

Before the Panel Convener

FTAA-2508-1093

Under	Fast-track Approvals Act 2024
In the matter of	Ayrburn Screen Hub

Memorandum of Counsel Memorandum of counsel on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga, Waihōpai Rūnanga, Te Rūnanga o Awarua and Te Rūnanga o Ōtaka-Aparima regarding Minute 1 of the Panel Convener

Date: 09/10/2025

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May it please the Panel Convener

- 1 This memorandum is filed on behalf of Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga, Waihōpai Rūnanga, Te Rūnanga o Awarua and Te Rūnanga o Ōraka-Aparima in advance of the convener's conference, scheduled for 10am on Wednesday 15 October 2025.
- 2 This memorandum is provided in response to the Minute 1 of the Panel Convener regarding the Convener's conference for the Ayrburn Screen Hub (*Application*) by Waterfall Park Developments (*the Applicant*) under the Fast-track Approvals Act 2024 (*FTAA* or *Act*).
- 3 Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga, Waihōpai Rūnanga, Te Rūnanga o Awarua and Te Rūnanga o Ōraka-Aparima (collectively, *Kā Rūnaka*) represent mana whenua in the Tāhuna (Queenstown) area.
- 4 This memorandum addresses the issues listed in Schedules 1 and 2 of the Minute. In particular, Kā Rūnaka hold significant concerns regarding the process and outcome of consultation to date and the sentiments expressed in the substantive application regarding effects on mana whenua, which are based on a draft cultural impact assessment (*CIA*) that has not been reviewed or endorsed by Kā Rūnaka.
- 5 Kā Rūnaka consider that more time is required to rectify the deficiencies in adequacy of consultation and enable the CIA to be finalised before a Panel is appointed. In the alternative, there must be sufficient timeframes provided in the Panel process to enable this process to occur.

Parties at the conference

- 6 Kā Rūnaka are seven of the eighteen Papatipu Rūnanga of Ngāi Tahu who uphold the manawhenua and mana moana of their takiwā.
- 7 The takiwā of Te Rūnanga o Moeraki centres on Moeraki and extends from Waitaki to Waihemo and inland to the Main Divide.
- 8 The takiwā of Kāti Huirapa ki Puketeraki centres on Karitane and extends from Waihemo to Purehurehu and includes an interest in Ōtepoti and the greater harbour of Ōtākou. The takiwā extends inland to the Main Divide sharing an interest in the lakes and mountains to Whakatipu-Waitai with Runanga to the south.

- 9 The takiwā of Te Rūnanga o Ōtākou centres on Ōtākou and extends from Pūrehurehu to Te Matau and inland, sharing an interest in the lakes and mountains to the western coast with Rūnanga to the North and to the South.
- 10 The takiwā of Hokonui Runaka centres on the Hokonui region and includes a shared interest in the lakes and mountains between Whakatipu-Waitai and Tawhitarere with other Murihiku Rūnanga and those located from Waihemo southwards.
- 11 The takiwā of Waihōpai Rūnaka centres on Waihōpai and extends northwards to Te Matau sharing an interest in the lakes and mountains to the western coast with other Murihiku Rūnanga and those located from Waihemo southwards.
- 12 The takiwā of Te Rūnanga o Awarua centres on Awarua and extends to the coasts and estuaries adjoining Waihōpai sharing an interest in the lakes and mountains between Whakatipu-Waitai and Tawhitarere with other Murihiku Rūnanga and those located from Waihemo southwards.
- 13 The takiwā of Te Rūnanga o Ōraka Aparima centres on Ōraka and extends from Waimatuku to Tawhitarere sharing an interest in the lakes and mountains from Whakatipu-Waitai to Tawhitarere with other Murihiku Rūnanga and those located from Waihemo southwards.

Section 18 Report and cultural significance

- 14 The Section 18 Report for this application correctly identifies the relevant groups as Kā Rūnaka and Te Rūnanga o Ngāi Tahu. It also identifies Aukaha Limited and Te Ao Mārama Incorporated (as other Māori groups with relevant interests being entities owned by Papatipu Rūnanga).
- 15 This memorandum is not provided on behalf of Te Rūnanga o Ngāi Tahu but counsel (and Kā Rūnaka) are engaged with Te Rūnanga o Ngāi Tahu) and it is anticipated that Kā Rūnaka will take the active interest/role in this application.
- 16 Kā Rūnaka consider that the Section 18 Report provides a narrow analysis of the Ngai Tahu Claims Settlement Act 1998, with a more appropriate assessment included as Appendix 36 in the Application.
- 17 Comments from Kāti Huirapa Rūnaka ki Puketeraki from the Section 18 Report record:
 - (a) The proposal lies within the catchment of Waiwhakaata. The name Waiwhakaaata relates to the shimmering reflection from the surface of the lake of the landscape and mauka that surround it.

- (b) Cultural values such as whakapapa, rangatiratanga, kaitiakitanga, mana, and mauri inform our relationships and association with wai māori and te taiao within the catchment.
- (c) Waiwhakaata has long been part of important associations and practises for our whānau and hapū, who hold intergenerational linkages to the wai and whenua.
- (d) The impacts on the catchment have contributed to a strong sense of loss of connection for manawhenua.
- (e) the principle of utu (reciprocity) is integral to taiao protection measures. The overall aim is for economic activity to achieve ea (balance) as a means of ensuring resilience. Thus, there is an expectation that the gains that the proposed development might afford the applicant will be balanced with reciprocal actions that uphold the mana and mauri of Waiwhakaata, its surrounding environment and our whānau.

18 Comments from Te Ao Marama Incorporated recorded:

- (a) The following key principles are required to be recognised by this application (but not limited to):
 - (i) Ngāi Tahu holds and exercises rangatiratanga with the Ngāi Tahu Takiwā.
 - (ii) The Crown and agents of the crown must act in good faith.
 - (iii) All areas and places within the Ngāi Tahu takiwā are important and form part of an intertwined network of values, places and resources which are relevant to Ngāi Tahu tribal history, contemporary values and the future of the tribe.
 - (iv) Settlement provided a basis for continuing evolution from which Ngāi Tahu can express its ancestral relationship with the Ngāi Tahu takiwā into the future.
- (b) The area within which the project is located is an area of deep connection and long association for Ngāi Tahu.
- (c) Rūnaka are continuing to work with the applicant to understand the impacts of the project on cultural values and connections, and whether those impacts can be mitigated satisfactorily.

- 19 In addition, the Assessment of Environmental Effects outlines the recommendations in the draft CIA and records that those have been responded to by the conditions of consent.
- 20 The record of consultation records that, through the Applicant's engagement with mana whenua, it is understood that Kāi Tahu associations with Waiwhakaata (Lake Hayes), Haehaenui (Arrow River), and the wider Whakatipu Basin are enduring, spiritual, and intergenerational. These relationships are based not only on archaeological evidence, but on whakapapa, place names, mahinga kai, and holistic cultural landscapes that bind people, water, and whenua.
- 21 The Applicant has acknowledged that cultural landscapes and mauri are being diminished by rapid urbanisation, and that new developments must therefore be designed and managed to actively restore ecological and cultural balance.
- 22 Identified threats to mana whenua values in the Queenstown Lakes Proposed District Plan are:
- (a) damming, activities affecting water quality.
 - (b) buildings and structures, utilities.
 - (c) earthworks.
 - (d) subdivision and development.
 - (e) new roads or additions/alterations to existing roads, vehicle tracks and driveways.
 - (f) commercial and commercial recreational activities.
- 23 Consistent with the above, Kā Rūnaka consider the Application has the potential to threaten mana whenua values.

Mana whenua engagement with the applicant, AEE and draft CIA

- 24 The AEE records, in Appendix 31, the consultation undertaken as pre- and post-referral decision. This has included site visits and hui earlier this year, and the preparation of a draft CIA. The summary of consultation goes on to state that:

Te Ao Mārama Inc has released the draft CIA to Waterfall Park Developments for use in preparing and lodging the substantive application, with a final CIA to be submitted by Kāi Tahu within 20

working days in which they have an opportunity to provide further comments. This approach relieves administrative constraints on both parties and is an effective use of time and resources while ensuring iwi participation is properly integrated.

- 25 Kā Rūnaka disagree with this statement, and the appropriateness of waiting until the substantive comments stage to finalise the CIA. The Applicant places significant weight on the draft CIA, which has not been approved by Kā Rūnaka, and was provided to the Applicant following significant pressure ahead of the substantive application being lodged.
- 26 The FTAA requires that consultation occurs before an application is lodged, including providing a summary of the consultation and an explanation of how the consultation informed the project. Adequate consultation should be early, genuine inclusive and responsive.
- 27 Applications that do not meet all the information requirements under the FTAA will not be accepted, requiring that a new application is made once the defects have been remedied. Kā Rūnaka are aware of the High Court's recent decision in *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2046 that confirms that the principles for adequate consultation in the *Land Air Water Association v Waikato Regional Council* case apply to applications under the FTAA, and that the consultation requirements in the FTAA are intended to be strictly applied.
- 28 Further, Schedule 5 of the FTAA sets out the requirements for approvals relating to the RMA, which includes requirements that the assessment of environmental effects includes:
 - (a) Cl 6 (e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal;
 - (b) Cl 7 (d) any effect on natural and physical resources that have aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generation.
- 29 The draft, unapproved or endorsed version of the CIA does not satisfy the requirements that the application include the views of iwi or hapū consulted, nor is it appropriate to rely on the draft CIA as an assessment of the effects on cultural values, until Kā Rūnaka are able to formally review and approve a final version of this document.

Issues requiring changes to the timeframes

- 30 Given the above, Kā Rūnaka consider that it would not be appropriate to formally appoint a Panel for the Application until the deficiencies in information and consultation are rectified.
- 31 Kā Rūnaka consider that, with the cooperation of the Applicant, this could be achieved by mid-November. While the Applicant has suggested that Kā Rūnaka could provide the final CIA in the section 53 comment process, we do not consider that it is appropriate or desirable for the Panel, given the uncertainty of progressing into a process with no ability to vary timeframes, and the potential that the recommendations in the final CIA may raise new issues that would then need to be addressed in the limited timeframe.
- 32 To proceed otherwise would establish a dangerous precedent for the FTAA process, set an unacceptably low standard for the acknowledgement of cultural severance within the Ngāi Tahu takiwā, and undermine the integrity of the Panel's decision-making mandate.
- 33 If it is not possible to delay appointing a Panel, Kā Rūnaka consider that an additional period of at least four weeks is required in the Panel process to enable sufficient time for the CIA to be finalised and any new issues to be worked through.

Issues requiring determination

- 34 Kā Rūnaka (and their environmental advisors) are still working through more detailed reviews of the AEE and technical assessments. Therefore, at this stage we are unable to narrow or identify with great accuracy the issues Kā Rūnaka consider will need to be addressed by the Panel.
- 35 It is however anticipated that the following issues may or will be raised by Kā Rūnaka:
 - (a) Cultural severance arising from intensification and urbanisation of the Waiwhakaata catchment.
 - (b) Intergenerational impacts diminishing the ability of future generations to recognise and relate to ancestral landscapes.
 - (c) Diminution of mauri through cumulative development pressures.
 - (d) Erosion of whakapapa-based relationships between Ngāi Tahu and their environment.

- (e) Cumulative change across the valley floor, transforming the cultural landscape from rural to urban.

36 These matters are fundamental to the cultural integrity of the area. They cannot be adequately addressed or mitigated without the CIA process being completed.

Relevance of tikanga and procedural considerations

37 Tikanga is relevant to this application, particularly in relation to:

- (a) significant shortcomings in the process and reliance on the draft CIA, in breach of the principles of tika, pono and mana; and
- (b) effects on Te Waiwhakaata, Haehaenui, Ka Muriwai and Kimiākau.

38 Kā Rūnaka consider it is highly desirable that at least one member of the panel member have expertise in Ngāi Tahu tikanga, given the significance of the area to Kā Rūnaka and the wider iwi.

Dated this 9th day of October 2025



Ben Williams / Rachel Robilliard

Counsel for Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Ōtākou, Hokonui Rūnanga, Waihōpai Rūnanga, Te Rūnanga o Awarua and Te Rūnanga o Ōraka-Aparima