The Hadleys submitted Waterfall Park's claims in these civil proceedings are an abuse of process because:

(a) the relief sought, being damages, was also being sought in the encumbrance arbitration;

(b) the claims are a collateral attack on the decision of the Environment Court in the tree planting proceedings; and

(c) the claims' predominant purpose was and is to coerce the Hadleys into withdrawing their opposition to Waterfall Park's PDP appeal, subdivision appeal, tree proceedings appeal and Waterfall Park's claim in the encumbrance arbitration.

[185] Waterfall Park opposed the application for strike out for abuse of process. It argued it has legitimate claims for loss caused by the Hadleys and that its claims do not seek to usurp other courts' decision-making. Waterfall Park relies on the content of the communications subject to its application to disallow privilege to prove its claims.

[186] Through Mr Asher's arbitration award, Waterfall Park must accept that the Hadleys' submission on the Proposed District Plan and their actions in commencing

the tree planting proceedings were not in breach of the encumbrance over the Hadleys' land. It is only as a result of the Hadleys' stipulation for a facilitation fee in privileged settlement negotiations that Waterfall Park contends it would be an abuse of proceedings for the Hadleys to remain as a party opposing the PDP and subdivision appeals in the Environment Court.

[187] With the breakdown in settlement negotiations, Waterfall Park is free to pursue in the Environment Court the relief it seeks on its PDP and subdivision appeals. There has been nothing stopping Waterfall Park from seeking whatever relief the Environment Court considers appropriate on the PDP and subdivision appeals since settlement negotiations ended in May 2021.

[188] On my assessment of all the evidence I have referred to, I find that Waterfall Park's claim against the Hadleys, filed in August 2021, both as to the causes of action pleaded and the claim for damages of $7.26 million and $7.1 million, was to deter the Hadleys from exercising the rights they had to be heard in the PDP and subdivision appeal proceedings before the Environment Court and on the tree planting appeal to the High Court.

[189] To adopt the phrase used by Etherton LJ in *Land Securities Plc v Fladgate Fielder*, the civil proceedings brought by Waterfall Park are an instance of parallel litigation to deter the Hadleys from honestly exercising the rights they have as parties genuinely interested in the issues which are before the Court in other proceedings to which they effectively are respondents.[70]

[190] I consider the civil proceedings do involve the misuse of the Court's process. As Moore-Bick LJ said in *Land Securities Plc v Fladgate Fielder*, "in general, people should be free to take action to vindicate their rights without facing the threat of collateral proceedings".[71] In *Williams v Spautz*, the majority of the Australian High Court adopted, as a correct statement of principle, Lord Evershed MR's statement in judgment for the English Court of Appeal in *Re Majory*:[72]

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70 *Land Securities Plc v Fladgate Fielder*, above n 57, at [68].
71 At [68].
72 *Re Majory* [1955] Ch 600 (CA) at 623-624, as cited in *Williams v Spautz*, above n 55, at 648.

> … that court proceedings may not be used or threatened for the purpose of obtaining for the person so using or threatening them some collateral advantage to himself, and not for the purpose for which such proceedings are properly designed and exist; and a party so using or threatening proceedings will be liable to be held guilty of abusing the process of the court and therefore disqualified from invoking the powers of the court by proceedings he has abused.

[191] As stated by the authors of *Todd on Torts*, the general principles upon which a court may act to stay a proceeding for abuse of process were explained by Lord Diplock in *Hunter v Chief Constable of the West Midlands Police*:[73]

> [This case concerns] the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people.

[192] On my consideration of all the evidence put before me, I am satisfied that Waterfall Park has brought these civil proceedings not to seek damages for a loss they can seriously argue the Hadleys are liable. I am satisfied they brought the claim to impose on the Hadleys the burden and costs of having to defend a claim for damages in excess of $7 million. I am satisfied Waterfall Park did that to deter the Hadleys from continuing to oppose Waterfall Park's attempt, through their appeals, to obtain relief from the Environment Court which would allow Waterfall Park to develop the Ayrburn land in the way it wants to. I am satisfied that is Waterfall Park's ulterior and predominant purpose of the civil proceedings.

[193] On that further ground, the Hadleys are entitled to an order striking out Waterfall Park's statement of claim.

[194] Had I not made such orders striking out Waterfall Park's claim, I would have held that the Hadleys were entitled to summary judgment against Waterfall Park. The Hadleys have established that Waterfall Park's claims have no prospect of success.

[195] I have made those determinations based on evidence which has not been in dispute and as to issues which did not require determination at trial.

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[73] *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 536, as cited in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters, Wellington, 2019) at 1068.

Costs

[196] In submissions for the Hadleys, Mr Casey said they would be seeking indemnity costs. Unless agreement is reached over those, counsel for the Hadleys is to file a memorandum seeking costs by 30 September 2022. Waterfall Park is to file its response three weeks after receiving the Hadleys' memorandum. The Hadleys may file a memorandum in reply within two weeks of receiving Waterfall Park's memorandum. The memoranda, exclusive of any necessary annexures, are to be no longer than seven pages.

[197] If required, I will determine costs on the papers.

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