

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 MINUTE 8 OF THE EXPERT PANEL

Dated: 27 January 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 raise a potential jurisdictional issue with the Panel in respect of its Minute 8 and seek directions (in the nature of a clarification) arising from the same.
- [2] Minute 8 sets out the Panel's intention to convene a conference on Friday 30 January. The principal topic for discussion is noted to be the two joint witness statements received, and panel questions of the authors arising from the same. Related topics for discussion are noted to be any procedural issues in relation to the Applicant's existing subdivision consent, and questions from the Panel arising in relation to the Applicant's legal memo responding to s 53 comments.
- [3] The Applicant seeks to ensure that the process for participants in this conference is clear, and procedurally fair and appropriate.

Minute 8 invitees and clarification sought

- [4] In respect of invitees to the conference, within Minute 8 the panel has directed:

[4] ... Mr Milne, Ms Gilbert, Ms Hampson and Mr Osborne (and/or Mr Heath) are **requested to participate** and be ready to answer any questions the Panel has arising from the Statements they have provided.

[5] The Panel anticipates that counsel for Messrs Kidd and Andersson **will wish to participate** in the conference because of Ms Hampson's involvement. It has also asked the EPA to advise Ms Hadley and Mr Dougherty that they **can join** the conference if they wish, because of their particular interest in the matters the subject of expert evidence.

(emphasis added)

- [5] Counsel wishes to clarify, that given the purposes of the conference (as set out above), the invitation extended to Ms Hadley and Mr Dougherty to join is limited strictly to their observance. It further should be clarified that they are not invited to participate (for example by way of discussion or submission) nor through allowing the provision of further information within the conference, or following the same, from matters arising.

[6] Counsel considers this clarification to be appropriate and fair to all other persons who have commented on the application and to the Applicant, given that Ms Hadley and Mr Dougherty are not signatories to the joint witness statements, nor represented by counsel, nor hold themselves to have provided comments as expert evidence in accordance with the Code of Conduct (which the joint witness statements are prepared in accordance with).

[7] This clarification would be consistent with the intention and purpose of panel-convened conferences as set out from paragraph 13.8 of the Panel Convenors' Practice and Procedural Guidance (22 July 2025), including the intention to enable panels to make robust decisions that observe natural justice and the procedural principles of the Act.

[8] Counsel is mindful also of the distinction in the Procedural Guidance and the FTAA itself as between panel-convened conferences, and a hearing, if held. This includes paragraph 13.4 and 13.10 of the Procedural Guidance, which states:

13.4 A 'conference' is a procedural meeting where the Panel Convener or panel and participants discuss how to manage an application.

13.5 A 'hearing' is a formal proceeding before a panel where issues of fact and opinion, or law, are examined and resolved.

...

13.10 The Panel Conveners observe that a conference may:

(a) enable the panel and participants to respond flexibly to issues identified by the panel, in a way that is more efficient than the static and sequential exchange of minutes and memoranda; and

(b) enable participants to expand on memoranda, clarify misunderstandings, and address questions from the panel in real-time.

[9] In light of the reasons set out, Counsel respectfully requests directions confirming the clarification sought at paragraph 5, above.

Dated: 27 January 2026

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

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