

<b>Under</b>	The Resource Management Act 1991 (RMA)
<b>In the matter of</b>	Plan Change 29 to the Mackenzie District Plan and Variation 1 to Plan Change 23 of the Mackenzie District Plan
<b>In relation to</b>	The submission of Queenstown Commercial Parapenters Ltd

**STATEMENT OF EVIDENCE OF MARK WILLIAM GEDDES**

7 May 2025



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## **INTRODUCTION**

1. My name is Mark William Geddes and I am a Director, Commissioner and Planning Consultant at Perspective Consulting Ltd.
2. My qualifications include a Bachelor of Resource Studies from Lincoln University, New Zealand, and a Master of Science (Spatial Planning) from Dublin Institute of Technology, Ireland (first class honours).
3. I have worked for over 25 years in planning, in New Zealand, Ireland and Australia in both the private and public sectors. I have significant experience in consenting, plan making, enforcement and policy analysis. This experience includes leading major plan making and policy projects; providing expert planning evidence in the Environment Court and Council hearings; consenting a range of developments; and making submissions on national legislation, and national, regional and district policy.
4. I am a full member of the New Zealand Planning Institute.
5. Queenstown Commercial Parapenters Ltd (the Submitter) has authorised this evidence in relation to their submission made on Plan Change 29 (PC29) and Variation 1 of Plan Change 23 (PC23) to the Mackenzie District Plan (MDP).
6. I have read and am familiar with the Environment Court's Code of Conduct for Expert Witnesses, contained in the Environment Court Practice Note 2014, and agree to comply with it. My qualifications as an expert are set out above. Other than where I state that I am relying on the advice of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **SUMMARY OF THIS EVIDENCE**

7. This evidence is filed in support of the Queenstown Commercial Parapenters Ltd submission on PC29 and Variation 1 to PC23.
8. The submitters are seeking resource consent to establish a commercial recreation activity at Lakeside Drive, Lake Tekapo, located in the Open Space Zone (OSZ) of PC29. While the OSZ classifies commercial recreation activities as a restricted discretionary activity, some of its other provisions are inconsistent with this approach, do not appropriately provide for commercial recreation activities and create an unnecessary and inappropriate impediment

for these activities, and which does not otherwise efficiently and effectively achieve the relevant objectives of the OSZ. Accordingly, the submission sought to make several discrete amendments to the OSZ, the Natural Character Chapter (NATC) and the Noise chapter to ensure that commercial recreational activities have an appropriate consenting pathway relative to potential adverse effects of the same (in terms of s76(3) RMA).

9. While my evidence agrees with some of the amendments recommended by the reporting officer, there remains several matters in contention.

10. In summary, my evidence is that:

- a. The introduction section, Objective OSZ-O1, Policy OSZ-P2 and Rule OSZ-R6 do not refer to active recreation activities which is a requirement of the National Planning Standards. Its exclusion inappropriately changes the intent of the zone and will negatively affect the appropriate consideration of active commercial recreation activities which are an anticipated component of the OSZ.
- b. Policy OSZ-P4 inappropriately refers to protecting uninterrupted views from urban areas which is not adequately justified in terms of s32 RMA for several reasons.
- c. Standards OSZ-S2 (in relation to setback for structures from boundaries) and Rule NATC-R1 (in relation to setback of structures from surface water bodies) are inappropriate and inefficient in that the consenting costs will outweigh any benefits derived from the consent process relative to potential adverse effects and the purpose of the OSZ.

11. **Appendix 1** of my evidence sets out my recommended amendments to PC29 and Variation 1 of PC23.

## **SCOPE AND PURPOSE OF THIS EVIDENCE**

12. The purpose of this evidence is to provide my expert opinion regarding the matters in contention.

13. The scope of this evidence includes:

- a. the background to the submission
- b. a summary of the relief sought by the submission and the reasons for that relief
- c. a summary of the Council's report in response to the relief sought
- d. a summary of the relevant further submissions
- e. my comment on the remaining matters in contention

- f. my recommended amendments to PC29 and Variation 1 of PC23.

## BACKGROUND

### The Submitter

14. The submitter is an experienced commercial recreation provider with operations in New Zealand and Australia. They have sought resource consent to establish a ropes course at Lake Tekapo. The application has been publicly notified and is, at the time of writing, waiting for a hearing.

### Site

15. The land that the submission relates (hereafter the site) is located at Lakeside Drive, Tekapo, and is legally described as Lot 2 Deposit Plan 562455, held in Record of Title 999813, and Lot 5 Deposit Plan 455053, held in Record of Title 584960. The location of the site is indicated in **Figure 1**. A close-up aerial photo of the site is provided in **Figure 2**.
16. The site was selected due to its established trees, proximity to existing commercial and recreational activities, notable levels of vehicle and pedestrian traffic and ability to visually absorb the activity.



Figure 1 – The site's general location is illustrated by a red outline. Source: Canterbury Maps Viewer).



Figure 2 – A close up aerial photograph of the site. The approximate boundaries of the site are indicated by a red line (Source: Canterbury Maps Viewer).

### Proposed Activity

17. As stated above, the Submitter has lodged a resource consent with Mackenzie District Council. It proposes a ropes course that will cater for tourists, visitors and residents. Refer to **Figure 3** for the site plan of the proposed activity.
18. The adult ropes course will contain a series of climbing wires, ropes, wire bridges, platforms and zip lines. These will be generally located within the canopy of the pine trees, between 3m–10m above ground level. The height of the course will enable the open space area beneath the ropes course to continue to be accessible to the public, including use of the footpath and picnicking within the trees.
19. A small base station building (58.56m<sup>2</sup>) is proposed that will be located parallel to Lakeside Drive at ground level. The base station will be located and will be clad with a combination of Corten steel and vertical timber panels with a natural finish and will have glazed windows and doors.

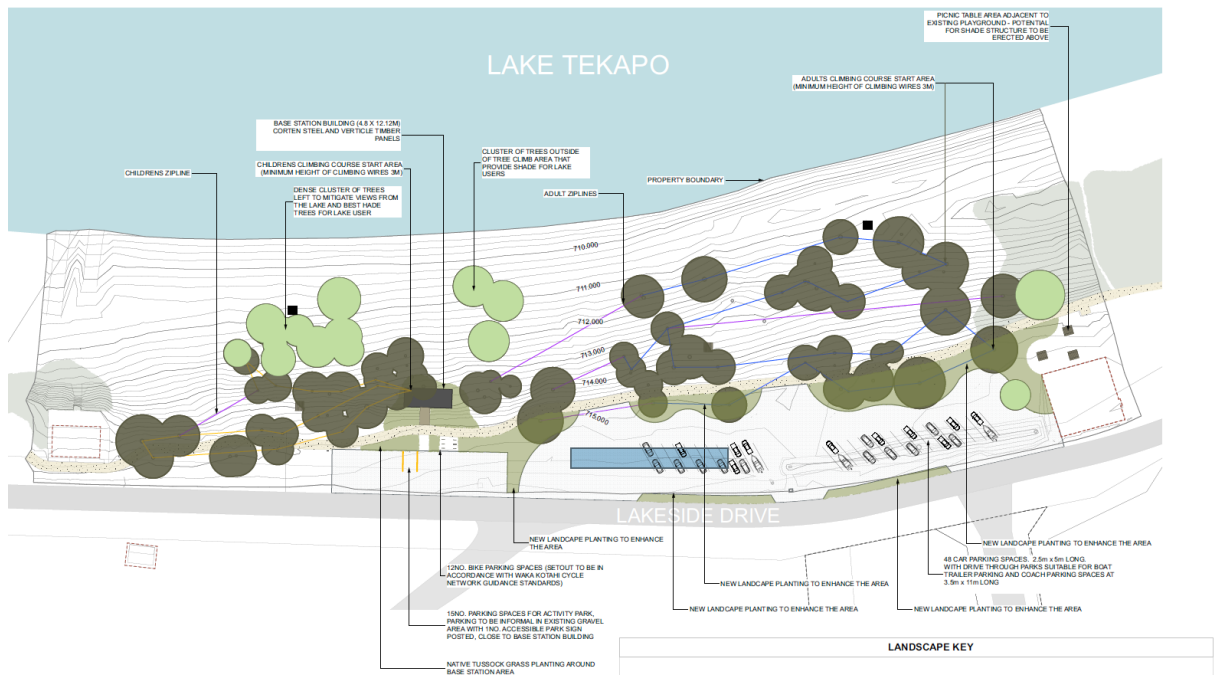


Figure 3 – The proposed ropes course

20. The scale, location and form of the base station building and structures have been designed to complement the site and surrounding area and to be in general accordance with the Takapō I Lake Tekapo Character Design Guide.
21. I have reviewed expert evidence from traffic, landscape, recreation, noise domains, supporting the proposal and concluding that it will have overall minor or less than minor effects on the environment and net positive recreation and economic / tourism benefits. On this basis, my expert planning opinion is that the proposal constitutes an appropriate and complimentary commercial recreation opportunity in the OSZ that will have minimal adverse effects on the existing and anticipate recreation values of that zone. Accordingly, it provides a useful example of a commercial recreation activity that should be considered on its merits in the OSZ. However, as outlined the submission, the provisions of the OSZ and NATC create some unjustified restrictions for the merits-based consideration of a suitable commercial recreation proposals in appropriate locations and scale, such as this proposal

## SUMMARY OF THE SUBMISSION

22. The main reason for the submission is that the provisions of PC29 do not appropriately provide for commercial recreation activities in the OSZ, NATC and NOISE chapters, and that current provisions are unjustifiably restrictive when considered in light of the purpose and objectives of the OSZ and the strategic direction of the PDP. While PC29 is appropriate in providing for

commercial recreation activities in the OSZ as a restricted discretionary activity, some of its other provisions are inconsistent with this approach or create an unnecessary and unjustified restriction for a future consenting pathway for such commercial recreation activities. The submission recommended several amendments to PC29 and Variation 1 of PC23 that it suggests would be more effective and efficient in achieving the objectives of these chapters and more appropriate in achieving the purpose of the RMA.

23. In summary, the submission sought to:

- a. Make three amendments to the introduction of the OSZ, the most important of which is to refer to compatible commercial recreation activities, which is consistent with the OSZ rules that enable those activities.
- b. Similarly, amend Objective OSZ-O1 to refer to compatible commercial recreation activities, which the rules enable.
- c. Amend Policy OSZ-P2 to delete the words 'does not detract from' as that will not allow for any adverse effects on the passive recreation focus of the zone no matter how minimal.
- d. Amend Policy OSZ-P4 to delete reference to 'maintaining uninterrupted views to the lake' as the protection of private views is fraught with issues.
- e. Amend Rule OSZ-R6 to amend three inappropriate assessment matters including one which seeks to maintain the character of the zone rather than achieve the anticipated character.
- f. Amend Standard OSZ-S1 in relation to height limits for structures so that it excludes small scale recreation equipment, which would have very minimal adverse effects.
- g. Amend Standard OSZ-S2 that requires minimum setbacks for structures to exempt commercial recreation equipment, fences, gates or signs less than 10m<sup>2</sup>, which would have minimal adverse effects.
- h. Amend Policy NOISE-P1 to remove the wording '*maintain the character and amenity anticipated*' as the word 'maintain' sends a signal that it is inappropriate to change the environment.
- i. Amend NOISE-R3 to include commercial recreation activities so that noise associated with it is also permitted.



- j. Amend NATC-R1 of Variation 1 to PC23 to exclude commercial recreation structures less than 10m<sup>2</sup> on the basis that the effects of these structures would be similar to effects of the other exempt structures (e.g. pump sheds, fences and water troughs).

24. The submission also sought consequential, alternative, or other necessary changes to achieve the intent of the submission. It also noted that a more refined suite of amendments may be provided in expert planning evidence.

## **OFFICER'S REPORT**

25. The officer's report on PC29 accepted several of the suggested amendments including the proposed amendments to:

- a. Change the introduction to refer to 'open space' rather than 'green space'
- b. Change the introduction to refer to 'other recreation equipment'
- c. Deletion of the words 'does not detract' from in Policy OSZ-P2.
- d. To add the word 'activity' to Rule OSZ-R6a.
- e. Deletion of the words 'Maintenance of the visual amenity and character of' from, and the addition of the words 'Consistency and anticipated character amenity values', to Rule OSZ-R6d
- f. Deletion of the words 'Whether the activity enhances the experience of' from Rule OSZ-R6e.

26. I agree with those amendments.

27. I also agree with the amendments recommended (or not recommended) by the reporting officer in relation to:

- a. Rule OSZ-R6e with the insertion of the words 'Any positive impacts of the proposal' for users of the area.
- b. Not amending Rule OSZ-S4 regarding reflectivity.
- c. Not amending Rule NOISE-R3 as requested by the submitter.
- d. Not amending Policy NOISE-P1 as requested.

28. I agree with the recommendation of the reporting officer to not amend NOISE-R3 on the basis that the intensity and frequency of commercial recreation activities can be greater than non-commercial recreation activities.

29. The officer's report did not accept the submission's proposed amendments to the following provisions:

- a. Amendments to the introduction refer to other compatible activities
- b. Amendments to Objective OSZ-O1 to reference other compatible activities
- c. Amendments to OSZ-P2 to insert the words 'significant' in front of does not detract from
- d. Deletion of the words 'maintain uninterrupted views from urban areas to any lake and' from Policy OSZ-P4.
- e. Amendment of Matter of Discretion OSZ-R6.b in relation to compatibility with active as well as passive recreation activities.
- f. Standard OSZ-S1 in relation to providing an exemption for 'any ropes, lines or platforms of recreational or commercial recreational equipment less than 10m<sup>2</sup> in area'.
- g. Standard OSZ-S2 in relation to providing an exemption for 'recreation or commercial recreation equipment, fences, gates or signs less than 10m<sup>2</sup>'.
- h. In relation to Amend NATC-R1 of Variation 1 to PC23 to exclude commercial recreation structures less than 10m<sup>2</sup>.

30. I comment on these matters further below.

## FURTHER SUBMISSIONS

31. The further submission by Tekapo Land Co Limited and Gotwit Leisure Limited requests that several amendments proposed in the submission are disallowed. The provisions which the amendment relates to and the reason for requesting the amendments are disallowed are set out in **Table 1** below.

Provision	Reason for relief sought
OSZ-R6	Oppose the suggested amendments to the matters of discretion, as these matters are considered important to an assessment of potential effects of commercial recreation activities that require consent in the OSZ.
OSZ-S1	The proposed amendment has the effect of allowing multiple separate small structures less than 10m <sup>2</sup> to be excluded from the height provisions and this is not considered appropriate.

OSZ-S2	The proposed amendment has the effect of allowing multiple separate small structures less than 10m <sup>2</sup> to be excluded from the setback provisions and this is not considered appropriate.
NOISE-R3	The proposed amendment would have the effect of permitting noise from commercial recreation activities outdoors and this is not considered appropriate for the broad range, locations and potentially noisy activities that may be captured by this. Additionally, noise limits applicable to the Open Space Zone do not appear to be included in NOISE-Table 1.

*Table 1 – The reasons stated in the Tekapo Land Co Limited and Gotwit Leisure Limited further submission for disallowing the amendments requested in the QCP submission.*

## RESPONSE TO THE REMAINING MATTERS IN CONTENTION

32. I now comment on the remaining matters in contention.

### Introduction & Objective OSZ-O1

33. The officer's report did not agree with the submission's proposed amendments to the introduction section and Objective OSZ-O1 that sought to ensure that compatible commercial recreation activities are referred to in these provisions as an activity that is anticipated in the OSZ. The submission sought the following specific amendment to Objective OSZ-O1:

OSZ-O1	Zone Purpose
	The Open Space Zone provides areas of open space which predominately provide for a range of passive recreational activities <u>and compatible commercial recreational activities</u> .

34. The submission stated that *"These amendments will ensure that there is a consistency between these provisions and the OSZ rules that enable commercial recreation activities as a restricted discretionary activity"*. The submission went on further to state that *"this will help avoid any confusion as to how commercial recreation activities are to be considered"*.

35. The officer's report disagrees stating that:

- a. The notified wording sets out that the predominant use of OSZ is for passive recreational activities.

- b. The additions sought would change this focus, by allowing for compatible commercial recreational activities/other appropriate recreation activities to equally predominate in this zone.
  - c. This would be inappropriate as it would change the current character and amenity values of these areas, which are valued by the community as spaces providing for informal and passive recreation opportunities.
- 36. The starting point of any discussion on this matter should be the National Planning Standards, which dictates standards for District and Regional Plans.
- 37. Clause 8.1 of the National Planning Standards provides a mandatory direction that *“a district plan...must only contain the zones listed in table 13 consistent with the description of those zones”*. Table 13 provides the following description for the OSZ:

*“Areas used predominantly for a range of passive and active recreational activities, along with limited associated facilities and structures.”* [Emphasis Added]
- 38. Notably a ‘range’ of ‘active’ recreational activities is included in Table 13. However, this contrasts to Objective OSZ-O1, which only states that the OSZ will be used for a range of passive recreation activities, stating:

*“Open Space Zone provides areas of open space which predominately provide for a range of passive recreational activities.”*
- 39. While Clause 8.1 of the National Planning Standards only requires district plan zones to be consistent with the descriptions of the zones in its Table 13, it is my view that not including ‘active recreation’ in Objective OSZ-O1 is inconsistent with the National Planning Standards as active recreation is the opposite to passive recreation.
- 40. While the submission seeks ‘compatible commercial recreational activities’ to be included in Objective OSZ-O1, based on the National Planning Standards, I consider that it would be more appropriate to include the words ‘active recreation’. This would subsequently address the general intent of the submission which is that the Objective OSZ-O1 does not refer to activities like that proposed by the Submitter that are active and commercial recreation activities, and which are provided by the rules of the OSZ as a restricted discretionary.
- 41. It is also unclear to me what evidence the reporting officer relies on to support her suggestion that ‘these places are valued by the community as spaces providing for informal and passive recreation opportunities’. While I have no doubt these areas are valued by the community for informal and

passive recreation, this statement seems to suggest that this is the only reason these areas are valued. The site and area surrounding it includes a range of active recreation opportunities including:

- a. a walking and cycling track that runs through the site
- b. a powerboat club that has regular competitions and events in summer
- c. a boat hire activity
- d. the public use of the beach and lake for swimming and boating

42. In my opinion, active recreation is the dominant use on the site and the area immediately surrounding it. Figure 4 below illustrate some of the active recreation activities in the area.



*Figure 4 – Existing active recreational activities in the broader area of the site.*

43. Active recreational activities are also common in other areas proposed to be zoned OSZ. For instance, the OSZ to east of Lake Tekapo includes the dog park and mountain bike area. Most OSZ includes playgrounds which are inherently active rather than informal (passive).

44. With these matters in mind, I think that it is important that the OSZ is not only consistent with the National Planning Standards but also reflects how these existing open space areas are actually used.

45. It is well established that the environment to be considered for resource consenting matters is the 'receiving environment'. The receiving environment includes the surrounding area both as it exists, including any permitted and consented activities already being conducted, and as it could

potentially exist in the future, including modification by permitted activities and unimplemented resource consents that are likely to be implemented. In the instance that a plan does ignore aspects of a receiving environment or consented baseline, this can result in anomalies that may affect plan integrity, and the public's confidence in the consistent administration of the district plan. Accordingly, a realistic and factually based assessment must be made to determine the capability of an environment to absorb development, and therefore the appropriate zone provisions for that environment. In short, it is normally nonsensical for plans not to provide for legal established activities.

46. Consequently, I have suggest that Objective OSZ-O1 is amended to state:

“Open Space Zone provides areas of open space which predominately provide for a range of passive and active recreational activities.”

47. It is also noted that Objective OSZ-O1's focus on passive recreation is inconsistent with Policy OSZ-P1 which includes reference to *‘walking and cycling connections, playgrounds, sporting equipment and picnic and barbeque areas’*, which in my view are all active recreation activities. It is also inconsistent with the introduction section of the OSZ which refers to the same activities (and as set out above), the establish land use in the receiving environment. These inconsistencies confuse the intent of the zone, which does not serve plan users well as it leads to inefficient consent processes. There is also no clear justification in terms of the adverse effects (or costs) of such active recreation activities and opportunities being recognised in the objective for the Zone.

48. It is also important that the introduction reflects the purpose of the zone described in Objective OSZ-O1 and is not inconsistent with the rules of the OSZ, which specifically provide for commercial recreation activities as a restricted discretionary activity. Presently, the introduction only refers to *‘Use of these areas is generally informal nature’*, which while does not exclude the possibility of formal recreation use, gives the impression, along with the omission of the words ‘active recreation’ from the introduction, that formal active commercial recreation is not anticipated. This inconsistency in my view will only create confusion about the intention of the zone. Accordingly, I recommend the following amendments to the first sentence of the introduction:

*The Open Space Zone encompasses areas of open space which provide for passive and active recreation opportunities, including walking and cycling connections in urban areas. Use of these areas is generally informal in nature but may include compatible commercial recreation activities.*

## Policy OSZ-P2

49. The submission requested the following change to Policy OSZ-P2:

<b>OSZ-P2</b>	
Provide for community facilities and commercial recreation activities which are of a nature and scale that is complimentary to, <del>does not significantly detract from,</del> the passive focus of the zone.	

50. However, this was an error and as clarified in the main body of the submission, the amendments sought to Policy OSZ-P2 are to ensure that its effects threshold is appropriately set at ‘significant’, as wording ‘does not detract from’ effectively sets a zero effects threshold. The submission should have requested the following wording:

<b>OSZ-P2</b>	
Provide for community facilities and commercial recreation activities which are of a nature and scale that is complimentary to, does not <u>significantly</u> detract from, the passive focus of the zone.	

51. However, I accept the reporting officer’s view that a ‘significant’ effects threshold is too high. I also agree with the reporting officer’s recommended changes to delete the words ‘does not detract from’. Notwithstanding, I consider that Policy OSZ-P2 should be amended so that it refers to the purpose of the zone, rather than the passive recreation focus in Objective OSZ-O1 (which is problematic for the reasons addressed above), as it inappropriately omits important active recreation activities. This would ensure its consistency with my recommended OSZ-O1. Accordingly, I recommend that Policy OSZ-P2 is amended as follows:

<b>OSZ-P2</b>	
Provide for community facilities and commercial recreation activities which are of a nature and scale that <u>is</u> <del>are complimentary to, does not detract from, the passive focus.</del> <u>consistent with the purpose</u> of the zone.	

## Policy OSZ-P4

52. The submission requested the amendment of Policy OSZ-P4 to omit the reference to uninterrupted views as follows:

<b>OSZ-P4</b>	<b>Built Form</b>
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Limit the scale of built form within the Open Space Zone to:

1. retain a clear predominance of open space; and
2. ~~maintain uninterrupted views from urban areas to any lake and~~ maintain the visual amenity of lakeside areas.

53. The reporting officer disagreed with this amendment for the following reasons:

- a. This clause reflects that there are high amenity values associated with lakeside views which in my view are relevant under s7(c) of the RMA.
- b. Protection of viewshafts is also, in my experience, not uncommon in district plans.
- c. This policy direction is consistent with that contained in the ODP13 and therefore the policy does not alter the current approach in this regard.

54. In respect to these specific comments, I note that:

- a. Views are component of amenity values, not the focus of S.7(c) RMA.
- b. 'Views from any urban area to a lake' is not a view shaft, which are normally spatially defined.
- c. There is no requirement to be consistent with the current policy of the ODP13.

55. I agree with the amendment the submission proposes to Policy OSZ-P4 as its existing wording could effectively be used by neighbours to justify that no new structures are suitable in the OSZ based on the fact that they could be perceived to interrupt a view from an urban area. Potentially, if a structure is visible, it could be said to interrupt the view, no matter how small that structure was, how far away it was or how it was designed. That would be an unfortunate situation given that the intention of the OSZ is to enable recreation activities and therefore supporting and ancillary.

56. The main way the Operative Mackenzie District Plan protects important views is through the Scenic Viewing Area overlay and associated provisions. In my opinion this is a more appropriate way to protect important views rather than to protect views generally from an urban area to the lake.

57. The legal submission in **Appendix 2** provides some comments in relation to views and in summary states that:

- a. Decisions of the Court have established settled legal principles that at common law, there is no right to the preservation of a view.



- b. Views are only one component of landscape assessment, and heightening their relevance through District Plan policy may not best serve the intended open space or landscape outcomes in terms of values and character of landscapes that are sought to be protected.
- c. It is also problematic endeavouring to protect uninterrupted views without clarity of what constitutes an uninterrupted view and what structures or buildings would be considered to interrupt a view.
- d. As development is an expected landscape component of all urban zones, planning policy directed at protecting uninterrupted views across urban areas, when no one has a right to a view must be approached with a high degree of caution if it is to align with the relevant Court decisions.

58. With these matters in mind, I consider that the original requested amendment to delete reference to views from urban areas in Policy OSZ-P4 should stand.

59. I also consider that the use of the words ‘maintain visual amenity’ are inappropriate. The reason for this is that maintenance is a concept of no or little change. This is inappropriate for urban areas that need to grow and change with the changing requirements and aspirations of the community. I have recommended an amendment to Policy OSZ-P4 to refer to the anticipated amenity, rather than the maintenance of amenity as follows:

OSZ-P4	Built Form
Limit the scale of built form within the Open Space Zone to:	
<ol style="list-style-type: none"> <li>1. retain a clear predominance of open space; and</li> <li>2. <del>maintain uninterrupted views from urban areas to any lake and</del> <b>be consistent with the anticipated</b> <del>maintain the visual amenity of lakeside areas.</del></li> </ol>	

#### The Matters of Discretion for Rule OSZ-R6

60. The submission sought the following amendments to Rule OSZ-R6:

- a. The nature, scale and intensity of the activity.
- b. ~~Compatibility with passive recreational activities.~~
- c. Any impacts on other users of the site, or on accessibility.
- d. ~~Consistency with the zone’s Maintenance anticipated character and of the visual amenity values and character of the zone.~~
- e. ~~Whether the activity enhances the experience of users of the area.~~

61. The reporting officers agrees with these proposed amendments except the proposed deletion of the clause b in relation to the compatibility with passive recreation activities and also the deletion of clause e. I agree with the reporting officer's amendment of clause e.
62. In respect of clause b, I recommend it is replaced with "compatibility with the active and passive recreation activities". As stated above, to align with the National Planning Standards, the purpose of the zone should not just be about passive recreation activities but also active recreational activities. Therefore, clause b is inappropriate as it is currently worded.
63. The submission from Tekapo Land Co Limited and Gotwit Leisure Limited opposed the suggested amendments to the matters of discretion, as they believe these matters are considered important to an assessment of potential effects of commercial recreation activities in the OSZ. Therefore, as they are still in contention, I briefly comment on the other matters of discretion I have not yet commented on in this evidence.
64. The proposed amendment to Matter of Discretion 'a' is required because clearly the word 'activity' is missing in this sentence.
65. The proposed amendment to Matter of Discretion 'd' was requested on the basis that the word 'maintenance of the visual amenity and character of the zone' is inappropriate as it implies a static unchanging environment, or unchanging values. The proposed amendment sought uses the phrase 'consistency with the zone's anticipated character and visual amenity values'. This makes it clear that it is the proposal's consistency with the zone's anticipated amenity values and character that are to be assessed, not the amenity values and character of the existing environment. These can be quite different matters, and it is the anticipated character and amenity values of the zone which should have precedence. The 'maintenance' approach is also in danger of being inconsistent with Policy OSZ-P2 that seeks to provide for commercial recreation activities.
66. Amendments were also proposed to Matter of Discretion 'e' which states that *'whether the activity enhances the experience of users of the area'*. I consider this matter of discretion is inappropriate for two reasons.
67. First the use of 'enhancement' is inconsistent with the objectives and policies of the OSZ that do not refer to enhancement. This means that it is not supported by the objectives and policies and it subsequently creates confusion as to the expectations of the zone. It is therefore not

justified in terms of s32(1)(b) to the extent it is not a provision that achieves objectives of the PDP.

68. Second, matter of discretion 'e' is inappropriate as it is unclear as to what enhancement of the experience encompasses e.g. what experience of users is the applicant required to enhance and to what degree. There is also no guidance as to the extent of enhancement required and how a proposal will have to enhance the experience of users.
69. This confusion and lack of clarity in matter of discretion 'e' will create investment uncertainty for applicants and potentially points of disagreement with the consent authority. On this basis, I consider its inclusion as an assessment matter would have greater costs than efficiencies and effectiveness, for the purposes of s 32(1) RMA.
70. However, I consider that the reporting officer's recommended amendment to matter of discretion 'e' are suitable as they allow consideration of positive impacts rather than create an expectation enhancement.

### **Standards OSZ-S1 and OSZ-S2**

71. The submission sought amendments to Standards OSZ-S1 and OSZ-S2 to exclude recreation or commercial recreation equipment less than 10m<sup>2</sup> in area. Standards OSZ-S1 provides a 5m height limit for buildings and structures, while OSZ-S2 provides for a 6m boundary setback for buildings and structures.
72. Slightly different amendments are proposed to each standard. In relation to Standard OSZ-S1, ropes, lines and platforms of recreational or commercial recreational equipment less than 10m<sup>2</sup> in area are requested to be excluded. In relation to Standard OSZ-S2, any recreation or commercial recreation equipment, fences, gates or signs less than 10m<sup>2</sup> are requested to be excluded.
73. I consider that the proposed amendments to Standard OSZ-S2 are appropriate as the adverse effects of recreation equipment less than 10m<sup>2</sup>, such as bench seats, picnic tables, exercise equipment, fences and signs, within the 6m boundary setback, would have less than minor adverse effects. As stated in the introduction to the OSZ, seating, picnic and barbeque facilities, toilets, shelters and playground or sporting equipment, are all structures that are expected in the zone and therefore part of the anticipated character. While signs are not mentioned in the introduction of the OSZ, signs indicating the name of park, track or a toilet, or information signs, are an expected part of parks and recreation area. As such it would be inefficient to require resource

consent for activities with such low effects that are expected in the zone, when the benefits obtained from requiring consent for those activities would also be very low. It would be an unfortunate situation to require resource consent for a bench seat, a sign, gate or fence in a park.

74. In relation to Standard OSZ-S1, I accept that that the proposed amendments to Standards OSZ-S1 are inappropriate. On that basis, I have not recommended the amendment proposed in the submission in relation to OSZ-S1.

#### **NATC-R1**

75. Variation 1 to PC23 introduces the OSZ into the right-hand column of Table NATC, the effect of which is to reduce the setback requirements for buildings and structures from surface water bodies from 100m (proposed in PC23) to 25m (proposed in Variation 1 to PC23) across all zones. I agree with that amendment.
76. As a consequential amendment, the submission also sought to amend Rule NATC-R1 to ensure that recreation or commercial recreation structures less than 10m<sup>2</sup> in the OSZ are also excluded. The rationale for this was to ensure that there is consistency with the other exclusions in this rule, such as the exclusion for pump sheds less than 10m<sup>2</sup>. However, the officer's report does not agree with this amendment on the basis that recreational activities are unlikely to have a functional or operational need to locate within the setback from surface water bodies. The officer's report also states that it is appropriate for recreational structures to go through a restricted discretionary activity consent. I disagree.
77. There is a limited type of recreation or commercial recreation structures which are less than 10m<sup>2</sup>. Structures under this size mostly consists of bench seats, picnic tables, small bridges and BBQs. As stated in the introduction to the OSZ and the Policy OSZ-P2, this equipment is expected in this zone. It also has very low adverse effects on natural character. The cost of applying for resource consent would be in excess of \$10,000 \$20,000 to consent this type of structure, considering planning consultant costs, landscape architect costs and Council fees and charges. This would likely exceed the costs of these structures and therefore would be inefficient in that the cost of implementing the rule would exceed the benefits derived from the implementation of the rule. It would also be an ineffective rule as it is unlikely that a resource consent process for a bench seat or picnic table etc is going to result in any change to the proposal. These costs are not adequately considered in Council's s32 documentation, as compared to the possible scale of adverse effects under s76(3) RMA.

78. It is also worth noting that most of the OSZ is owned and administered by Mackenzie District Council. This gives the Council control over the design of the structure and a high level of accountability considering that they are a democratically elected organisation. As such, it is considered highly unlikely that a resource consent process is going to add value, or create a more efficient and effective outcome, considering the Council control.
79. I also do not agree that there is no functional or operational need for recreation activities to locate in the surface water setback. For example, the function of a seat in proximity to a surface water body is to provide views of that water body and therefore the seats location in proximity to that water body is a functional need. Similarly, the function of a small bridge is to allow people to walk over the water body, which is also functional need.
80. Accordingly, I have recommended the submission amendment to NATC-R1, but with an amendment that addresses the scope issues raised by the reporting officer.

### **Section 32AA RMA**

81. Section 32AA of the RMA requires that a further evaluation under Sections 32(1) to (4) is necessary for any changes that have been made to the proposal since the evaluation report for the proposal was completed. While my evidence has not been formally set out as a s32AA evaluation, it contains the components of any such evaluation and responds to key planning issues as required by s.32AA(1)(c) and has been undertaken at a level of detail which corresponds to the scale and significance of the changes.
82. I consider that amending the wording from that notified, and differently from that recommended in the S.42A report as set out above, will be efficient as the benefits will outweigh any costs. Clarity and precision in Plan wording is important to ensure consistent and appropriate implementation of the Plan. The proposed wording changes provide the most appropriate way of achieving the relevant objective of the PDP because:
- a. They appropriately recognise the range of activities beyond just passive recreation that are occurring in the OSZ and which are appropriate to the area.
  - b. They provide certainty and clarity in the wording of the provisions to avoid confusion and inconsistent interpretation of the PDP.
  - c. They provide for increased opportunity to develop and use the OSZ for active and commercial recreation activities in appropriate locations.

## CONCLUSION

83. The submission sought to make some discrete amendments to the OSZ of PC29 and the NATC of Variation 1 to PC23 on the basis that some of its other provisions are inconsistent with the rules, do not appropriately provide for commercial recreation activities (as provided in the rules) and create an unnecessary and inappropriate impediment for commercial recreation activities.
84. My evidence largely agrees with the submission, with some exceptions. I have recommended amendments to PC29 and Variation 1 of PC23 in **Appendix 1** in line with this evidence.

## **APPENDIX 1 – RECOMMENDED AMENDMENTS TO PC29 and VARIATION 1 TO PC23**

## Open Space Zone (OSZ) Introduction

The Open Space Zone encompasses areas of ~~green~~ **open** space which provide for passive **and active** recreation opportunities, including walking, and cycling, connections in urban areas. Use of these areas is generally informal in nature but may also include compatible commercial recreation activities. The Open Space Zone is located within, or adjoining the District's town and settlements.

Limited built form is anticipated in this zone to support the recreational focus, such as seating, picnic and barbeque facilities, toilets, shelters and playgrounds, and sporting or other recreation equipment, reflecting the dominance of open space.

In lakeside areas, the maintenance of lake views and accessibility to the lake is also important.

## Objectives and Policies

Objectives	
<b>OSZ-O1</b>	<b>Zone Purpose</b>
The Open Space Zone provides areas of open space which <del>predominately</del> provide for a range of <b>active and</b> passive recreational activities.	
<b>OSZ-O2</b>	<b>Zone Character and Amenity Values</b>
The Open Space Zone contains limited facilities and structures which support the purpose of the zone and maintain the predominance of open space.	
Policies	
<b>OSZ-P1</b>	<b>Recreational Activities</b>
Enable informal recreation opportunities, and facilities that support these, including walking and cycling connections, toilets, playgrounds, sporting equipment and picnic and barbeque areas.	
<b>OSZ-P2</b>	<b>Compatible Activities</b>
Provide for community facilities and commercial recreation activities which are of a nature and scale that is <del>complimentary to, does not detract from,</del> <b>consistent with the</b> purpose <del>passive focus of the</del> zone.	
<b>OSZ-P3</b>	<b>Other Activities</b>
Only allow other activities where they: <ol style="list-style-type: none"> <li>1. have a functional need or operational need to locate within the zone; or</li> <li>2. are compatible with the purpose of the zone and do not conflict with recreational uses; and</li> </ol>	



3. are of a location, nature and scale that does not preclude development of new open space and recreational activities.	
<b>OSZ-P4</b>	<b>Built Form</b>
Limit the scale of built form within the Open Space Zone to:	
3. retain a clear predominance of open space; and 4. <del>maintain uninterrupted views from urban areas to any lake and</del> <b>be consistent with the anticipated</b> <del>maintain the visual amenity of lakeside areas.</del>	

<b>OSZ-R6</b>	<b>Commercial Recreation Activities</b>	
<b>Open Space Zone</b>	<b>Activity Status: RDIS</b>	
	<b>Matters of discretion are restricted to:</b> <ol style="list-style-type: none"> <li>The nature, scale and intensity of the <b>activity</b>.</li> <li>Compatibility with <b>active and</b> passive recreational activities.</li> <li>Any impacts on other users of the site, or on accessibility.</li> <li><b>Consistency with the zone's Maintenance anticipated character and</b> <del>of the visual amenity values and character of the zone.</del></li> <li><del>Whether the activity enhances the experience of</del> <b>Any positive impacts of the proposal for</b> users of the area.</li> </ol>	

## Standards

OSZ-S2	Setbacks	Activity Status where compliance not achieved:
OSZ	<p>1. Any building or structure (<u>excluding any recreation equipment, fences, gates or signs less than 10m<sup>2</sup></u>) shall be set back a minimum of 6m from any boundary (including a road boundary).</p>	<p><b>RDIS</b>  <b>Matters of discretion are restricted to:</b></p> <ul style="list-style-type: none"> <li>a. The location, design, scale and appearance of the building or structure.</li> <li>b. For road boundaries, adverse effects on the streetscape.</li> <li>c. For internal boundaries, the extent of adverse effects on privacy, outlook, shading, and other amenity values for the adjoining property.</li> <li>d. Where the building or structure is opposite any residential zone, the effects of a reduced setback on the amenity values and outlook on that zone.</li> <li>e. The adequacy of any mitigation measures.</li> </ul>

My recommendation for amendments to Variation 1 to Plan Change 23 are set out below:

<b>NATC-R1</b>	<b>Buildings and Structures (excluding fences, water troughs, and water pump sheds with building footprint of 10m<sup>2</sup> or less)</b>	
<b>All zones</b>	<b>Activity Status: PER</b>  <b>Where the activity complies with the following standards: NATC-S1 Activity Setbacks from Surface Waterbodies.</b>	<b>Activity status when compliance with standard(s) is not achieved:</b> Refer to relevant standard(s).
<b><u>Open Space Zone</u></b>	<b><u>Activity Status: PER</u></b>  <b><u>Where:</u></b>  <u>1. The activity complies with the following standards: NATC-S1 Activity Setbacks from Surface Waterbodies, except that recreation and commercial recreation structures with a building footprint of 10m<sup>2</sup> or less are exempt.</u>	<b><u>Activity status when compliance with standard(s) is not achieved:</u></b> Refer to relevant standard(s).

## **APPENDIX 2 – LETTER FROM TODD AND WALKER**

2 May 2025

Queenstown Commercial Parapenters Limited (Gforce)  
C/O Mark Geddes  
mark@erspective.net.nz

**By email:** mark@erspective.net.nz

Dear Mark

### **Public and Private views – RMA case law**

1. This letter sets out the leading case law in terms of relevant views under the Resource Management Act (**RMA**).
2. Relevantly, decisions of the Court have established settled legal principles that, at common law, there is no right to the preservation of a view.<sup>1</sup>
3. While a decision maker must have particular regard to the maintenance and enhancement of amenity values, the Courts have held that this is not the same thing as saying there is a right to a view.<sup>2</sup>
4. Related to the above is the accepted concept that a landowner is permitted to use their land as they see fit, providing that the use of it does not breach any legal requirement. It follows that the use of land by a neighbour, in some circumstances, can lawfully change an existing view.<sup>3</sup>
5. The significance of a particular landscape to people who live near it, and are thereby affected by any change to it (and the interrelated effect on visual amenity), require a decision maker to carefully consider both local and expert opinions. An analysis of the District Plan provisions relating to landscape and visual amenity is also important because this is the framework against which local expectations about amenity must be measured.

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<sup>1</sup> *Anderson v East Coast Bays City Council* (1981) 8 NZTPA 35, page 37 (HC) and *Re Meridian Energy Limited* [2013] NZEnvC 59 at [112].

<sup>2</sup> *Foot v Wellington City Council* W73/98, 2 September 1998, Kenderdine EJ, paragraph [104].

<sup>3</sup> *Re Meridian* at [113].

6. It is therefore of key importance that the District Plan expressly identify what types of views, and to what particular values and characteristics, are important to be included in policy or other planning provisions.
7. Te Tangi a Te Manu states that:
  - (a) *visual effects are a subset of landscape effects —they are effects on landscape values as experienced in views. They are one method to help understand landscape effects. It may be helpful to approach this exercise as a combination of:*
    - (i) *the extent to which something contributes to or detracts from landscape value, and*
    - (ii) *the visual dominance/prominence based on certain parameters.*
8. It can be taken from this, that views are only one component of landscape assessment, and heightening their relevance through District Plan policy may not best serve the intended open space or landscape outcomes in terms of values and character of landscapes that sought to be protected.
9. Furthermore, the efficiency and practicality of endeavouring to protect uninterrupted views from urban areas must be closely considered when compared with the normal practice of identifying specific viewshafts from public places towards an identified feature that may be of importance for visual amenity. The purpose of urban zones is generally to enable some sort of anticipated change in amenity as a result of development, which is contrary to protecting (or preserving) uninterrupted views. It is also problematic endeavouring to protect uninterrupted views without clarity of what constitutes an uninterrupted view and what structures or buildings would be considered to interrupt a view. These components are not supported by sufficient section 32 assessment as to the costs and benefits of such outcomes required for urban zoning views.
10. As development is an expected landscape component of all urban zones, planning policy directed at protecting uninterrupted views across urban areas, when no one has a right to a view in established case law must be approached with a high degree of caution if it is to align with the relevant Court decisions.

Yours faithfully

**TODD & WALKER LAW**



**Rosie E M Hill**

Principal

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