

**BEFORE THE COMMISSIONERS APPOINTED BY THE MACKENZIE
DISTRICT COUNCIL**

UNDER

the Resource Management Act 1991

IN THE MATTER

of RM230149 an application for land use
consent to establish and operate a
commercial tree-climb ropes course at
Lakeside Drive, Takapō/Lake Tekapo

BETWEEN

**QUEENSTOWN COMMERCIAL
PARAPENTERS LIMITED**

Applicant

OPENING LEGAL SUBMISSIONS FOR THE APPLICANT

Dated: 27 August 2025

MAY IT PLEASE THE COMMISSIONERS

Introduction and executive summary

- [1] These submissions are presented on behalf of Queenstown Commercial Parapenters Limited (**Applicant**), in support of RM230149 (**Application / Proposal**).
- [2] The Applicant seeks resource consent to establish and operate a commercial tree-climb ropes course at Lakeside Drive, Takapō / Lake Tekapo (**Site**).
- [3] Evidence in support of the Application has been lodged in advance of the hearing and will be called from:
 - (a) Jamie McMurtrie (corporate)
 - (b) Rob Hay (Acoustic)
 - (c) Andrew Leckie (Traffic)
 - (d) Samantha Strong (Open Space)
 - (e) Andrew Craig (Landscape)
 - (f) Mark Geddes (Planning)
- [4] These submissions address the following key legal issues:
 - (a) executive summary
 - (b) a description of the Site and context environment
 - (c) an introduction to the Proposal
 - (d) the potential effects of the proposal regarding:
 - (i) Natural character
 - (ii) visual amenity and views
 - (iii) landscape

- (iv) passive recreation and amenity
- (v) noise
- (vi) traffic and transport
- (vii) positive effects
- (e) an assessment of the objectives and policies
- (f) the section 104D tests and the decision-making framework
- (g) overall comments and conclusions.

Executive summary

[5] The Applicant's case is that the Application, as supported by its expert and corporate evidence is appropriate for the grant of consent, given:

- (a) Any adverse effects of the Proposal (including on natural character, visual amenity and landscape, and recreation) will be no more than minor and appropriate in the context¹.
- (b) There are no adverse cumulative or precedent effects of the proposal.²
- (c) The Application is consistent with, and not contrary to, the objectives and policies of the operative and proposed MDP when read as a whole. In turn, following established authority,³ the Proposal is also therefore consistent with Part 2 of the Act.

[6] Commercial recreation activities are encouraged under the MDP due to the economic, cultural, and social benefits they bring to the wider community and the District⁴. Any adverse effects of the Proposal are in the range of less than minor or minor at most, and acceptable in the context, due to the elevated positioning of the ropes course in the tree

¹ Evidence of Mr Geddes, at [278].

² Evidence of Mr Geddes, at [150], [266] and Mr Craig, at [102].

³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [73] (CA).

⁴ Strategic Direction ATC-O1; see also *Te Manahuna Ki Uta / Destination Mackenzie 2022 Shaping Our Tourism Values for the Future* [Mark Geddes, at [262].

canopy, with limited use of ground space and little day-to-day effects on other users of the Site⁵.

- [7] Submitters have raised concerns as to effects on amenity, quiet enjoyment of the Site, views from urban areas, and noise / increased 'busyness'. The Applicant's case is that while these concerns are genuinely held, they are not convincingly substantiated by expert or lay evidence⁶ and are not matters which run contrary to the anticipated outcomes for commercial recreation on the Site and the wider OSZ.
- [8] On the available evidence, and having regard to the limited scale and volunteered conditions of the Proposal, the Site and wider environmental context, and the policy direction of the proposed MDP, all effects are managed and minimised to an appropriate degree.
- [9] The Council's s42A report conclusions are predominantly based on Ms Faulkner's landscape evidence relating to natural character, visual amenity / outlook, and landscape. Much of the conclusions appear to be based upon the zoning direction under the previously operative MDP for the Passive Recreation Zone, or the proposed MDP as originally notified. These are outdated by the significantly changed policy and rule direction in the proposed MDP⁷. Furthermore, a number of the conclusions as to adverse recreation effects, and effects on other sensory qualities, are made without a suitable expert evidential basis⁸.
- [10] When properly weighting the proposed planning direction, and relying on the more appropriately qualified recreational and landscape evidence called by the Applicant, it is clear the Proposal will contribute to net positive recreation and other positive effects overall.

⁵ Evidence of Ms Strong at [107].

⁶ No specific lay evidence has been provided as to actual recreation use and values of the Site currently to counter the time lapse photos provided by the Applicant. No countering expert recreational evidence has been tabled to rebut the conclusion from Ms Strong that there will not be adverse effects on current passive recreation use. Summary statement of Mr Geddes as to weighting.

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⁸ For example, conclusions at [136] – [137] of the S 42A report do not rely on expert recreational evidence from a suitably qualified expert, nor any lay evidence as to baseline amenity values.

Site and environment context

- [11] The Site is located on MDC-owned land at Lakeside Drive, Lake Tekapo. It consists of existing exotic *Pinus* trees, within and below which the Proposal is planned to be located.
- [12] The Site is not subject to any reserve classification, is not identified within a wider section 6b landscape overlay and is not regarded by Mr Craig as being within the margin of the Lake in terms of s6a RMA.⁹ Natural character of the actual area occupied by the proposed activity is not considered to be pristinely high, due to the presence of exotic rather than indigenous vegetation and other elements of human modification.¹⁰ The Site is within an established 'urban fringe recreation' setting that supports a wide range of similar activities including the presence of existing commercial recreation businesses nearby.¹¹ The Site itself offers limited current recreational use for passive users, however this (limited) use can be further activated by the Proposal to overall increase recreational amenity and utility for both course users and non-users.¹²
- [13] The Site has been selected not only for the above co-location benefits of a wider mixed recreation setting, and outside of s6 RMA landscape constraints, but also for the functional and operational needs of a commercially viable ropes course operation. Mr McMurtrie's evidence provides an overview of alternative sites considered.¹³
- [14] At the time of lodgement of the Application, the Site was within the operative Passive Recreation Zone, however it has since been reviewed under Plan Change 29 to be re-zoned as Open Space Zone (**OSZ**). This rezoning, along with amendments to the attendant objectives, policies, and rules of the OSZ signals a significant and important policy shift for management of resources within the Site and wider receiving

⁹ Evidence of Mr Craig, at [69]. Counsel has assumed this will not be a contested issue as Mr Smith and Mr Craig do not consider the Site to be within the margin in terms of s6(a) and the definition of margin per Court authorities applying an ordinary meaning; referring to 'the edge or border of a surface':... or the example of a space immediately adjacent a river or piece of water, and edge, a border, a brink' (*Save Wanaka Lakefront Reserve* [2017] NZEnvC 88, at [161]).

¹⁰ Evidence of Mr Craig, at [40].

¹¹ Evidence of Ms Strong, at [19]; [26].

¹² Evidence of Ms Strong, at [156] – [157].

¹³ Evidence of Mr McMurtrie, at [24].

environment. The Proposed OSZ provisions now provide equal support for both passive and active recreation activities, and provide for complementary commercial recreation activities as a restricted discretionary activity.¹⁴

[15] This policy shift and rezoning is material to the assessment of the Application in that:

- (a) The proposed OSZ provisions should be given significant weight as compared to the outgoing ODP provisions or the initially notified OSZ provisions which they have replaced¹⁵.
- (b) The S 42A report heavily relies on the initially notified proposed provisions and does not consider the weighting of the two plans, therefore many conclusions as to the Application's appropriateness in the policy framework are incorrect and outdated¹⁶.
- (c) The Proposal is aligned with the outcomes of the decision version of the proposed OSZ in respect of complementary commercial recreation activities¹⁷, providing for limited facilities and structures¹⁸, and a predominance of open space.¹⁹

S88A RMA and application status

[16] As summarised in Mr Geddes' evidence, when the Application was first lodged under the previous Passive Recreation Zoning of the ODP, the proposal was non-complying under s104D RMA.

¹⁴ Evidence of Mr Geddes, at [207].

¹⁵ Evidence of Mr Geddes, at [252]; save for policy OSZp4 (Built form which is under appeal by the appellant – to be discussed later in these submissions).

¹⁶ Evidence of Mr Geddes, at [256]. The Same issue relates to Ms Faulkner's assessment which predated the new OSZ provisions.

¹⁷ Evidence of Ms Strong, at [105].

¹⁸ Evidence of Mr Craig, at [159].

¹⁹ Ibid; and evidence of Mr Geddes, at [210].

- [17] When decisions were confirmed by the Council on PC29, this rezoned the Site to OSZ and consequently amended the activity status for commercial recreation activities to a restricted discretionary status.²⁰
- [18] The Appeal period for PC29 closes on 4th September 2025. This means that, on the date of the hearing of this consent application, the new zoning and attendant OSZ provisions are not yet formally 'operative' and the previous provisions 'inoperative'. However, s88A of the Act still applies to lessen an activity status changed in a more favourable way for an application on foot.
- [19] The Environment Court considered this issue in *Infinity Investment Group Holdings Limited v Canterbury Regional Council*²¹, where it considered:

[81] The next question is whether the purpose of section 88A requires that works both ways: if the status is non-complying in a proposed plan to start with and then as a result of a clause 10 decision it becomes controlled, must it still be treated as the former? One answer for an applicant in this situation is to withdraw their application and re-apply for a controlled use - provided that does not have effects on their standing in any argument as to priority of applications. But that seems unnecessarily cumbersome, especially if they have (at least nominally) two applications before the local authority anyway.

[82] Applying section 88A both ways- i.e. where the status of an activity becomes easier - would "protect" a local authority from applications gaining a lower status under a proposed plan. However, the local authority does not need such protection for two reasons. First, the local authority is (usually) promoting the plan (change) to start with, so **presumably it considers the lower threshold of the status of the activity is a good idea even if it has not finally decided that yet.** Further, it has the controls in sections 86B to 86F RMA to prevent the relevant rules having legal effect if it wishes. In that case a second

²⁰ Evidence of Mr Geddes, at [29]; see also summary of Mr Geddes in respect of discretionary buildings for commercial recreation.

²¹ *Infinity Investment Group Holdings Limited v Canterbury Regional Council* [2017] NZEnvC 35.

resource consent would not be required unless and until the proposed plan actually became operative.

- [20] It is therefore submitted that the Commissioners should consider the Application under a discretionary framework and by applying most and significant weight to the proposed OSZ provisions.²² However, out of an abundance of caution, and to assist the Commissioners' determination should they come to a different view, the Applicant has also provided a non-complying gateway assessment for the Proposal. Either way, the Applicant's expert evidence concludes the Proposal is overall appropriate for grant of consent in accordance with the relevant s104(1) matters.²³
- [21] Counsel will likely provide an update on any relevant appeals by right of reply after 4th September, as well as an update on the operative / inoperative status of relevant rules and zoning.

The Proposal

- [22] A description of the Proposal is set out in para 40 of Mr Geddes' evidence detailing the scale and nature of the ropes course and associated built form, landscaping, and mitigation conditions.
- [23] Conceptual layouts of the final course design are contained within an envelope for approval on the site plan to be consented. Some limited flexibility is envisaged by the Applicant to finally locate all component parts of the course, subject to certification by Council, and with final plans provided by a registered landscape architect.
- [24] A revised set of conditions will be addressed in Mr Geddes' summary which includes new controls responding to submitter concerns as to uncertainty of the Proposal layout, final course design, and pruning of trees. In all other regards, the Proposal remains unchanged to that outlined in the Applicant evidence.
- [25] The Proposal is inherently transparent in nature; the cables, ropes, relatively small tree borne platforms and obstacles exhibit very little

²² OSZ P4 Built form to be addressed later in submissions
²³ Evidence of Mr Geddes, at [278] – [279].

visual bulk within the tree canopy elevated above ground level but below 10m in height. The only built form associated with the Proposal is low key and of a very limited footprint and finished in recessive materials and colours. In terms of the base building, the percentage Site coverage is only in the order of 0.074% and when considered as part of the wider OSZ is much lower.²⁴ The entire ropes course covers an area of 8,210m² which equates to 1.132% of the total OSZ.²⁵ However that should not be conceptualised as an exclusively occupied percentage, because the ropes course is suspended and open space will continue to flow.

- [26] The Course is overall regarded as being an 'organic' or informal layout²⁶ and fundamentally temporary in nature as the apparatus and base building are all removable and so the underlying landscape character of the activity area has the potential to be fully restored.²⁷
- [27] The Proposal is an efficient and effective use of available resources and will provide for a vibrant and enticing space for people to enjoy. It will enhance climbing experiences for all ages and abilities, while also promoting passive recreation through the shared pathway, inclusion of picnic facilities, landscaping, and minimal footprint at ground level.²⁸
- [28] Patronage is limited to a maximum of 60 persons; however some realism should be applied when assessing overall effects particularly on recreation, amenity, and 'busyness'. There will be fluctuations at different times of the year and over the course of the day. With the addition of the Applicant's proposed picnic tables and signage, there will be an enhanced experience for passive recreation users overall.²⁹

S 104(1)(a) Assessment of effects

Natural character

- [29] Natural character is addressed in the S 42A report at pages 22 – 23. While the author adopts Ms Faulkner's conclusions that modification of

²⁴ Slightly adjusted to 61m² footprint excluding decking per Mr Geddes' summary as compared to .039% as referenced initially in Mr Craig's evidence.

²⁵ Evidence of Mr Craig, at [115].

²⁶ Evidence of Mr Craig, at [201].

²⁷ Evidence of Mr Craig, at [26].

²⁸ Evidence of Ms Strong, at [95].

²⁹ Evidence of Ms Strong, at [61].

the proposal is small in the context and only has a minor effect on natural character [117] he goes on at [118, 120, and 201] to consider that in light of ss 6(a) and 6(d) RMA, the Proposal does not accord with Part 2 and that establishment of a 'commercial activity park' within the lake margin is not appropriate in terms of s6(a). It is hard to reconcile the two conclusions.

- [30] This assessment of natural character conflates a range of issues in terms of s6(a) RMA, the provision of public access (s 6d), and the MDP assessment matters.
- [31] As set out in the landscape evidence of Mr Craig, the Site itself is not considered to be within the margin of the Lake in terms of s 6a RMA³⁰. It triggers natural character assessment matters under the MDP only because of a very minor (almost technical) transgression into the 25m setback from the 'full flow water level' of the Lake. As addressed in Mr Geddes' evidence at [60] the Proposal's base building is not within this setback area, although some parts of the suspended ropes course are³¹.
- [32] These very modest intrusions in mind (which are inherently transient and transparent in nature), are important context when considering the NATC framework of the MDP. This is only a restricted discretionary assessment with 9 associated matters of discretion to consider under NATC-R1.
- [33] When looking at those matters of restricted discretion collectively, it seems they are mostly pointed at overall ensuring effects on natural character (and in particular the surface of water and riparian margins) are 'appropriate'. One assessment matter (f) pertains to functional and operational needs, reading:

³⁰ Counsel has assumed this will not be a contested issue as Mr Smith and Mr Craig do not consider the Site to be within the margin in terms of s6(a) and the definition of margin per Court authorities applying an ordinary meaning; referring to 'the edge or border of a surface':... or the example of a space immediately adjacent a river or piece of water, and edge, a border, a brink' (*Save Wanaka Lakefront Reserve* [2017] NZEnvC 88, at [161]).

³¹ Note this is demonstrated on the site plan and Mr Craig's summary evidence corrects the understanding the building footprint does not extend into the setback areas.

(f) The extent to which the alternative practicable options have been considered and their feasibility, including the functional need and operational need for the activity to locate in a riparian margin.

- [34] Firstly, it is arguable whether this assessment matter is directly applicable given the Applicant's expert evidence that the proposal is not within the riparian margin of the Lake.
- [35] That aside, the corporate evidence of Mr McMurtrie has identified the functional and operational needs of the activity to establish in this location, and that a number of alternative options were considered but were not practicable to pursue. This assessment matter must be read in the context of a restricted discretionary framework (which is inherently enabling), and in the OSZ which also anticipates commercial recreation as well as active and passive recreation and therefore associated structures and buildings (to a degree). The assessment matter is not a hard standard or policy directive to be achieved in all cases, or which might 'fail' an activity if it could not demonstrate functional and operational need. Rather, it is one relevant assessment matter to be considered in the matrix of 9 assessment matters for a rule which is only very minorly transgressed.
- [36] While the Applicant evidence does support its functional and operational need, even if that were not favoured, that does not mean the proposal falls foul of the natural character provisions of the MDP.
- [37] The MDP has particularised and given effect to s 6(a) of the Act through these provisions. There is no assessment from the s 42A report writer suggesting those provisions are incomplete, invalid, or otherwise uncertain, warranting a decision to instead be made directly against s 6(a) of the Act. In this regard it is considered that very limited weighting should be given to the conclusion at [118] and [201] that due to there being no functional or operational need for the course to be close to the lake, it is not appropriate use in terms of s 6(a) RMA.
- [38] It is submitted that the evidence of Mr Craig and Mr Geddes should be preferred in this regard, where they conclude that:

- (a) Natural character effects will range from less than minor to minor at most as the Proposal is in keeping with its setting.³²
- (b) Natural character includes “a range of natural character from pristine to modified” and while natural character is moderately high at the Site it is not at all pristine.³³
- (c) Overall, in terms of the Proposal's very modest setback intrusion, it will have negligible effect on the surface water body and its riparian margin and will be consistent with all assessment matters in NATC-R1.³⁴

[39] As noted by Mr Geddes and Mr Craig there is no general policy in the MDP or in the Act itself that precludes, or suggests commercial activity is generally not appropriate within the context of s6(a). To the contrary, as established in Ms Strong's evidence, the Site's immediate environment includes a range of similarly established activities.³⁵

[40] Finally, in terms of s 6(d) public access to lakes, Ms Strong concludes the Proposal maintains public access beneath the course. Its location within an established urban fringe recreation setting supports such activities, as does the presence of existing commercial recreation businesses nearby, and its small-scale / temporary nature which does not inhibit other recreation uses³⁶. These factors all combine to mean it has a less than minor effect on existing passive and active recreation users of the area³⁷ and there are no adverse effects on access to the Lake in terms of s6(d) of the Act³⁸.

Visual amenity / outlook

[41] Visual amenity values and views are one of the most contested parts of the Proposal, particularly as set out in evidence of the opposing

³² Evidence of Mr Geddes, at [100].

³³ Evidence of Mr Geddes at [101].

³⁴ Evidence of Mr Craig, at [227] – [238].

³⁵ Evidence of Ms Strong, at [122], [130], [135].

³⁶ Evidence of Mr Craig, at [26] - The proposed activity is fundamentally temporary in nature as the apparatus and base building are all removable and so the underlying landscape character of the activity area harbours the potential to be fully restored.

³⁷ Evidence of Ms Strong at [19].

³⁸ Evidence of Mr Geddes, at [271].

submitter who has called expert evidence³⁹ in respect of their development's adjacent lake views.

[42] The s 42A report considers that cumulatively the activity will occupy a large space, be prominent for those traversing through the Site, and those seeking to use the area for the zoned purpose (i.e. enjoyment of open space for passive recreation) [135].

[43] Firstly, this conclusion appears to predominantly rely on the notified version of the MDP OSZ or perhaps (but it is not clear because weighting is not addressed) the operative passive recreation zone. As observed by Mr Geddes, the recent PC29 policy shift removes a preference for passive over active recreation, and now **'provides for'** complementary commercial recreation. That is material to this assessment of effects.

[44] It is difficult to reconcile the conclusions at [135] with the facts of the Proposal and supporting evidence, in particular:

- (a) The OSZ site coverage standard for buildings is 5% or 100m², whichever is the lesser⁴⁰. Within the 1.48ha Site, as noted above, the base building achieves both standards and is very modest.
- (b) The only physical ground footprint is this very modest base building, and this is not placed in a location that interferes with access and recreational use.⁴¹
- (c) While the physical structures of the ropes course will be noticeable along the shared pathway, they will not dominate or detract from the primary recreation experience and will continue to allow for current and future recreation to occur.⁴²
- (d) Pedestrians currently access this area by foot and there would be no significant change in mode shift in recreation from the Proposal⁴³.

³⁹ Tekapo Landco Limited and Godwit Leisure Ltd and associated expert evidence of Ms Banks and Mr Smith.

⁴⁰ Evidence of Mr Geddes, at [217].

⁴¹ Evidence of Mr Craig, at [207].

⁴² Evidence of Ms Strong at [83b].

⁴³ Evidence of Ms Strong, at [37].

(e) The inclusion of publicly accessible additional seating, picnic tables, and signage, will significantly enhance the visual amenity of this space and would, in fact, activate this unused space underneath the pine trees.⁴⁴

[45] The Proposal therefore is very low key with limited built form within the canopy of trees. It is hard to correlate these very modest occupational percentages with the s 42A conclusion that cumulatively the activity will occupy a large space.

[46] The s 42A report goes on at [135] to consider that residential sites in Station Bay will receive adverse effects (though does not quantify those) then concludes overall amenity and open space values are considered to be more than minor.

[47] As addressed above, the nature of the ropes course at elevated locations is essentially permeable in nature. Mr Craig concludes that views to and through the treed setting and lake background will remain attainable. Additionally, because installation of the ropes course may involve some limited pruning of trees,⁴⁵ views to the lake may be improved, especially for those parties viewing it from higher elevations such as from Station Bay subdivision. For pedestrians and motorists, views to the lake will remain unobstructed. Mr Craig concludes that view obstruction for these residents will be less than minor.⁴⁶

[48] Mr Smith for the opposing submitter concludes that there are moderate, to moderate to high, adverse effects from the Station Bay Development. in terms of views, this relates to his consideration that because of policy OSZ-P4, 'views to the Lake and mountains are highly valued and subsequently less able to absorb change or have the view reduced. i.e. a small reduction to a view can have a moderate-high degree of effect'.⁴⁷

⁴⁴ Evidence of Ms Strong, at [60].

⁴⁵ See new condition 15 to manage the trimming of trees to ensure that it is necessary, not detrimental to the health of the tree and will maintain natural vegetation patterns.

⁴⁶ Evidence of Mr Craig, at [128].

⁴⁷ Evidence of Mr Smith, at [38].

[49] The Applicant has appealed this policy that was introduced under PC29. It therefore should be given limited weighting by the Commissioners. The policy direction provided for:

(OSZ-P4) maintain uninterrupted views from urban areas to any lake and maintain the amenity of lakeside areas

[50] In any event, Mr Smith does not appear to accurately convey the wording of the policy in his evidence, or in applying his effects assessment based upon the importance of those views. Firstly, he omits reference to the nature of such views to be maintained in terms of where those are ‘uninterrupted’ at present. As noted in Mr Craig’s evidence views from these urban areas are not uninterrupted towards the Lake itself – they are interrupted by the Site’s mature trees to be used for the Ropes Course, they are interrupted by existing and anticipated future growth of landscaping, they are interrupted by the likely future permitted landscaping of other residential sites, and they are also interrupted by views of existing structures and built form⁴⁸.

[51] Furthermore, the policy direction is whether such uninterrupted views are ‘maintained’.

[52] Even if one considered these private views were uninterrupted to the Lake (and the evidence suggests that is not the case) the policy direction of ‘maintaining’ those does not create a no-change outcome.

[53] Recent High Court authority has assessed the meaning of maintain in the context of visual amenity landscapes. The High Court in *Canyon Vineyard* considered an appeal alleging errors of law in an Environment Court decision granting resource consent for subdivision. Matters at issue included the Environment Court’s interpretation of the meaning of “to maintain”.⁴⁹

[54] The High Court decision includes a comprehensive review of the relevant case law in terms of a meaning of ‘maintain’. The Court

⁴⁸ Evidence of Mr Craig at [207] – [212]. They may also be interrupted by future built form within the subdivision subject to the MDP bulk and location rules. Planting on private property may intrude views too.

⁴⁹ *The Canyon Vineyard Limited v Central Otago District Council* [2022] NZHC 2458, at [101] – [125].

ultimately found that the weight of recent case law supported Bendigo's submissions which were summarised at [121] and [122] of the decision:

[121] Bendigo submitted the EC understood that a possible outcome of achieving Objective 4.3.3 may well have been to avoid all effects but recognised on the evidence that this was not such a case. The EC considered that such an approach is not essential and is informed by the nature of the Proposal, its context and the extent of any adverse effect. Accordingly, Bendigo submitted the EC did not err in its approach to the term "maintain" and was entitled to grant consent to a Proposal that would introduce change to the landscape.

[122] Bendigo submitted that "to maintain" does not require that a landscape be frozen in time (*Meridian*) and anticipates land use change in a way that can maintain amenity (*Brial*).

- [55] Whether this outcome is achieved in this case is informed by the nature of the proposal, its context and the extent or degree of any adverse effects. The Applicant says that its evidence does establish that the Proposal suitably maintains uninterrupted views to the Lake.
- [56] It is trite law that change is not necessarily adverse. The *Canyon* case establishes that in the context of 'maintain', there is a degree of scope for change without running afoul of the directives in relevant objectives and policies.
- [57] In the context of the Site being OSZ (and not ONL or within s6(a) margins) facilities and structures are 'limited' and are to maintain a predominance of open space across the zone. Built form is not therefore to be avoided or prohibited, or even reasonably difficult to see. Change in a view may not be anomalous provided it maintains the generic outcome in plan direction. In the OSZ, this is the predominance of open space and vegetation while accommodating recreational activity. The applicant's proposal is not anomalous in this regard as it maintains all of these outcomes.⁵⁰

⁵⁰ See Mr Craig's examination of values at [72] and his conclusions as to maintenance of a predominance of open space at [159].

[58] Mr Smith fails to assess his conclusions on view effects in this context:

- (a) At [76] he concludes that 'built form and resulting busyness within these trees will interrupt and detract from the current views gained to Takapō / Lake Tekapo from the Station Bay Development'. As noted above, the policy direction is not whether built form will interrupt or detract from views. Rather it is about the extent to which uninterrupted views will be maintained.
- (b) In this conclusion, Mr Smith also does not specifically assess the degree of interruption or detracting of views with reference to any anticipated activities in the OSZ or built form and landscaping changes in the urban areas.
- (c) The policy direction about 'views' is a broad direction in the sense a view is panoramic. It cannot be equated to an avoidance of visible built form or no change directive.

[59] Mr Smith considers that while open space at a broader receiving environment scale will be retained, at the 'character area' scale it will not. This takes an extremely narrow approach to the intent of the OSZ provisions which, to the contrary, are expressed on a zone-wide basis:

Objectives	
OSZ-O1	Zone Purpose
The Open Space Zone provides areas of open space which predominately provide for a range of passive and active ⁴ recreational activities.	
OSZ-O2	Zone Character and Amenity Values
The Open Space Zone contains limited facilities and structures which support the purpose of the zone and maintain the predominance of open space.	

Policies	
OSZ-P1	Recreational Activities
Enable informal recreation opportunities, and facilities that support these, including walking and cycling connections, toilets, playgrounds, sporting equipment and picnic and barbeque areas.	
OSZ-P2	Compatible Activities
Provide for community facilities and commercial recreation activities which are of a nature and scale that is complementary ⁵ to, and does not detract from, ⁶ the passive recreational ⁷ focus of the zone.	
OSZ-P3	Other Activities
Only allow other activities where they: <ul style="list-style-type: none"> 1. have a functional need or operational need to locate within the zone; or 2. are compatible with the purpose of the zone and do not conflict with recreational uses; and 3. are of a location, nature and scale that does not preclude development of new open space and recreational activities. 	
OSZ-P4	Built Form
Limit the scale of built form within the Open Space Zone to: <ul style="list-style-type: none"> 1. retain a clear predominance of open space; and 2. maintain uninterrupted views from urban areas to any lake and maintain the visual⁸ amenity of lakeside areas. 	

- [60] As observed in *Save Wanaka Lakefront* it is important that an expert applies a methodology for landscape scale that properly accords with the plan's objective and policies and ss 6(a) and (b), RMA. Otherwise, the risk is that the assessment will address the wrong questions, and derive the wrong answers.⁵¹ Mr Smith's 'character-scale' assessment of the trees of the Site itself is overly confined such that his assessment of effects on the openness of landscape does not properly accord with the plan's policy intentions for such assessments.
- [61] Furthermore, Mr Smith's conclusion as to open space also conflates access and recreation values where he states that the Proposal will 'perceptually deter the public from entering this space, due to the commercial nature of the activity and inherent safety risk'. This is contrary to the uncontested recreation evidence of Ms Strong which concludes there will be no such deterrence to the public and there is no tension due to commercial and safety matters⁵². Mr Smith traverses matters beyond his expertise in this regard and these conclusions should be given limited weight.

Landscape

- [62] Only two brief paragraphs are provided in respect of the s 42A conclusion that landscape effects will be adverse (moderate to moderate to high). The basis of the conclusions at para 136 – 137 seem to be related to peoples' appreciation and enjoyment of open space, recreation and visual amenity values as well as smells and sensory qualities.
- [63] As noted above, in terms of recreation, sounds, smells, and sensory qualities, the Applicant's case in reliance on the uncontested evidence of Ms Strong is that the location of the Site in proximity to other significant tourism and commercial offerings means the presence of commercial recreation services will not be unexpected in this setting.
- [64] In terms of five key recreational assessment matters (consequential mode shift, dominance of the course, carrying capacity and crowding,

⁵¹ *Save Wanaka Lakefront Reserve Inc v QLDC* [2017] NZEnvC 88, at [216].

⁵² Evidence of Ms Strong, at [159].

specialisation and commercialism, Ms Strong finds that although some individual perceptions may vary, the overall impact on the experience will be minor for most users.⁵³

[65] The Commissioner should give greatest weight to Ms Strong as the only suitably qualified recreational expert in this hearing, over conclusions from Ms Faulkner and Mr Smith in this regard, which do not appear to be qualified, nor rely on any evidence to establish the current passive recreation values or how those will be adversely affected.

[66] For these reasons, the Applicant's case is that Mr Craig's evidence should be preferred, and his conclusions that amenity and associative effects will be less than minor and landscape effects minor.

Traffic and transport

[67] The s42A report concludes that effects on access and parking will be less than minor, and generally transport effects will be no more than minor. The Applicant has volunteered a financial contribution and proposed landscape plan for upgraded parking within the MDC carpark. While achieving those outcomes is reliant on the Council adopting and undertaking an upgrade process, these would be material positive effects volunteered by the Applicant, and which are not critically necessary to otherwise offset any adverse effect of the Proposal⁵⁴.

[68] The Applicant's expert evidence concludes that Lakeside Drive carries relatively low traffic volumes in a slow speed environment, and the small volume of additional traffic from the Proposal, even at its busiest times, will have a negligible effect on the safety and efficiency of Lakeside Drive. More than adequate parking is available, and the Proposal's parking demands would be typical for the activity area and acceptable.⁵⁵

Noise

[69] The s 42A report confirms that noise has been sufficiently managed by the Applicant and such effects are acceptable in the receiving

⁵³ Evidence of Ms Strong, at [83].

⁵⁴ S 104(1)(ab) RMA.

⁵⁵ Summary statement of Mr Leckie.

environment. The Applicant has clarified its noise standards to be imposed, as will be addressed by Mr Hay's summary.

[70] The dominant character of noise from the Proposal is traffic noise and vocalisation. Both of these have character that are identical or very similar to the existing traffic noise, parking, and informal play that occurs in the area currently under ambient (residual) noise monitoring undertaken, which demonstrated a moderately noisy environment.

[71] The Proposal complies with permitted noise standards, and in terms of character of noise, Mr Hay concludes that:

- (a) While use of the zip lines does have a character that differs from existing noise levels, this noise is not predicted to be intrusive or dominating and will not change the level of amenity for other users of the space.
- (b) Contrary to Mr Smith's (landscape) opinion, noise from the Proposal will not be prominent to the point of dominating the experience along a 250m section of the pathway, and rather, will be consistent with noise levels measured at the site, and the expected pattern of activity throughout the year.
- (c) While there is a perceptual link between landscape and noise, this is not necessarily adverse. The effects of the Proposal will be acceptable in the receiving environment and will not materially alter or degrade the existing amenity afforded by the ambient environment.⁵⁶

[72] While expert landscape and planning evidence for the opposing submitters attempt to make conclusions as to adverse noise effects as a proxy for 'busyness' and amenity effects, it is submitted that the expert acoustic evidence of Mr Hay should be preferred and is unchallenged.

[73] Furthermore, it is difficult to reconcile the positive conclusions of the s 42A report in respect of noise, with the potential for adverse amenity and quiet enjoyment in terms of sensory qualities relating to landscape (at

⁵⁶ Summary statement of Mr Hay.

para 136). In this regard, it is submitted that the combined evidence of Mr Geddes, relying on Ms Strong, Mr Craig, and Mr Hay, for the Applicant have more appropriately stayed within their respective expert domains and provide a compelling assessment of noise effects, including character and quality of noise, on the receiving environment.

Amenity and recreation values

- [74] The RMA's definition of 'amenity values' refers to those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.⁵⁷ That definition allows for consideration of the recreational attributes of an area, without precluding active recreation. In determining what people appreciate, one can validly consider the proposed MDP as a very recent policy document informed by public submissions, and as noted above, this does not provide any preference for passive over active recreation. Furthermore, the Site is not designated as recreation reserve (so no RMP is in place), nor subject to any other overlay that signals active and commercial recreation would be a contrary outcome.
- [75] The OSZ provisions expressly contemplate a wide range of recreational experiences, based on the identified characteristic and environmental limits of the various parts of the lake and foreshore. The objective and policies specifically intend proper management of adverse effects, including in relation to other recreational values. Specific focus is given to the effects of incompatible scale activities (e.g. ones which do not retain a predominance of open space or are not complementary). However, that focus is not necessarily intended to exclude activities that involve buildings or structured recreational activities.
- [76] Specifically, those provisions allow for properly managed development of the OSZ and contemplate commercial, active and passive recreational activities co-existing.

⁵⁷ S 2(1) RMA.

- [77] Concerns from submitters as to displacement of passive recreation overstate perceived negatives of the effects of the Proposal and understate true positives for amenity values. Such submissions are not supported by any clear evidence as to actual passive recreation use (such as by any evidence on values, nor photo or video evidence). The Applicant has however taken the effort to quantify this through studies of the site, timelapse photos, and expert recreational evidence.
- [78] Even if the very limited building footprint were to displace some passive recreation use (and that is not supported by the expert recreation evidence. Such change is not necessarily overall adverse. This was similarly addressed in the *Save Wanaka Lakefront* case, where the Court considered:

[257] We accept that a consequence of enabling the proposal is that some current informal usage of the relevant locality will be displaced. For those uses that take place in the footprint of the proposed building, that is inevitably the case. It is also inevitable that, during the frequent times that the facility is being used for its intended watersports activities, other incompatible activities will be temporarily displaced. There will be occasions when, as rowing hulls are being worked on in preparation or for return to the building, those walking or cycling in the area may have to slightly divert from their intended routes. On the other hand, some may choose to pause to watch.

[258] We find nothing adverse in such change to how things are now experienced. Rather, change of this kind is part of the normal dynamics of a reserve intended for recreation which may be structured/active and/or informal/passive⁵⁸.

- [79] Change will not necessarily be adverse, particularly where the guiding policy for the Site (in this case the OSZ) anticipates a range of passive and recreation uses, rather than a no change or preservation outcome.

Positive effects

- [80] The Proposal will create a unique additional recreational and tourism offering within a suitable location, that increases vibrancy of offerings in

⁵⁸ *Save Wanaka Lakefront Reserve Inc v QLDC* [2017] NZEnvC 88, at [257] – [258].

the area. As concluded by Ms Strong, given Lake Tekapō's established role as a recreation and tourism destination, and the capacity of the area to sustain recreation and tourism uses in the vicinity of the site, the Proposal is appropriate from a recreation and tourism development perspective. Furthermore, it has the potential to generate net positive outcomes for local recreation and tourism activity.⁵⁹

- [81] The Proposal will enhance the diversity of recreation options available and has potential positive impacts for users, without generating adverse effects such as crowding or visual impacts. These are consistent with the Destination Management Plan objectives, supporting broader recreation and tourism initiatives.⁶⁰
- [82] The Applicant has volunteered a number of public picnic tables to further active an underutilised space in the vicinity of the Site. While this does not offset an adverse effect (given Ms Strong's evidence that there are no adverse displacement effects on recreational use), this will create a further additional positive offering the Applicant is willing to provide.
- [83] In terms of landscape and visual amenity values, Mr Craig for the Applicant notes that the Proposal will also enhance peoples' appreciation of its landscape setting where elevated views of the lake and its mountain backdrop will be attained⁶¹.
- [84] Furthermore, the (limited) pruning of trees may also have positive effects compared to the current situation, with the effect of enhancing views of the lake.⁶² Mr Smith's evidence for the opposing submitter also accepts this positive effect.⁶³
- [85] Through consultation, the Proposal has received a positive response from the community board and there are several positive economic, social, and cultural benefits that will accrue both directly and indirectly.⁶⁴ The ability for the Proposal to create an additional reason for people to

⁵⁹ Evidence of Ms Strong, at [17].

⁶⁰ Evidence of Ms Strong, at [136].

⁶¹ Evidence of Mr Craig, at [119].

⁶² Evidence of Mr Craig, at [139].

⁶³ Evidence of Mr Smith, at [39]. Note that further conditions of consent have been revised in response to the concern regarding uncertain limbing outcomes.

⁶⁴ As listed in the evidence of Mr Geddes, at [81].

visit the area or to stay longer has important wider strategic significance in terms of the Destination Management Plan and the strategic provisions of the MDP.⁶⁵

- [86] The s 42A report writer did not have the benefit of any expert recreation evidence at the time of writing, and so may have underestimated the weighting to be given to all of these positive effects.

S 104(1)(b) Assessment of MDP policies and objectives

- [87] The findings of Mr Geddes are that, overall, the Proposal not inconsistent with the Passive Recreation Zone of the Operative MDP and is consistent with the OSZ from PC 29.⁶⁶ This is supported by the above comments in respect of:

- (a) A number of conclusions made by both Mr Smith and Ms Faulkner which appear to stray outside of their landscape areas of expertise, and do not appropriately regard the most qualified opinion on the matters of recreation and amenity effects from Ms Strong (or did not have the benefit of that evidence at the time of writing).
- (b) The lack of the s 42A report writers' assessment and appropriate weighting to be given to the proposed MDP objectives and policies to a much greater degree than the notified MDP provisions.
- (c) The erroneous landscape character and visual effects assessments made by Mr Smith which do not apply correct policy direction, do not have regard for the realities of the receiving and future environment, and take a narrow character scale assessment rather than a holistic receiving environment assessment.
- (d) The inappropriate consideration of functional and operational needs as if this is a test of activities within the 25m natural character setback and that commercial activities in the OSZ are inherently inappropriate.

⁶⁵ For example ATC-O1.

⁶⁶ Evidence of Mr Geddes, at [11].

Natural character objective and policies

[88] In terms of the natural character policy direction, the s 42A report writer concludes the proposal is in tension with the policy framework at NATC-p1 and p2. The conclusion is made with reference to Ms Faulkner's finding that the use of the Site is inappropriate in terms of s 6(a). As noted above, this approach subverts established higher court authority to override clear plan and policy direction in light of Part 2 of the Act. The key assessment is against the policy direction itself, which does not set a preservation or no change outcome. Rather, it is directed at protection of natural character from *inappropriate* use and development. As concluded in the evidence of Mr Craig and Ms Strong, there is no inherent policy direction or in the Act itself to the effect that commercial activities in public spaces are inappropriate⁶⁷.

[89] What is inappropriate will turn on the values of that which is sought to be protected. The more specific and directive any policies are in this regard, the more weight would be given as compared to those expressed in more abstract terms. The NATC policy direction seeks to guide scale intensity and form of development to manage effects on natural character. In the context of the Proposal, the triggering of these provisions is almost technical in nature and in an environment which is not pristinely natural. In this contextual assessment, the Proposal is aligned with objectives and policies of the natural character chapter.⁶⁸

Open Space Zone objectives and policies

[90] At [176], the s 42A report concludes that the purpose of the OSZ is clear and the proposal is incompatible with many of the outcomes sought in the OSZ. Ironically, the issue as to signage for public use was a response to Council concerns as to privatisation. If the signs are a particular issue, the Applicant can withdraw those. They do not signal the Proposal is inherently contradictory to the Zone purpose.

[91] As noted above, commercial recreation activities are 'provided for' in policy p2 where they are of a nature and scale that is complementary to

⁶⁷ Evidence of Mr Craig, at [217].

⁶⁸ Evidence of Mr Geddes, at [237].

the recreation focus of the zone. The Applicant's case, in reliance on the evidence of Ms Strong and Mr Craig is that in this particular location the Proposal would not be unexpected, and its limited nature and built form are of a complementary scale. The Proposal is required to complement recreational focus generally (not just passive recreation use), and Ms Strong's evidence concludes such uses will not be adversely affected.⁶⁹ There is no policy direction to 'not detract from' a passive focus.

- [92] The policy direction to 'provide for' complementary commercial recreation activities is reasonably directive. The direction means that such activities are essentially anticipated or enabled,⁷⁰ particularly when coupled with the restricted discretionary consenting pathway for commercial recreation activities. While that is subject to an evaluative assessment of complementary nature and scale (as well as effects on the predominance of open space and views), it is still an overall enabling framework for activities like the Proposal.

Other relevant policies and objectives

- [93] Subordinate to these two issues above, the s 42A report writer concludes that the Proposal accords with the policy direction relating to noise, transport, and strategic direction. In respect of his overall conclusions at 185, he considers that primarily concerns arise from effects on visual amenity and accessibility of the area for passive recreation. This is fundamentally flawed in terms of weighting passive recreation from the notified plan over the MDP decision version which does not prioritise this or require the proposal not detract from such values any longer.

Section 104D gateway test

- [94] Section 104D of the Act contains the gateway test which applies to noncomplying activities. The proposal must either:

- (a) have effects that are not more than minor; or

⁶⁹ Evidence of Ms Strong at [83].

⁷⁰ *Royal Forest and Bird Protection Society of New Zealand Inc v NZ Transport Agency* [2024] NZSC 26, at [69] – noted that 'provide for' is an enabling directive.

(b) not be contrary to the objectives and policies of the relevant plans.

[95] The s 42A report concludes the effects gateway is not achieved, but the policy gateway is.

[96] The Applicant's evidence is that, if to be assessed as a non complying activity, both s 104D gateway tests are passed, and the Proposal is overall appropriate for the grant of consent under s 104(1) of the Act.

[97] Observations as to the approach for a s 104D gateway assessment were recently provided in the Supreme Court's East West Link case.⁷¹ Key principles include that a fair appraisal of policies and objectives across the plan must be taken holistically and the context of policies and objectives as they appear is important, as is context of the environment / Site and Proposal under consideration.

[98] The Applicant does not consider the Proposal should be assessed on a non complying basis given the revised activity status under PC29, soon to be confirmed operative. However out of an abundance of caution this assessment is provided. When appraising the new open space, natural character, and strategic provisions as a whole, the Proposal is consistent with the policy direction of the proposed MDP.⁷²

Conclusion

[99] Given all of the above the Applicant submits that

(a) The Proposal will maintain visual amenity values and ensure a predominance of open space is achieved.

(b) Uninterrupted views from urban areas will be maintained, to the extent there are any.

(c) Landscape values, natural character, views, and associative / sensory landscape effects will be less than minor to minor at most.

⁷¹ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

⁷² Evidence of Mr Geddes at [277].

- (d) The Proposal will have overall net positive recreation effects. It will increase the diversity and vibrancy of active recreation opportunities close to Lake Tekapo within an appropriate mixed use recreation setting.
- (e) There are no adverse cumulative or precedent effects, and there are a range of positive effects.

[100] The Proposal is appropriate for grant of consent under s104 and on the conditions to be addressed in the summary statement of Mr Geddes.

Dated 27 August 2025



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