

BEFORE THE FAST-TRACK EXPERT PANEL

UNDER

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

IN THE MATTER

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

MEMORANDUM OF COUNSEL FOR THE APPLICANT IN RESPONSE TO MINUTES 12 AND 13 OF THE EXPERT PANEL

Dated: 10 February 2026

Todd Walker

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

MAY IT PLEASE THE COMMISSIONERS:

Introduction

- [1] The purpose of this memorandum is to address matters arising from the Panel's Minutes 12 and 13, including:
- (a) The matters requested at paragraphs [2] and [4] of Minute 12 and summarised as:
 - (i) Review of planting methodology for the western side of the Site (paragraph [4](a)).
 - (ii) Timing for tree removal, replanting, and construction in the southern conifer/native planting (paragraph [4](b)).
 - (iii) The interface between the proposed trail and acoustic fencing (paragraph [4](c)).
 - (b) The matters requested at paragraph [2] of Minute 13, being a legal response to the permitted baseline / receiving environment issue.

Response to Minute 12

- [2] The following attachments are included as part of this Memorandum and in response to paragraph [4] of Minute 12:
- (a) **Attachment A** – Updated Winton Ayrburn Screen Hub Design Report (**Ayrburn Design Report**) (which includes the additional planting for the site (including the spur, southern conifer/planting plans and cross sections).
 - (b) **Attachment B** – Updated Visual Simulations from One to One Hundred.
 - (c) **Attachment C** – Proposed amendments to the landscape conditions with the updated phasing to the southern conifer/native planting.
 - (d) **Attachment D** – Mr Milne's Supplementary Memo responding to paragraphs [2] and [4] of Minute 12 and further addressing

changes that have been made to revised planting and conditions included in the above attachments.

[3] In summary of the above matters, it is noted that:

- (a) The Applicant has addressed the Panel's points made about the landscape planting treatment for the Site (particularly the western part of the Site) and revised its plans accordingly (refer in particular to pages 39-40 of the Ayrburn Design Report). Mr Milne supports this proposal and Ms Gilbert has provided her peer review comment of the same.
- (b) The Applicant has considered the approach to the proposed trail intersecting the acoustic fencing, and rather than providing an engineering and acoustic response as to the suitability of the same, has revised the alignment to traverse around the outside of the barrier (refer page 32 of the Ayrburn Design Report). The Applicant has consulted with the Queenstown Trails Trust, reconfirming the suitability of this revised route.
- (c) In response to the matter of phased removal and replanting, and construction of the acoustic fence in the southern conifer/native planting area, the Applicant has provided an additional phasing plan (refer page 35 of the Ayrburn Design Report) and proposed revised conditions responding to the same which provide certainty in terms of the timing and sequencing, and Mr Milne has assessed related effects.

[4] It is noted that Ms Gilbert and Mr Milne have collaborated on the above revised planting plans and landscaping treatment. Ms Gilbert's memo is filed alongside this memo and attachments for the Applicant, on behalf of Ms Scott for QLDC. There are two remaining matters in Ms Gilbert's memo which are not addressed in the above documents; however, the Applicant has considered the response to the same, and it is noted:

- (a) In response to item 2.5(a) of Ms Gilbert's memo, the Applicant has increased the average minimum height to 6.5m for the native planting (unless otherwise agreed with the relevant adjoining neighbour). This has been amended on page 35 of the Ayrburn

Design Report and the document dated with today's date (10 February 2026).

- (b) In response to item 2.5(b), there is a mixture of existing recently planted natives underplanted beneath the large mature woodland as a requirement of RM240982, which is why it is shown as both. Example photos of this can be provided if appropriate.

Permitted baseline / receiving environment – Minute 13

[5] In response to Minute 13, at paragraph [2], and relating to the issues traversed at paragraphs [107]-[118] of the Applicant's legal memorandum, Counsel for the Applicant is invited to provide a reply to the contradicting legal arguments posed on Ms MacDonald on behalf of Mr Kidd and from Ms Scott on behalf of QLDC.

[6] To summarise the Applicant's high-level position on this issue, as set out in its legal memorandum and in the conference held on 30 January 2026:

- (a) The Applicant's original landscape assessment referred to the possible development of the Ayrburn Structure Plan Residential Activity Area (**RAA**) as sort of 'permitted baseline.'¹
- (b) Recognising that reference to the 'permitted baseline' in that landscape assessment (insofar as that term is used in s 104(2) of the Act applies) was not legally correct in that context, Counsel filed a memorandum dated 18 November 2025 (Applicant response to Minute 2) which clarified:

[9] Development of the Residential Area (shown in the Ayrburn Structure Plan) for its zoned rural living purposes requires restricted discretionary subdivision consent under Chapter 27 Rule 27.5.9 of the PDP and restricted discretionary land use consent under Chapter 24 Rule 24.4.7B of the PDP.

Mr Milne has been requested to prepare an Addendum commenting on any consequences for his Landscape Assessment

¹ Part 4.2.6 on page 22 of the Landscape Assessment Report (Appendix 22).

Report **if the rural living development enabled within that Residential Area cannot be taken into account.**

(emphasis added)

- (c) The accompanying addendum assessment provided clarification that, again **‘if’** the future development of the RAA under the Structure plan can not be taken into account, then an alternative assessment of effects is concluded. Mr Milne’s overall conclusion is that: “It is my opinion that the conclusions drawn in the LAR in regard to potential adverse landscape and visual amenity values, fundamentally do not change to any great degree.”² He further concludes in respect of minor adjustments to any degree of effects associated with particular viewpoints and effects on character and values throughout the addendum.
- (d) As explained by Counsel in the 30 January 2025 conference, the point of this exercise above was not to ‘resile’ from the relevance of future built form in the RAA entirely. Rather, it was to correct the legal terminology of the permitted baseline originally referenced, and to provide a counterfactual landscape assessment, should the Panel be minded not to consider any RAA development outcome under a restricted discretionary scenario.

[7] The summary of all of the above, is that the Panel has before it, two options for assessing landscape effects, either:

- (a) Considering the future likely development under a restricted discretionary consenting scenario of development of four large rural living lots averaging 1ha in size on which there could be four significant houses with associated boundary and internal planting and potentially including tennis court(s), swimming pool(s), and the like in the RAA, in the context of landscape effects of the Fast Track proposal; or
- (b) Considering the effects of the Fast Track proposal without consideration of this RAA development.

² Addendum landscape assessment memo dated 18 November 2025, at 2.1.2

- [8] Either way, the Applicant says, that the end result is materially similar in this context, and the expert landscape architects in the Joint Witness Statement are in agreement, that from five years and beyond the visual amenity effects in relation to the more sensitive viewpoint 5 are minor at most.³ It further says, for the reasons set out in the legal memorandum of 23 January, that the Panel can consider the RAA development as part of its assessment, either by way of s 104(1)(a) anticipated environment, by way of s 104(1)(b) the policy context, or s 104(1)(c) another matter relevant and reasonably necessary to determine the application.
- [9] That overall observation aside (that with or without factoring development of the RAA into an assessment of landscape effects is not a material difference), Counsel maintains the opinion that consideration of the RAA development outcome in this context is appropriate for the following reasons.
- [10] In response to Ms Macdonald's legal submissions, at paragraphs [4] and [5], there is no material distinction between the meaning of what is an 'anticipated' outcome or a 'contemplated' outcome in this case.
- [11] Ms Macdonald cites the matters of restricted discretion associated with RAA subdivision and land use development but does not explain how, in this context, matters such as 'landscape character associated with bulk and external appearance, as well as landform modification, lighting/landscaping, infrastructure, hazards, and again Lake Hayes catchment water quality' could be applied in such a way as to effectively render consent not being granted for land use and subdivision of four lots as envisaged in the RAA under the Ayrburn Structure Plan.
- [12] Ms Macdonald also fails to acknowledge the framework within which the RAA development would be assessed. Chapters 24 and 27 together clearly indicate that the intention for the RAA is expressly for this envisaged density of future rural living development. There is no other particular use of this activity area encouraged by policies and objectives, for example:

³ Applicant legal memorandum, 23 January 2026, at [120].

- (a) Landscaping is a permitted activity (Rule 24.4.26.1) which as defined includes residential and human use elements.
- (b) Density of a maximum of one residential unit per net site area and average area: 6,000m² minimum and 1ha average, is envisaged by Rule 24.5.1.6A. This table under 24.5 (and 27.6.1 for subdivision) similarly sets out 'anticipated' residential densities for other areas of the Wakatipu Basin. It would be constrained to consider those rules do not direct a level of expected density outcomes through future development.
- (c) Policy 27.3.27.1 seeks to 'enable' subdivision which is consistent with the Ayrburn Structure Plan. That is a directive policy which again, anticipates realising density prescribed for the RAA.
- (d) Provision 27.13.22 sets out the Ayrburn structure plan including the RAA activity area, denoted as 'residential' in the associated key. There is no other hybrid use or outcome as opposed to residential earmarked for this defined area.

[13] Ms Macdonald entirely ignores the commercial reality of RAA development to a level of anticipated density, regardless of ultimate scale of built form that might be controlled by conditions. She further does not address the Applicant's recent experience in obtaining non-notified subdivision consent (under RM250242) and land use consent (under RM250715) for three rural living lots and houses within the other RAA shown on the Ayrburn Structure Plan (being Lot 6 consented under RM240982) or address how that would be different in the RAA under consideration for the Site.

[14] In the end, Ms Macdonald accepts the Panel should 'acknowledge' the PDP structure plan and zoning provisions as part of a relevant planning framework. This is essentially aligned with the Applicant legal submissions and Mr Milne has put some accurate and helpful parameters around what that outcome envisaged actually looks like, in his initial landscape assessment. Ms Scott's conclusions also ultimately arrive at this position.

- [15] Ms Scott suggests the Applicant's case law relied on is distinguishable given the restricted discretionary activity status being 'significant' and different compared to a controlled activity context of those cases. For the reasons set out above, this particular restricted discretionary context for development of the RAA, and read in light of the FTAA regime, are important.
- [16] Ms Scott's paragraph [12] suffers the same failings as Ms MacDonald in terms of theoretically considering a restricted discretionary framework rather than engaging in the specific policy context of the RAA.
- [17] The Applicant acknowledged the RMA case law cited in its legal memorandum was in a controlled activity context but further noted the reasons why that reasoning should apply in the Fast Track consenting context.⁴ Ms Scott has not acknowledged the latter point, rather she has entirely transposed the RMA case law over, without any analysis of how that should apply or be interpreted in light of clause 17(1)(b) of Schedule 5 of the FTAA.
- [18] The Applicant's position remains, despite Ms Scott's submissions at her paragraphs [8] and [9], that case law developed under the RMA in that legislative context should be interpreted and applied, in this entirely new FTAA context.
- [19] In the end, Ms Scott accepts that the panel can take into account what might be reasonably anticipated in a policy perspective. As noted above, the Applicant has not sought to apply a permitted baseline 'discount' of effects (it expressly clarified this on 18 November 2025) and as set out above, Mr Milne has helpfully provided context around that reasonably anticipated policy outcome.

Summary

- [20] While acknowledging the initial Applicant landscape assessment memo may have caused some confusion in its reference to a permitted baseline existing, the Applicant does not resile from the position that development of the RAA is 'virtually certain' to be obtained, provided that matters of

⁴ Applicant legal memorandum, 23 January 2026, at 117-118.

discretion are properly addressed. This reflects the plan-enabled outcome, the Applicant's planning, legal, and practical recent experience of development under the structure plan framework, and an obvious commercial reality.

Dated: 10 February 2026

A handwritten signature in black ink, appearing to be 'R Hill' or similar, written in a cursive style.

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