

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

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

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

LEGAL SUBMISSION FOR DAVID JOHN KIDD

Dated 17 December 2025

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MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 David John Kidd is an immediately adjoining neighbour to the proposed Ayrburn Screen Hub, at the closest, only some 40m distant from the nearest building planned within the Project. These submissions are filed on behalf of Mr Kidd in response to the Expert Panel's invitation in Minute 4 issued under section 53 of the Fast-Track Approvals Act 2024 (FTAA) to comment on the substantive application submitted by Waterfall Park Developments Limited (the Applicant) for the Ayrburn Screen Hub project (the Project).
- 1.2 Mr Kidd has filed a comprehensive personal statement, which has been lodged with these submissions, and the evidence referred to below.
- 1.3 These submissions do not address the lengthy and convoluted consenting history of land upon which the Project is to be situated. That history is canvassed in the legal submissions authored by Mr Peirce and Mr Page (Galloway Cook Allan Lawyers) on behalf of Mr Andersson, which have been provided to us in advance of finalising these submissions and upon which content we rely to 'set the scene'.
- 1.4 These submissions are structured as follows:
 - (a) Executive Summary
 - (b) Evidence in support of comments
 - (c) Legal and contextual environment
 - (d) Extent and certainty of regional and/or national benefits
 - (e) The proportionality test – whether adverse impacts are sufficiently significant to be out of proportion to the Project's regional and/or national benefits
 - (f) Proposed conditions if consent is granted

(g) Other matters

(h) Conclusion.

1.5 Mr Kidd's position is that the Project is not regionally significant and should not progress any further in the fast-track consenting process.

2. EXECUTIVE SUMMARY

2.1 These submissions address two fundamental issues central to the decision-making criteria under the FTAA:

- (a) the extent and certainty of the Project's regional and/or national benefits; and
- (b) the proportionality test – whether adverse impacts are sufficiently significant to be out of proportion to the Project's regional and/or national benefits.

2.2 The key points pursued in submissions are set out below.

Regional and/or national benefits:

- (a) a project's importance is relative to the place in question, so the scale of the Project must be assessed in its local context;
- (b) when assessing the importance of a development project's effects, the focus should be on the long-term effects of its operation, rather than the one-off effects of its construction;
- (c) the expert economic evidence raises numerous reasons as to why the operational benefits of the Project are hugely inflated, amount to only 0.25% of regional GDP, and therefore is not regionally significant;
- (d) Mr Sean Kelly's statement (as a senior film technician with over 30 years' experience) shows studios are generally city-based because the technician/crew base is in cities and relocating productions is costly; Queenstown is

predominantly used for exterior shooting and, where significant interior/studio work is required, productions generally relocate to a city studio (usually Wellington or Auckland);

- (e) the accommodation proposed as part of the Project is essentially a hotel, not dedicated workers' accommodation, and the economic benefits of the accommodation is grossly overstated;
- (f) there is a real risk that accommodation could be built and operated as a hotel without the studio components being completed – this outcome would not be regionally significant nor deliver regionally significant benefits;

Adverse impacts:

- (g) urban development creating non-environmental impacts – Mr Vivian's core planning characterisation is that the Project "falls squarely"¹ within the Proposed District Plan (**PDP**) definition of 'Urban Development' meaning that there is a strategic/spatial planning harm or adverse impact specific to the Project site location;
- (h) growth management impacts – the Project site is outside the Urban Growth Boundary (**UGB**) and as such the Project risks impacting the District's growth management outcomes and negatively impacting public interest considerations and greater strategic outcomes;
- (i) scale of earthworks – even if sediment/dust can be managed, the scale of earthworks will result in permanent landform modification and intensification from a Project of this scale;
- (j) deliverability and enforceability issues – there are concerns that proposed conditions and management plans will not be effective in practice, leaving neighbours to bear the burden of ongoing non-compliance;

¹ Evidence of C Vivian at [12].

- (k) prolonged construction disruption and loss of amenity – residents have already endured years of construction noise and face the prospect of further extended disruption that will impact on their ability to live normally;
- (l) psychosocial and wellbeing impacts – the Project has caused stress, anxiety, sleep deprivation, and loss of quiet enjoyment for neighbours (all tangible harms that go beyond traditional environmental effects);
- (m) privacy and security impacts – increased public interface (such as a cycle trail along property boundaries) has reduced privacy and changed how residents use their outdoor spaces, impacting their sense of security and autonomy;
- (n) community character, public experience, and loss of openness – the Project threatens the rural character, local identity, and public recreational experience of the area, with concerns about loss of public landscape values; and
- (o) benefit-credibility issues – there is a real risk that the accommodation component of the Project could proceed without the studio, undermining the claimed benefits and any uncertain benefits make the adverse impacts even more disproportionate.

2.3 Overall, against the limited and largely transferable benefits of the Project must be weighed the substantial and permanent adverse impacts and the real risk that a large hotel-style accommodation complex is delivered while the screen-hub components are under-delivered or under-utilised. On this basis the Project should not proceed further in the fast-track process due to insufficient regional benefit and disproportionate adverse impacts

3. EVIDENCE IN SUPPORT

3.1 Mr Kidd's comments are supported by:

- (a) Expert economic evidence from Ms Natalie Hampson, an experienced economic consultant with particular expertise in the Queenstown Lakes and

prior experience with fast-track and screen sector projects. She has been jointly instructed by Mr Kidd and Mr Jan Andersson.

- (b) Expert planning evidence from Mr Carey Vivian, a senior and experienced planner, again with particular expertise in the Queenstown Lakes and the consenting history of the Project site. He has been jointly instructed by Mr Kidd, Mr Andersson, and Mr James and Mrs Rebecca Hadley.
- (c) Mr Sean Kelly, a senior film technician, with over 30 years' experience in the local film industry. Mr Kelly's statement is provided in support of comments from both Mr Kidd and Mr Geoff Van Deursen (also a neighbour to the Project).

4. LEGAL AND CONTEXTUAL ENVIRONMENT

Legal context

- 4.1 This section provides a brief overview of the FTAA decision-making framework. A two-stage process is established by the FTAA: preliminary gateway decisions to determine whether a project qualifies for the fast-track approvals process, followed by a thorough assessment of a Substantive Application and a decision to grant or decline the approvals sought.

Stage one – preliminary gateway decisions

- 4.2 A decision on a referral application is a preliminary gateway decision. The expert Panel appointed to assess and decide the substantive application is not explicitly bound by the Minister's initial finding in the referral gateway decision that a project has significant regional or national benefits. The gateway decision is based on a limited review of the initial material provided by the Applicant. The expert Panel must independently assess the substantive application and make its own decision.
- 4.3 Section 81(4) of the FTAA requires the Panel to consider the extent of the project's regional or national benefits when taking the purpose of the FTAA into account under any of the clauses referred to in subsection 81(3). The project's regional or national

benefits are also relevant to any decision by a Panel to decline an approval under section 85(3).

4.4 Under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA), several expert consenting Panels found that they were not bound by Ministerial determinations that projects would help to achieve the purpose of the FTCA and were required to make their own independent assessments of applications against the statutory purpose (section 4, FTCA).²

4.5 At this first stage in the process, there is no decision to grant or decline a substantive application.

Stage two – assessment and decision by the expert Panel

4.6 Section 81(1) of the FTAA requires the Panel to decide whether to:

- (a) grant the approval and set any conditions to be imposed on the approval; or
- (b) decline the approval.

4.7 For the purpose of making the decision, the Panel may decline the approval only in accordance with section 85, which requires a look at whether any adverse impacts in relation to the approval sought exist.

4.8 The FTAA's purpose is to facilitate infrastructure and development projects that have significant regional or national benefits. Panels must keep that purpose front of mind.

4.9 Under s 81, when the relevant decision provisions direct the Panel to take account of the Act's purpose, the Panel must consider the extent of the project's regional or national benefits, and for staged projects may look at whole-of-project benefits "having regard to the likelihood" that later stages will be completed. That wording expressly

² See the FTCA decisions on the following projects: Tasman Aquaculture Trials, at [45], Kohimarama Retirement Village, at [32], Hananui Aquaculture Project, at [53]; and under the FTAA the draft decision in Delmore at [14] and [501]

invites a likelihood (not certainty) assessment, and allows benefits to be discounted where later stages are uncertain.

4.10 Under section 85, after undertaking that exercise and considering feasible conditions and modifications, the Panel may decline an approval if it considers that one or more adverse impacts are “sufficiently significant to be out of proportion” to the regional or national benefits.

4.11 In practical terms, the Panel is entitled to:

- (a) treat benefits that depend on optimistic assumptions, multiple contingencies or untested market recovery as speculative and to be given reduced weight; and
- (b) ask, once those benefits are discounted to a realistic level, whether the adverse effects (including on neighbours) are out of proportion – at which point decline remains lawful notwithstanding the pro-development purpose of the Act.

Contextual environment

4.12 Ayrburn is situated within a distinctly rural environment near Lake Hayes, Queenstown. The area is characterised by open landscapes, low-density residential living, and a strong sense of local identity tied to its rural setting as borne out in the various neighbouring comments lodged in opposition to the Project. This context is central to the assessment of the Project, given the rural character and amenity values are highly valued by residents and underpin both the community’s lifestyle and the planning framework for the region. Any changes or intensification in this environment must be carefully considered in light of these unique rural qualities.

5. EXTENT AND CERTAINTY OF REGIONAL AND NATIONAL BENEFITS

5.1 As noted in section 4 above, section 81(4) of the FTAA requires the Panel to consider the extent of the Project’s regional or national benefits when taking the purpose of the FTAA into account under any of the clauses referred to in subsection 81(3). The Project’s regional or national benefits are also relevant to any decision by a Panel to

decline an approval under section 85(3). The Panel is entitled to discount benefits that are speculative, contingent, or dependent on optimistic assumptions.³

5.2 This section provides an assessment of the Project’s regional benefits.⁴ The Applicant relies heavily on asserted “significant regional and national economic benefits” to justify the Project under the FTAA. These claims rest primarily on the Economic Impact Assessment by Property Economics and supporting film industry material.

5.3 In summary, the regional significance assessment covers:

(a) project scale;

(b) construction-phase benefits are not enough to satisfy the FTAA test; and

(c) accommodation component – hotel versus workers’ accommodation, conditions, staging and risk of partial delivery.

5.4 Each of these topics is discussed separately below.

Project scale

5.5 To assess “regional significance” in the context of the FTAA, one must first look at the purpose. Section 3 states:

*The purpose of this Act is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.*⁵

5.6 Numerous expert Panels have already commented on the meaning of “significant regional” benefits. In the *Maitahi Village* ‘amended decision report and conditions of consent’ report of 16 October 2025, the expert Panel noted that “[t]he question of

³ See FTAA Port of Auckland decision at [282] to [294].

⁴ An assessment as to the national benefits of the Project has not been undertaken for the purpose of these submissions because the expert economic evidence is aimed at demonstrating that the Project only has some regional significance, not national significance.

⁵ Section 3, FTAA.

whether a project is indeed one with significant regional or national benefits remains an intensely factual determination turning on the particular circumstances of the application”.⁶ The Panel looked at the definition of regional significance in the context of a region that is suffering from increasing housing affordability. In that case, the substantive application, if approved (which it was), would be regionally significant because it contributed to growth within the Nelson region.⁷

- 5.7 In the *Waihi North* draft decision and conditions (released on 25 November 2025), the expert Panel commented:

“Significant” is a word of indeterminate meaning. It can, for instance, be used in the sense of “game-changing”. But it can also have meanings along the lines of “worthy of note”.⁸

- 5.8 On the topic of scale, the Panel determined that 442 additional jobs for the Hauraki District was a significant regional benefit as the employment contribution represented a substantial proportion of employment in the Hauraki District (in excess of 7 per cent of the current number of jobs).⁹ The Panel said:

In the context of “deliver significant economic benefits” and “development of natural resources including mining”, it is not particularly likely that any one project will produce game-changing effects, certainly across the country as a whole. The same can be said of any one project to “increase the supply of housing”. Indeed, in a large city, even a substantial housing project is unlikely to make a material change to the supply of housing. All of this supports the view that “significance” is not to be determined by reference to whether implementation of the project will appreciably change national or “regional” gross domestic product or the annual tax revenue of the Government. Rather it is an indication of scale.¹⁰

⁶ *Maitahi Village*, at [515].

⁷ *Ibid*, at [521].

⁸ *Waihi North*, at [90].

⁹ *Ibid*, at [94].

¹⁰ *Ibid*, at [91].

(underlining added)

5.9 The decision shows that “significance” is not a fixed dollar hurdle to exceed but rather depends on the regional context. The scale of the project should be put relative to the size of the region to determine if it is “significant” in the context in question. In the *Waihi North* example, a 7% shift in employment numbers was seen to be a significant regional benefit.

5.10 Looking at ‘scale’ in the context of the Project, Ms Hampson analyses the enduring long-term operational activities, as well as the one-off construction impacts that only occur during the period the studio is constructed. With regards to the long-term operational activities, she observes:

The operational impact of the Project is estimated by Property Economics as a cumulative \$462 (NPV) of regional economic activity “generated from the ongoing operation” of the Project over a 10 year period. This is an annual average impact (in NPV terms) of \$46m sustained for the 10 years assessed. To put the scale of this annual average increase in economic activity into perspective today, this equates to a 0.25% increase in regional GDP.¹¹

(underlining added)

5.11 Notably, a 0.25% increase in regional GDP is an inadequate contribution to the Queenstown Lakes District (QLD) economy when compared with the 7% employment contribution in the *Waihi North* decision, or simply other approved fast-track projects.¹² As explained later in these submissions, Ms Hampson suggests that these operational effects are overstated and likely to be much lower than claimed – certainly not of regional significance.

¹¹ Evidence of N Hampson at [49].

¹² See FTAA Port of Auckland decision at [282] to [294].

5.12 With regards to one-off construction effects of the Project, Ms Hampson opines:

Overall Property Economics estimate \$258m (NPV of direct, indirect and induced regional economic activity (output) generated from the capex construction of the Project. This is an annual average impact (in NPV terms) of \$86m sustained for 3 years. To put the scale of this annual average increase in economic activity into perspective today, this equates to a 0.46% increase in regional GDP.¹³

5.13 While this shows that there are some regional benefits during the construction phase of the Project, the overarching point of development projects is not the one-off transient effect of constructing the buildings but rather the long-term activity that the relevant project enables. Capex is a one-off effect from construction alone – they stimulate for three years and then go away – operational effects are what there is on an ongoing basis and these are the long-term effects of a development project. This is relevant to the assessment of whether the Project is regionally significant because Ms Hampson has determined that the construction phase does create regional benefits but the long-term operational benefits of the Project do not. This point is further expanded on below.

Construction-phase benefits are not enough to satisfy the FTAA test

5.14 Mr Kidd accepts, in line with Ms Hampson’s evidence, that the construction phase of the Project, if delivered in full, would generate regionally significant economic activity over an indicative three-year period. That is a relevant benefit for the purposes of the FTAA.

5.15 However, it is submitted that construction-phase multipliers alone cannot be sufficient to satisfy the statutory requirement that the Project “would have significant regional or national benefits”. There are four key reasons for this outlined below.

¹³ Evidence of N Hampson at [49].

The text and scheme of the FTAA focus on projects delivering ongoing benefits

- 5.16 First, the FTAA’s purpose is expressed in terms of facilitating the delivery of *infrastructure and development projects with significant regional or national benefits*. The same formulation is repeated in the Ministerial referral criterion in s 22(1)(a), which requires that the project “would have” such benefits, and in guidance describing the regime as applying to projects that “will deliver significant national or regional benefits”.
- 5.17 That language is forward-looking and functional. It focuses on what the Project will do – what it will *deliver* or *enable* – rather than on the one-off boost from building it. This is reinforced by the list of “benefit” indicators in s 22(2), which includes whether a project:
- (a) “will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure”; and
 - (b) “will deliver significant economic benefits”, support industries, enhance natural resource development, contribute to climate outcomes, or address environmental issues.
- 5.18 All of those criteria are inherently about the operation and ongoing contribution of the completed project, not simply the activity of pouring concrete or erecting buildings.
- 5.19 As a matter of statutory interpretation, it is difficult to reconcile that structure with an interpretation which under any large construction job automatically qualifies as having “significant regional or national benefits”, regardless of whether the completed project is likely to deliver enduring benefits of similar scale.

Panels are directed to look at the benefits of “the project”, not just the build

- 5.20 Secondly, under section 81(4) - (5) the Panel, when giving effect to the FTAA purpose, “must consider the extent of the project’s regional or national benefits”, and for staged

projects may consider whole-of-project benefits “having regard to the likelihood that any later stages of the project will be completed”.

5.21 This structure:

- (a) Treats “the project” as the relevant unit of analysis; and
- (b) Explicitly directs Panels to assess likelihood in relation to later stages – which only makes sense if Parliament was concerned with the delivery of the project’s intended functions and activities, not just the initial build.

5.22 If short-term construction spend were enough by itself, there would be no need for section 81(5)’s focus on later stages. A developer could satisfy the FTAA’s purpose simply by starting construction, regardless of whether the stages that actually deliver ongoing benefits (such as a functioning studio and screen-sector cluster) ever eventuate.

The section 85 proportionality test assumes enduring benefits are in play

5.23 Thirdly, section 85 allows the Panel to decline an approval where adverse impacts are “sufficiently significant to be out of proportion to the project’s regional or national benefits” after conditions and modifications are considered.

5.24 That proportionality exercise inevitably involves comparing like with like:

- (a) On the adverse effects side, the Panel is confronted with permanent changes to landscape, character and amenity and continuing effects on neighbours.
- (b) On the benefits side, it would be incoherent if a short-term, three-year construction stimulus could carry equal weight to those long-term adverse effects and thereby satisfy the Act’s “significant benefits” threshold.

5.25 It is submitted that the preferred and better reading is that construction multipliers are relevant but auxiliary – they can add weight, but the principal focus must be on whether the completed and operating project, over its life, delivers significant regional or national benefits commensurate with the scale of its adverse effects.

5.26 Against that statutory backdrop, Ms Hampson’s evidence is that:

- (a) The capex / construction phase of the Project would, if fully delivered, provide a regionally significant uplift in economic activity over roughly three years; but
- (b) The ongoing operational impacts, once realistic assumptions and discounting are applied, are positive but not significant at a regional level; and
- (c) The benefits modelled by Property Economics are not site-specific, and could be obtained from a comparable facility on an alternative, less sensitive site in the district.¹⁴

5.27 On Ms Hampson’s assessment, only the short-term construction phase crosses the “significant regional benefit” threshold, and the permanent, operation-phase benefits do not.

5.28 Ms Hampson candidly notes that “on this capex basis alone, the Project may satisfy the purpose of the Act”. That observation is properly understood as a narrow economic statement – that the scale of construction investment is large enough to register as “significant” in regional GDP terms for a brief period.

5.29 Mr Kidd says that the Panel’s legal task must be more demanding than that:

- (a) As noted, Parliament has framed the FTAA around projects that will deliver significant benefits, including new or enhanced infrastructure, housing and long-term economic outcomes. That language is not naturally satisfied by a three-year construction stimulus followed by an operation phase that Ms Hampson characterises as modest and not regionally significant.
- (b) If “capex alone” were enough, almost any large private development (luxury resorts, shopping centres, greenfield subdivisions) could claim eligibility for fast-track purely on construction multipliers, even where the long-term use delivers no particular regional or national benefit beyond ordinary commercial

¹⁴ Mr Vivian’s evidence gives other examples where the Project could be located within the UGB (page 39)

activity. That would cut across the Act's design, which targets infrastructure and development projects of particular regional or national importance, not simply any large spend.

- (c) A capex-only reading would also sit uneasily with section 85's proportionality test. The Panel must compare the full suite of adverse impacts over the life of the project with the realistic regional and national benefits once speculative elements are discounted. Where long-term benefits are modest and non-site-specific, it is open to the Panel to conclude that short-term construction gains cannot carry the FTAA purpose across the line.

5.30 Accordingly, Mr Kidd says the proper application of sections 3, 22, 81 and 85 is that:

- (a) Construction-phase benefits are relevant but not determinative; and
- (b) To satisfy the FTAA's emphasis on "projects with significant regional or national benefits", the completed and operating Project must itself deliver enduring benefits of a significant scale.

5.31 On Ms Hampson's evidence, the Project does not.

5.32 In addition to concerns surrounding benefits only at the construction phase, Ms Hampson also identifies that the operational modelling:

- (a) relies on a single, highly optimistic "if the Gods were on your side" production slate in year one, with no sensitivity testing of the more conservative scenarios recommended by the Applicant's own film expert;
- (b) ignores public data from Ministry of Business, Innovation and Employment (MBIE) and the New Zealand Film Commission showing a material downturn in international production demand, very high vacancy, and no forward bookings for existing studio facilities nationwide, and a fragile longer-term pipeline;

- (c) assumes that all modelled “area spend” is net additional to the regional economy, without recognising that productions would continue to spend locally on location-shoot activity in the absence of the project and without separating out activity that is merely relocated from other parts of New Zealand (or even from within Queenstown itself, due to the film studio that already exists in Frankton and has nearby hotels, apartments, supermarkets and the airport);
- (d) potentially double-counts accommodation and wellness centre expenditure already embedded in the “area spend” figures supplied by the film expert; and
- (e) applies a 6% discount rate and brings forward full operational benefits into a year when the Applicant’s own capex schedule shows significant construction still underway.

5.33 On that basis Ms Hampson opines that, while the construction phase has significant regional economic benefits, the ongoing operational benefits are likely to be much more modest than have been modelled and should not be characterised as regionally significant. As noted earlier, the construction significance is of diminished relevance to the assessment of whether the Project is regionally significant because it is only a temporary effect. Much more is needed to get the Project over the scoreline so far as meeting a regional benefit test.

Film industry practicality and likely operational demand

5.34 Mr Kelly provides practical, industry-based context that supports the conclusion that long-term operational benefits are materially uncertain. He explains that studios are typically located in cities because technicians primarily live in cities and moving a production out of a city is expensive (accommodation, per diems, vehicles and transport). He also notes that Queenstown is traditionally used for its outdoor environment and landscapes, with productions primarily there for exterior shooting; where a significant portion of a film requires interior shooting, productions generally relocate to a city studio (usually Wellington or Auckland).¹⁵

¹⁵ S Kelly at [15].

5.35 Mr Kelly further notes that, where an interior space is needed in Queenstown, it is usually addressed via one-off hire of an aircraft hangar, unused building, or empty industrial space converted temporarily for filming. He gives the example of a studio once built for the film *Vertical Limit* which was later dismantled and removed, illustrating the potential lack of long-term viability for a permanent studio facility in Queenstown.¹⁶

Accommodation component – hotel versus workers’ accommodation, conditions, staging and risk of partial delivery

5.36 The accommodation component of the Project is in substance a hotel, not “workers’ accommodation”, as concluded by Ms Hampson. Only about one-third of units are self-contained with kitchens. The balance are hotel-style rooms with tea/coffee facilities only, surrounded by typical hotel amenities (reception, bar, restaurant, spa/wellness centre). The application does not characterise this as workers’ accommodation and provides no assessment of tourism demand or benefits, even though tourism bookings are acknowledged to be important to the commercial viability of the complex. In Ms Hampson’s view, the Project is best understood as a film studio and a hotel linked by a supply agreement which prioritises production bookings, rather than an integrated piece of screen-sector infrastructure. Ms Hampson also notes that in the Applicant’s referral application the reception area was referred to as the ‘Hotel Reception Building’ but was changed in the substantive application to ‘Accommodation Reception’, indicating that the Applicant themselves have been confused throughout the fast-track process.¹⁷

5.37 Mr Kelly also addresses accommodation needs in professional film production. He notes that technicians generally need accommodation within town for access to food and basic amenities, that Queenstown has plenty of hotels that meet those requirements, and that accommodation is generally not shared (shared accommodation tends to occur only when filming in remote locations where lodging is limited).¹⁸ This practical evidence reinforces the conclusion that the accommodation component is not a

¹⁶ Ibid, at [31].

¹⁷ Evidence of N Hampson [12(f)].

¹⁸ S Kelly at [9(d)].

necessary screen-sector enablement element and should not be treated as a key driver of significant regional benefits.

5.38 Proposed condition 67 expressly allows the Project to be constructed in phases, with no guarantee that all stages will be delivered. Ms Hampson highlights the real risk that the accommodation can be fully constructed and operated as a hotel while the studio components are scaled back or not completed. Condition 68, which is said to protect accommodation for production use, in fact allows up to 85% of units to be occupied by tourists at short notice, applies to “studio bookings” only (thus excluding other screen-sector activity such as location-only productions using workshops and offices), and may be particularly ineffective during the early years when only a portion of the accommodation is built.

5.39 Ms Hampson therefore considers that the economic benefits claimed for the accommodation are overstated, and that any benefits of co-located accommodation could have been achieved by other, less hotel-like forms of workers’ accommodation and with fewer units. These overstated accommodation benefits further diminish the regional significance of the Project.

6. PROPORTIONALITY TEST – WHETHER ADVERSE IMPACTS ARE SUFFICIENTLY SIGNIFICANT TO BE OUT OF PROPORTION TO THE PROJECT’S REGIONAL BENEFITS

6.1 Section 85 gives scenarios where the Panel “must” (section 85(1)) and “may” (section 85(3)) decline approval.

6.2 The Panel may decline an approval where adverse impacts are sufficiently significant to be out of proportion to the Project’s regional or national benefits (section 85(3), FTAA).

6.3 Subsection (3) enables the Panel to decline an approval if, in complying with section 81(2), the Panel forms the view that:

- (a) there are one or more adverse impacts in relation to the approval sought; and

(b) those adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits that the Panel has considered under section 81(4), even after taking into account –

(i) any conditions that the Panel may set in relation to those adverse impacts; and

(ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.¹⁹

6.4 “Adverse impact” is defined in section 85(5) as meaning “any matter considered by the Panel in complying with section 81(2) that weighs against granting the approval”. The term is purposely broad and is not confined to the traditional catalogue of biophysical “adverse effects on the environment” often assessed under the Resource Management Act 1991 (RMA). It extends to broader planning and community impacts that can arise from approving an inappropriate form of development in an inappropriate location and it is submitted can capture social, community, implementation, risk and credibility issues. Mr Vivian’s evidence assists the Panel in identifying a category of adverse impacts that are strategic, spatial and community-based, and which are not adequately captured by a narrow focus on localised amenity effects.

6.5 The following adverse impacts of the Project have been identified from the evidence and comments presented and must therefore be weighted against the Project’s regional significance:

(a) urban development creating non-environmental impacts;

(b) growth management impacts;

(c) scale of earthworks;

¹⁹ Section 81(4), FTAA.

- (d) deliverability and enforceability issues;
- (e) construction duration, cumulative disruption, and loss of amenity resilience;
- (f) psychosocial and wellbeing impacts;
- (g) privacy and security impacts;
- (h) community character, public experience, and loss of openness; and
- (i) benefit-credibility issues.

Urban development creating non-environmental impacts

- 6.6 Mr Vivian’s core planning characterisation is that the Project “falls squarely” within the PDP definition of ‘Urban Development’ meaning that there is a strategic spatial planning adverse impact specific to the Project site location.
- 6.7 An adverse impact can include community character and settlement pattern impacts so introducing an urban-form complex into a rural-amenity/open-space setting changes how the area functions and is experienced, and pressures further urbanisation within the area.
- 6.8 As described by Mr Vivian, the local community character is “low density (1 ha residential) rural-residential development surrounded by open space”, whereas the proposal is a scale/density typical of greenfield subdivision (plus very large studio buildings).²⁰

Growth management impacts

- 6.9 The Project site is outside the Urban Growth Boundary (UGB) so the Project risks impacting the District’s growth management outcomes and negatively impacting public interest considerations regarding District growth management. The PDP policy

²⁰ Evidence of C Vivian at pages 9 & 10.

direction is that urban development is to be avoided outside the UGB. The Project is characteristic of “sporadic” urban development in a rural area which is more than merely “plan inconsistency”.²¹ It has adverse impacts on the integrity of the District’s strategic growth framework, loss of defensible urban edges, out-of-sequence development, and precedent effects that undermine spatial planning outcomes.

Permanent landform modification and scale of earthworks

- 6.10 Even if sediment/dust can be managed, there is still permanent landform modification and intensification from a project of this scale. Mr Vivian quotes the AEE’s earthworks numbers (c. 80,400m³ cut and 74,400m³ fill over ~91,000m², with cut/fill depths up to 9.5m/12m), and then concludes this does not “minimise inappropriate modification” – especially because much is within the Open Space area.²²

Deliverability and enforceability issues

- 6.11 It is submitted that “adverse impact” captures social, community, implementation, risk and credibility issues. The Panel can therefore weigh the real-world risk that purported controls will not in fact protect neighbours – particularly where experience shows that conditions and enforcement are ineffective, leaving residents to carry the compliance burden.
- 6.12 The comments in Mr Kidd’s personal statement and from various other neighbours in opposition to the Project raises a credible deliverability/enforcement concern. For instance, we are aware that the Shaws describe seeking QLDC enforcement assistance for late-night noise and finding it “very unsatisfactory”, including contractors being ineffective, and concluding that enforcement is not equipped to ensure compliance. They also emphasise the need for strict, binary conditions because “hopes, promises and best endeavours” in management plans do not protect the community.²³
- 6.13 Even if mitigations are proposed on paper, the likely *lived* outcome is ongoing non-compliance and neighbour burden. This is an adverse impact which is not purely

²¹ Evidence of C Vivian at pages 16 to 17.

²² Ibid, at pages 26-27.

²³ Comments of J and H Shaw at [58].

“environmental” but poses the question as to whether the Panel can responsibly rely on conditions to avoid disproportionate impacts.

Construction duration, cumulative disruption, and loss of amenity resilience

- 6.14 We are aware that Mr Van Deursen’s comments describe prolonged heavy machinery, drilling “extremely loud and excruciating”, ongoing earthworks that commenced before consent, and concern the application would “sentence us to another 36 months of disruption” after years already endured. This is not merely a standard “temporary construction effect” but rather a near-decade cumulative disruption which is an adverse impact in its own right because it materially affects people’s ability to live normally over an extended period.
- 6.15 The Shaws likewise describe five years of construction noise already experienced and the prospect of a further 36 months as “awful”, with machinery noise so prevalent it resembles a “quarry or landfill close by”.²⁴

Psychosocial and wellbeing impacts

- 6.16 Wellbeing harms can also be seen as an adverse impact despite not always being foregrounded in RMA “biophysical effects” assessments. The neighbours’ evidence again includes repeated references to stress, exhaustion and sleep impacts. The Shaws for example describe the submission process and ongoing disputes as “stressful, exhausting and draining.” They also describe noise disrupting their “quiet enjoyment” and, when it continues, their sleep.²⁵
- 6.17 Most of the bedrooms, and the outdoor living areas at Mr Kidds home face the Project site. These outdoor spaces are used into the evening, with frequent use for outdoor dining during the warmer months.
- 6.18 We are also aware from Mr Andersson’s comments that he similarly explains the prospect of the development has caused “a great deal of stress and anxiety about the

²⁴ Comments of J and H Shaw at [43].

²⁵ Ibid, at [19].

future” and fear the property will no longer provide a peaceful refuge. These are adverse impacts because they are tangible consequences on residents’ day-to-day lives and wellbeing.

Privacy and security impacts

- 6.19 Mr Van Deursen’s comments provide a concrete example of privacy and security concerns: a public cycle trail was created along his boundary with no notification, with many users able to “look straight into our property”, reducing privacy and changing how outdoor areas are used. The loss of privacy/security and altered living patterns are an adverse impact for some neighbours.²⁶

Community character, public experience, and loss of openness

- 6.20 The Project also threatens the rural character, local identity, and public recreational experience of the area, with concerns about loss of public landscape values, as described in Mr Vivian’s evidence. In itself, this is also an adverse impact of the project.

Benefit-credibility issues

- 6.21 Because s 85(3) requires a proportionality comparison against benefits, the credibility and durability of claimed benefits is a relevant “matter” in the overall evaluation. Where benefits are uncertain, contingent, or not linked to what will be built, the risk of being left with the impacts without the benefits is an adverse impact in its own right. In practice, this would see all the adverse impacts materialise without any of the regional benefits. This is a point made very strongly by Mr Kidd in his statement where he reasons that where there will be a substantial loss of amenity if a Project like this is approved, the Panel should be wary of determining that it is appropriate without any evidence of profitability or sustainability.²⁷ He submits that economic benefits must be certain and compelling to justify imposing such a substantial loss of amenity on him, his family and his neighbours.

²⁶ Comments of G Van Duersen.

²⁷ At [40]

- 6.22 The credibility of the Applicant’s economic evidence, the structural risks associated with conditions not adequately linking accommodation to delivery of the studio (creating a scenario where accommodation could proceed without the studio), and the long-term viability and the risk the community is left with an oversized accommodation/industrial complex even if studio operations do not succeed – these are all risks that intensify the adverse impacts described in this section.
- 6.23 This is also where Mr Vivian’s evidence assists with the other side of the FTAA weighing exercise. He identifies uncertainty around economic resilience, referencing (among other matters) acknowledged decline in internationally funded productions and uncertainty as to whether the consented Silverlight Studio in Wānaka will be constructed.²⁸
- 6.24 He further raises a delivery/phasing risk noting that Stage 2 “may never be built”, and that if this occurs then the economic benefits said to derive from “a screen hub” would not be realised and the proposal would be simply another urban development.²⁹
- 6.25 Where an Applicant relies on asserted *significant* regional benefits to justify approval under the FTAA, it is submitted that it is legitimate (and, in a staged project, necessary) for the Panel to consider the likelihood those benefits will actually be delivered, including whether later stages are realistically capable of being completed. The FTAA expressly contemplates an evaluative judgment about the “likelihood” of later stages being completed when considering whole-of-project benefits, and the Panel is entitled to discount benefits that are contingent or speculative.
- 6.26 In this case, Mr Kidd’s comments raise a concrete concern that the Application material is silent on how construction costs (said to be c.\$190m) will be funded, and provides no assurance of committed funding or operational viability, while the Applicant’s own economic material does not assess profitability and instead proceeds on the Applicant’s “motivation” as a feasibility assumption. These matters go directly to benefit credibility - if the Panel cannot be satisfied the Project (or its later stages) is likely to be delivered, the claimed benefits must be materially discounted, and the risk of being left with the

²⁸ Evidence of C Vivian, pages 7-8.

²⁹ Ibid, at [34].

adverse impacts without the promised benefits is itself an “adverse impact” that weighs against approval.

- 6.27 Relatedly, uncertainty as to deliverability creates a distinct psychosocial/wellbeing impact for immediately adjoining residents. An approval (or staged approval) can operate as an ongoing “overhang”, leaving neighbours living for years with prolonged uncertainty about whether and when disruptive works will commence and whether the Project will ever be commenced or completed. That continuing uncertainty compounds the stress, anxiety and loss of quiet enjoyment already identified in neighbours’ evidence, and is a further adverse impact properly weighed in the proportionality assessment.
- 6.28 In those circumstances, the Panel can rationally give reduced weight to benefits that are not secured, are contingent, or may not eventuate – particularly where the adverse impacts identified above (strategic growth management impacts, loss of open space/openness, landform modification, and domestication of rural character) would still occur.
- 6.29 It is submitted that the appropriate finding based on the information before the Panel is that the first criterion – the extent of the regional significance of the Project, is minimal. For the reasons advanced above, it then follows that the Panel can comfortably conclude that the adverse impacts described are sufficiently significant to be out of proportion to the project’s regional benefits.

7. PROPOSED CONDITIONS IF CONSENT IS GRANTED

- 7.1 If, despite opposition, the Panel grants approval, the following conditions (also advanced on behalf of Mr Andersson) should be imposed:
- (a) tie the use of the accommodation units strictly to the screen hub purpose (so that they cannot operate as a general hotel – e.g. a condition akin to Silverlight, ensuring units are occupied only by persons involved in productions or related activities);

- (b) stage or defer the accommodation construction until the film studio facilities are built and operational (to ensure the studios are delivered and the project does not result in “accommodation-first” with studios potentially delayed or never completed); and
- (c) impose all practical measures to limit effects on rural amenity, such as stringent building design controls, landscape and noise buffers, noise limits and traffic management to protect neighbours and trail users.

7.2 In addition to these proposed conditions, specific attention should be given to the personal comments of Mr Kidd when determining the practical measures in point 7.1(c) above. To summarise, Mr Kidd seeks:

- (a) **Lighting:** Zero light spill onto neighbouring properties, especially bedrooms; all exterior lighting shielded and directed downwards; prohibition of floodlights or high-intensity lights; independent monitoring of light levels at his property boundary with real-time public reporting; post-construction certification and quarterly monitoring at his property.
- (b) **Vegetation and bank stability:** Replacement of failing conifers with low-height native planting under a formal bank stability and pest management plan; no net increase in vegetation height to maintain viewshafts; independent maintenance regime for the bank and vegetation; ongoing pest management; prohibition of structures or public tracks on the bank or within the planting area.
- (c) **Noise and hours of operation:** No exterior filming or outdoor set activity after 6:00pm; no construction on Saturdays or Sundays or public holidays; construction hours limited to 8:30am–6:00pm on other days; engineered noise control (bund and solid acoustic barrier) designed and certified to meet internal night-time criteria at his home’s bedrooms with windows open; prohibition on tonal/reversing alarms (broadband “quacker” alarms only); independent noise and light compliance monitoring with real-time public reporting.

- (d) **Traffic:** Heavy vehicle haul routes should avoid Speargrass Flat Road frontage during evenings; robust construction traffic management plan with specific attention to minimising impacts on neighbouring properties.
- (e) **Complaints and enforcement:** Independent monitoring, public dashboard, enforcement bond to secure performance, and robust mechanisms for transparent reporting and effective enforcement.

8. OTHER MATTERS

Inadequate Landscape Assessment

8.1 Mr Kidd addresses the conifer trees from paragraph [20] of his comments, noting their inadequacy “as protection against anything”. That observation aligns with a broader and material deficiency in the application: landscape and visual effects on the residential properties to the south of the Site receive only cursory treatment in the application and supporting assessments.

8.2 The Landscape Assessment itself identifies the southern neighbours as a key potentially affected group. At section 5.1 it records “potential issues”, stating:

The potential landscape and visual effects arising from the proposal include the following:

...

- *Effects on visual amenity, perceptual and associative values as experienced by the residential developments located to the south of the Site and along Speargrass Flat Road.*

...

8.3 The assessment then describes a structured approach to evaluating those effects. At section 5.2 it states that representative viewpoints are selected and will “form the basis of this assessment”, including:

The selected view points are....Views across the site from within the rural residential properties to the south of the Site and Speargrass Flat Road.

8.4 It further states that, from each viewpoint, it will outline:

- *Description of the view including existing landscape character and amenity values within the current scene.*
- *Extent of visibility of the Site and proposed development.*
- *Assessment of potential adverse effects on existing landscape character, sensory and amenity values.*

8.5 The assessment also expressly recognises (at page 26) that potentially affected viewers Include residents occupying the residential lots to the south of the Site, who have rural views into the Site.

8.6 However, having identified these viewers and viewpoints as central to the assessment framework, the Landscape Assessment does not then provide any substantive assessment of effects on those southern properties, nor does it meaningfully return to them in its evaluation of effects or mitigation. This is not a minor gap or a matter of emphasis: it is a fundamental omission that goes to the heart of the assessment's completeness and reliability.

8.7 The peer review is similarly deficient, in that it fails to identify or correct this omission.³⁰ The practical consequence is that there is no adequate evidential basis before the Panel to determine the magnitude or significance of landscape and visual effects on the southern neighbours, or to test whether and what proposed mitigation would be effective. In those circumstances, the Landscape Assessment (and the peer review) cannot reasonably be relied on in relation to the southern residential receiving environment, and should be afforded little (if any) weight on that issue. The Panel should be slow to accept any conclusion that effects on those properties will be acceptable, and should treat the absence of assessment as a serious deficiency in the application material.

³⁰ This is equally concerning given the condition in the Notice of Decision on the referral application, dated 13 May 2025, that the substantive application **must** contain an independently peer reviewed landscape assessment.

Principle of finality in the administration of justice

- 8.8 A cornerstone of our legal system is the principle of finality. Once a court of competent jurisdiction has determined a dispute and the period for appeal has expired (or no right of appeal exists), affected parties are entitled to treat that outcome as settled. Mr Kidd emphasises the finality he reasonably expected to follow the Environment Court’s decision on the Ayrburn PDP rezoning appeal. That decision was final and binding, resolving long-standing zoning and development issues that had been in contention for many years, as others have explained. It determined the land was suitable for low-density lifestyle development (a maximum of three to four lots), and not for the high-intensity commercial or industrial development now proposed by this Project.
- 8.9 While Parliament has conferred on the Panel a power that may, in effect, depart from that finality, the principle remains highly relevant. Mr Kidd is concerned that allowing the Applicant to circumvent a final judicial determination through a subsequent legislative fast-track process—absent the clearest and most compelling reasons—would undermine public confidence in the courts and the integrity of planning law. The rule of law requires that individuals and property owners be able to rely on final judicial determinations when making significant investment and life decisions.

Legitimate expectation and reliance

- 8.10 In reliance on the finality of the Environment Court’s decision, Mr Kidd entered into a major construction contract with Modbox on 5 May 2025 to undertake extensive refurbishment and extension works to his family’s home, at a cost of approximately \$1.5 million. This decision was made on the reasonable belief that the planning questions affecting the adjoining Ayrburn ‘paddocks’ had been conclusively resolved.
- 8.11 The Applicant’s actions have undermined not only the *legitimate expectations* of adjoining owners but also the public interest in certainty and stability of land use decisions. To allow approval of the present application would unfairly penalise those who have acted in good faith reliance on a final judicial decision, while rewarding an applicant who has deliberately sought to reopen matters already conclusively determined.

Absence of consultation and lack of good faith

8.12 The Applicant's conduct in failing to engage with immediately adjoining owners before lodging the substantive application is on Mr Kidd's account, inconsistent with good faith and fair process. Despite ongoing communication between Mr Kidd and Mr George Watts, a senior Winton representative, there was no disclosure or consultation regarding the intention to pursue a fast-track application.

8.13 This lack of candour is particularly concerning given that the Applicant:

- **(a)** was probably aware that neighbouring owners had relied on the finality of the Environment Court decision in making significant financial commitments; and
- **(b)** deliberately chose to withhold information about its intention to invoke a legislative "fast-track" process to circumvent a decision it had previously lost.

8.14 Such behaviour should weigh heavily against the exercise of any discretionary or balancing of impacts, and the Panel's decision making powers to approve the Project. It demonstrates a disregard for the principles of fairness, transparency, and respect for judicial outcomes.

Balancing of Interests and proportionality

8.15 Even if the Panel were to consider that the Government's fast-track framework permits reconsideration of previously settled matters (and here the legal submissions for Mr Andersson are particularly relevant regarding the Applicant's misrepresentation of the factual consenting background relative to the Project), it is submitted that the Panel must weigh the limited *public benefit* of the Project against the *private detriment* to affected landowners. The law requires that any intrusion on settled rights or legitimate expectations must be justified by the *clearest and most compelling* evidence of public benefit. In this case, the claimed economic benefits are speculative and unproven, while the private detriment—including substantial loss of amenity, privacy, and property value—is immediate, significant, and irreversible.

9. CONCLUSION

9.1 After thorough and careful assessment Mr Kidd submits it is open for the Panel to find:

- (a) **Insufficient Regional Significance:** The Project does not meet the threshold of “regional significance” as required by the FTAA. The long-term operational benefits are modest – amounting to only 0.25% of regional GDP – and are significantly overstated in the Applicant’s economic evidence. The accommodation component is essentially a hotel, with its benefits further overstated and not genuinely integrated with the studio operations. There is a real risk that the accommodation could proceed independently, undermining any claimed regional benefit.
- (b) **Disproportionate Adverse Impacts:** The adverse impacts identified – including growth and urban management, prolonged construction disruption, psychosocial and wellbeing harms, loss of privacy and security, threats to community character, and credible concerns about enforceability – are sufficiently significant to be out of proportion to any regional benefits. These impacts are tangible, cumulative, and have already affected local residents’ quality of life.
- (c) **Credibility and Deliverability Risks:** There are substantial risks that proposed conditions and management plans will not be effective in practice, leaving neighbours to bear the burden of ongoing non-compliance. The credibility of the claimed benefits is undermined by the risk that key components (such as the studio) may not be delivered, while adverse impacts will still materialise.

9.2 Mr Kidd urges the Panel to decline the approvals sought for the reasons set out above. The Project fails to demonstrate sufficient regional significance and presents adverse impacts that are disproportionate to any potential benefits, even after considering possible conditions or mitigation measures.

9.3 Should the Panel be minded to grant the approvals sought, Mr Kidd asks that robust, enforceable conditions be imposed to ensure that:

- (a) the delivery of all Project components (including the studio) is guaranteed before accommodation or other facilities are operational;
- (b) ongoing compliance is strictly monitored and enforced;
- (c) mitigation measures for construction disruption, privacy, wellbeing, and community character are clearly defined and implemented.

9.4 Mr Kidd's position on balance however remains that the evidence supports declining the application.



Dated 17 December 2025

Jayne Macdonald, Counsel for David Kidd