

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 10 AND 11 OF THE EXPERT PANEL

Dated: 3 February 2026

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MAY IT PLEASE THE COMMISSIONERS:

Introduction

- [1] The purpose of this memorandum is to address matters arising from the conference convened by the Panel on 30 January 2026, and later as set out in minutes 10 and 11.
- (a) Scope and natural justice issues relating to the acoustic fence / barrier
 - (b) Subdivision consent requirements
 - (c) Clarification on ORC comments on existing consents held
 - (d) Economic comment in response to Minute 10.

Acoustic fence / barrier

- [2] In response to paragraph 2 of minute 10, the following sets out the sections of the application describing the location, design, height and density of the fence proposed on the southern side of the application site.
- [3] By way of background to this matter, Counsel expressed no natural justice issues arise in relation to the acoustic fence / barrier because:
- (a) The acoustic fence is a positive mitigation measure to address Commentor concerns relating to glare and noise.
 - (b) The overall scale of the proposal as lodged and commented on, and the same rule triggers as to buildings in the OS and RAA are already applied for (and the planning assessment does not differ).
 - (c) The Applicant originally applied for fencing treatment in its masterplan.
- [4] The Applicant's substantive application included, at appendix 7 (Ayrburn Design Report) the existence of fencing treatment. This is identified and highlighted yellow in the screenshot below:



[5] The Applicant’s response to comments received (filed 26 January 2026), documents 15 and 17 refer to the south neighbours additional mitigation plan and the specification of acoustic fencing:



[6] Both documents demonstrate the acoustic fence / barrier being in the same location as originally in the substantive application documents. The changes between the substantive application as notified and the response to comments can be summarised as:

- (a) The initial proposal, substantially lodged and commented on, including a 2.5m high hedge and solid timber fence.
- (b) To mitigate concerns relating to glare and acoustics, further specifications were added in the plans as to the nature of the

timber treatment and the height of 2.4m, along with planting specification.

- (c) Added clarification was included in the planning analysis, that the fencing was a building to be applied for under land use consents.

[7] The above confirms that there are no natural justice issues arising from the acoustic barrier / fencing treatment, as this has largely remained the same throughout the process.

Subdivision consent requirements

[8] The Applicant's position, as set out in its legal memorandum at paragraphs 27 and 61-62, is that rules under chapter 27 are not triggered for subdivision activity. It considers that a s 127 variation application adequately covers and addresses the necessary consents required, as a result of:

- (a) The acoustic fence / barrier in parts of the OS and RAA¹
- (b) Replacement native planting in parts of the OS²

[9] Counsel considers these activities, in light of the purpose and scale of the subdivision consent already granted under RM240982, are not intrinsic to that already granted consent and are appropriately dealt with by way of a s 127 variation. The activities do not create overall substantially different or greater effects and are not in the nature of a new or different activity or proposal that replaces the original subdivision consent or renders it unable to be implemented.

[10] The proposed changes to some conditions of RM240982 are to ensure that the consent notice required will reflect buildings and planting that would be enabled by approval of this proposal. ensuring there are no conflicting consent conditions between the FTAA consent that is sought and RM240982. It does not involve a change to the boundaries or other aspects of the subdivision.

¹ Referred to at paragraph 27b of the legal memorandum dated 23 January 2026.
² Ibid, at 27a.

[11] The Barker & Associates revised planning report (dated 18 November) adds, at page 54, that consent is sought for subdivision under chapter 27. It however goes on to state that *'the above rule is applied for as a consequence of the s 127 of conditions 15(b) and 15(d) of RM240982 as explained in section 5.1.15 of the report'*. See below:

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- A **Non-Complying** activity pursuant to Rule 27.7.32.2 for a subdivision that is inconsistent with the Ayrburn Structure Plan as the s127 variation of RM240982 will not comply with (b) and (d) of Rule 27.7.32.2 This will allow some of the buildings proposed in the Ayrburn Screen Hub application to be constructed within the OS and mitigation planting above the Pasture Line ensuring there are no conflicting consent conditions between the FTAA consent that is sought and RM240982.

The above rule is applied for as a consequence of the s127 of Conditions 15(b) and 15(d) of RM240982 as explained in Section 5.1.15 of this report.

[12] The intention of that addition was to confirm that the Applicant does not consider subdivision consent is necessarily triggered (for the reasons above and explained in the legal memorandum) but should the Panel be minded to disagree, it has been included in the planning assessment. The Applicant confirms it is supportive of the withdrawal of the additional subdivision consent trigger underlined above, if the Panel is minded to agree with Counsel's analysis in the application of s 127. QLDC appears to be aligned with this approach.

Variations are sought to conditions of RM240982

[13] In response to paragraph 5 of Minute 11, Counsel has also carefully considered the conditions of RM240982 and confirms the following are required for variation. Conditions 15b and 15d were identified in the Barker & Associates revised planning report (dated 18 November) however condition 15a was not. It is considered 15a also requires variation as a consequence of potential native planting to replace conifers in the TPA (as referred to at paragraph 27a of the legal memorandum). Noting that no variation is required to condition 1 / the plans of RM240982 as these are only subdivision scheme plans, the changes sought to the conditions of existing subdivision consent RM240982 are:

15 a) No vegetation other than pasture grass, crops or grapevines shall be planted within Lots 4 and 5 within Activity Area OS as shown on the Ayrburn Structure Plan referred to in Rule 27.7.32.2 provided that this control does not apply to: i. Planting to maintain or replace trees and landscaping along Ayr Avenue or to planting within a Tree Protection Area (TPA) shown on Proposed Subdivision Plan – Pasture Line and Tree Protection Areas, Sheet No. 41, Rev J, dated 12/11/2024 or **the mitigation planting consented under Consent FTAA-2502-1008**; ii. Planting authorised through any resource consent; and iii. That part of Lot 5 that is located in the Waterfall Park Zone.

b) No vegetation other than pasture grass shall be planted within Lot 4 above the Pasture Line shown on Proposed Subdivision Plan – Pasture Line and Tree Protection Areas, Sheet No. 41, Rev J, dated 12/11/2024. **except for the mitigation planting consented under Consent FTAA-2502-1008.**

15(d) No building shall be located within Lots 4 and 5 (except for buildings previously consented – refer Condition 14(e) above) **and except for buildings consented under Consent FTAA-2502-1008.**

Clarification on ORC comments on existing consents held

[14] At the end of the conference, Counsel clarified that the ORC response to Minute 6 went beyond the matters strictly requested by the Panel.

[15] The ORC memo provides a table of consents held by the consent holder, some of which are beyond the subject site of this FTAA application. It concludes with the following statement:

Of the consents in Table 1 RM23.735.01-02 held by the applicant directly provides for the maintenance and enhancement of water quality. These consents authorise the periodic removal of accumulated sediment from three amenity ponds on the applicant's site. Undertaken over the term of consent, these activities will assist in the removal of contaminants from the Lake Hayes Catchment.

[16] It should be noted that RM23.735.01-2 is outside of the subject site. It relates to three ponds identified in red below (with reference to the subject site in blue). The ORC statement should not be inferred as suggesting the Applicant's positive environmental benefits posed as part of the FTAA application are reduced or 'double counted'.



Economic response to Minute 10

[17] Attached to this memorandum is a formal response from the Applicant's economic experts in response to paragraph 2 of Minute 10.

Dated: 3 February 2026

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

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R E M Hill
Counsel for the Applicant