

Submission

On Plan Change 29 of the Mackenzie District Plan and Variation
1 of Plan Change 23 to the Mackenzie District Plan

By Queenstown Commercial Parapenters Ltd



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General Information

This is a submission on Plan Change 29 of the Mackenzie District Plan and Variation 1 of Plan Change 23 to the Mackenzie District Plan.

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1.0 Introduction

This is a submission made on behalf of Queenstown Commercial Parapenters Ltd (**submitter**) on Plan Change 29 of the Mackenzie District Plan (**MDP**) and Variation 1 of Plan Change 23 to the MDP.

2.0 Executive Summary

The submitter is interested in the entirety of Plan Change 29 of the MDP and Variation 1 of Plan Change 23 to the MDP and seeks the amendments to those provisions, including for the purposes of ensuring that commercial recreation activities are appropriately managed. Specific amendments are proposed in **Appendix 1** and **Appendix 2** of this submission, however alternative, consequential, or other necessary relief is sought in order to achieve the intention of the submission.

3.0 Background

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 currently on hold. The application is described in more detail in Section 5 of this submission.

4.0 Description of the land to which the submission relates

4.1 Site Description

The land to which 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**.



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).

5.0 Description of the Proposed Development

This section describes the resource consent application that the submitter has lodged with Mackenzie District Council (**MDC**). It constitutes an appropriate and complimentary commercial recreation activity located in the proposed Open Space Zone (**OSZ**). Accordingly, it provides a useful example of a commercial recreation activity that should be considered on its merits in the OSZ. However, as outlined later in this submission, the provisions of the OSZ and the Natural Character Chapter (**NATC**) create some unnecessary and inappropriate impediments for the merits-based consideration of this proposal. Amendments set out in this submission to PC29 seek to ensure a realistic consenting pathway is achieved for this type of activity or similarly appropriate ones.

A ropes course is proposed that will cater for tourists, visitors and local residents. Refer to **Appendix 3** for the site plan. The site was selected due to its established trees, proximity to existing commercial and recreational activities and the site's location that has notable levels of vehicle and pedestrian traffic. The proposed activity will comprise:

- A base station building (58.56m²) located at existing ground level with a height of 2.6m. The base station will be located parallel to Lakeside Drive 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.
- An adult ropes course and a children's ropes course which will contain a series of climbing wires, ropes, wire bridges, platforms and zip lines. These will be located within the canopy of the pine trees, between 3m – 10m above ground level (except for two zip lines which will finish at 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.

A key design driver is to ensure that the proposed activity will sit lightly within the site and setting. 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.



Figure 3 – Visualisation of the base state and ropes course

6.0 The Relevant Provisions

The relevant provisions of Plan Change 29 to the MDP and Variation 1 of Plan Change 23 to the MDP that this submission relates to are the objectives, policies, rules, standards and associated definitions that relate to commercial recreation activities.

7.0 Submission

7.1 General Relief Sought

The submitter seeks amendments to the provisions of Plan Change 29 to the MDP and Variation 1 of Plan Change 23. Amendments are sought to the OSZ and the NATC in relation to the provisions that the submitter opposes. These amendments are set out in **Appendix 1** and **Appendix 2** of this submission respectfully. However, without derogating from the specificity of those suggested amendments, the Submitter seeks consequential, alternative, or other necessary changes to achieve the intention of this submission. A more refined suite of amendments may be provided in expert planning evidence.

The general reason for the submitter's proposed amendments is that, as they stand, the proposed provisions do not appropriately provide for commercial recreation activities in the OSZ and the NATC. While Plan Change 29 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 inappropriate impediment for commercial recreation activities. The amendments proposed in this submission would be more effective and efficient in achieving the objectives of these chapters and more appropriate in achieving the purpose of the RMA.

The reasons for the specific recommended amendments in **Appendix 1** and **Appendix 2** are summarised below.

7.2 Plan Change 29

7.2.1 Introduction & OSZ-O1

Amendments are sought to the 'Introduction' section of the OSZ chapter and Objective OSZ-O1 to ensure that compatible commercial recreation activities are referred to in these provisions as an activity that is anticipated in the OSZ. 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. This will help avoid any confusion as to how commercial recreation activities are to be considered. Limited built form shall be enabled which supports both a recreational as well as a commercial recreational outcome.

7.2.2 Policy OSZ-P2

Amendments are sought to Policy OSZ-P2 to ensure that its effects threshold is appropriately set as 'significant'. As it reads, Policy OSZ-P2 provides a strong direction that commercial recreation activities do not detract from the passive recreation focus of the zone. We interpret that as commercial recreation activities cannot detract in any capacity from the passive recreation focus of the zone. This is a very low threshold which could potentially defeat the purpose of providing for commercial recreation activities as a restricted discretionary activity. It is also considered a no effects approach, which is inappropriate considering the urban nature of the OSZ and lack of national direction that seeks to avoid adverse effects in OSZ. The suggested amendment inserts the word 'significant' before the word 'detract' so that it is clear that activities that would have a significant effect on the passive recreation focus of the OSZ would be inappropriate, but activities that would have a lesser impact could be considered, or otherwise, as alternative relief, delete the following wording in its entirety from this policy: "and does not detract from".

7.2.3 Policy OSZ-P4

Amendments are sought to Policy OSZ-P4 so that it does not refer to *'maintain uninterrupted views from urban areas of any lake.'* Caselaw has confirmed that the planning system does not protect private views and therefore Policy OSZ-P4 would be more appropriate if it referred to maintaining the amenity of lakeside areas.¹

7.2.4 Rule OSZ-R6

The submitter supports Rule OSZ-R6 which identifies commercial recreation activities as a restricted discretionary activity. This activity status is appropriate as it ensures that these activities can be granted consent but also allows scope to decline consent if the activity is inappropriate. We acknowledge that scope for the latter is appropriate given that there is potentially a large range of commercial recreation activities, a range of open space environments in which they could be located and therefore a large range in their actual and potential adverse effects on the environment. The matters of discretion are generally appropriate except for the two exceptions outlined next.

7.2.5 Matter of Discretion OSZ-R6.4

Amendments are sought to the matters of discretion for Rule OSZ-R6.4 which states *'maintenance of the visual amenity values and character of the zone'*. We consider the word *'maintenance'* as inappropriate as it implies a static unchanging environment, or unchanging values, is sought through this matter of discretion. The 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.

7.2.6 Matters of Discretion OSZ-R6.5 and .2

Amendments are sought to the matters of discretion for Rule OSZ-R6.5 so that it does not refer to *'whether the activity enhances the experience of users of the area'*. We consider this matter is unclear and potentially creates an expectation that proposed developments will be put to the

¹ *Anderson v East Coast Bays City Council* (1981) 8 NZTPA 35

cost of enhancing degraded public areas, which is the responsibility of MDC, not resource consent applicants. The use of 'enhancement' is also inconsistent with the objectives and policies of the OSZ that do not refer to enhancement, and there is overlap with compatible passive recreational activities – therefore this assessment matter is sought to be deleted. Matter of restricted discretion (b) (or point 2) is sought to be amended given that compatibility is not a commonly used RMA standard. The submitter considers this is otherwise duplicated under matters a and c and can be deleted.

7.2.7 Standards OSZ-S1 and OSZ-S2

Amendments are sought to Standards OSZ-S1 and OSZ-S2 to exclude recreation or commercial recreation equipment less than 10m² in area. The adverse effects of recreation equipment this size, such as bench seats, picnic tables, exercise equipment and support lines and wires would be very low, and often of a temporary nature rather than permanent buildings. As such it would be inefficient to require resource consent for activities with such low effects compared with the benefits obtained from requiring consent for those activities.

7.3 Variation 1 to Plan Change 23

Variation 1 to Plan Change 23 of the MDP introduces the OSZ into the right-hand column of Table NAT-C, the effect of which is to reduce the setback requirements for buildings and structures from surface water bodies. We support that proposal and seek, as a consequential amendment, to amend Rule NATC-R1 to ensure that recreation or commercial recreation structures less than 10m² are also excluded. This will ensure that there is consistency with the other exclusions in this rule, such as consistency with the pump shed exclusion for buildings less than 10m². It will also ensure that recreation or commercial recreation equipment this size such as bench seats and picnic tables, which have very low adverse effects on natural character are enabled without the requirement of a resource consent, which would be inefficient and provide little benefit.

The following provisions of the Noise chapter are opposed by the submitter:

7.3 Noise

7.3.1 Amend policy NOISE-P1 to remove wording 'maintain the character and amenity anticipated'. As above, maintain sends a signal of a no change environment.

7.3.2 Amend NOISE-R3 to include recreational and commercial recreation activities conducted outside.

8.0 Expert Conferencing

The submitter is open to its expert planning witness conferencing with the reporting officer.

9.0 Conclusion

The submitter is interested in the entirety of Plan Change 29 to the MDP and Variation 1 of Plan Change 23 to the MDP and seeks the amendments of these provisions to ensure that commercial recreation activities are appropriately managed.

Appendix 1 – Amendments Sought to the Open Space Zone, PC29

Open Space Zone (OSZ)

Introduction

The Open Space Zone encompasses areas of ~~green~~ open space which provide for passive 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	
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> .	
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 complimentary to, does not <u>significantly</u> detract from, the passive focus of the zone.	
<i>Or, in the alternative:</i>	
Provide for community facilities and commercial recreation activities which are of a nature and scale that is complimentary to, does not detract from, the passive focus of the zone.	

OSZ-P3	Other Activities
Only allow other activities where they: <ol style="list-style-type: none">1. have a functional need or operational need to locate within the zone; or2. are compatible with the purpose of the zone and do not conflict with recreational uses; and3. 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: <ol style="list-style-type: none">1. retain a clear predominance of open space; and2. maintain uninterrupted views from urban areas to any lake and maintain the visual amenity of lakeside areas.	

Rules

OSZ-R6	Commercial Recreation Activities	
Open Space Zone	Activity Status: RDIS Matters of discretion are restricted to: <ol style="list-style-type: none"> 1. The nature, scale and intensity of the <u>activity</u>. 2. Compatibility with passive recreational activities. 3. Any impacts on other users of the site, or on accessibility. 4. <u>Consistency with the zone's Maintenance anticipated character and of the visual amenity values and character of the zone.</u> 5. Whether the activity enhances the experience of users of the area. 	

Standards

OSZ-S1	Height	Activity Status where compliance not achieved:
OSZ	<ol style="list-style-type: none"> 1. The maximum height of any building or structure shall not exceed 5m above ground level, <u>except any ropes, lines or platforms of recreational or commercial recreational equipment less than 10m² in area.</u> 	RDIS Matters of discretion are restricted to: <ol style="list-style-type: none"> a. The impact of the increased height on users of the site. b. The location, design, scale and appearance of the building or structure. c. Adverse effects on the streetscape. d. Adverse effects on the amenity values of neighbours on sites containing residential or other sensitive activities, including visual dominance, shading and effects on privacy. e. The extent to which the increase in height is necessary due to the functional and operational requirements of an activity.

OSZ-S2	Setbacks	Activity Status where compliance not achieved:
OSZ	1. Any building or structure <u>(excluding any recreation or commercial recreation equipment, fences, gates or signs less than 10m²)</u> shall be set back a minimum of 6m from any boundary (including a road boundary).	RDIS Matters of discretion are restricted to: <ol style="list-style-type: none"> The location, design, scale and appearance of the building or structure. For road boundaries, adverse effects on the streetscape. For internal boundaries, the extent of adverse effects on privacy, outlook, shading, and other amenity values for the adjoining property. 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. The adequacy of any mitigation measures.
OSZ-S4	Reflectivity	Activity Status where compliance not achieved:
OSZ	1. Any building or structure shall <u>have or</u> be finished in materials with a light reflectivity value of no more than 40%.	RDIS Matters of discretion are restricted to: <ol style="list-style-type: none"> The location, design and appearance of buildings on the site. The visual impact of the built form on users of the zone, the streetscape and surrounding environment. The adequacy of any mitigation measures.

Noise – R3	Noise associated with Recreational Activities <u>and Commercial recreation activities</u> ... 1. The recreational activity does not involve powered motorsport, or gunfire; and <u>any commercial recreation activity is undertaken outdoors</u>	
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Appendix 2 – Initial Amendments Sought to the Variation 2, PC23

The submitter's initial amendments sought to Variation 1 to Plan Change 23 are set out below:

NATC-R1	Buildings and Structures (excluding fences, water troughs, and water pump sheds <u>and recreation and commercial recreation structures</u> with building footprint of 10m² or less)	
All zones	Activity Status: PER Where the activity complies with the following standards: NATC-S1 Activity Setbacks from Surface Waterbodies	Activity status when compliance with standard(s) is not achieved: Refer to relevant standard(s).

Appendix 3 – Layout of the proposed ropes course

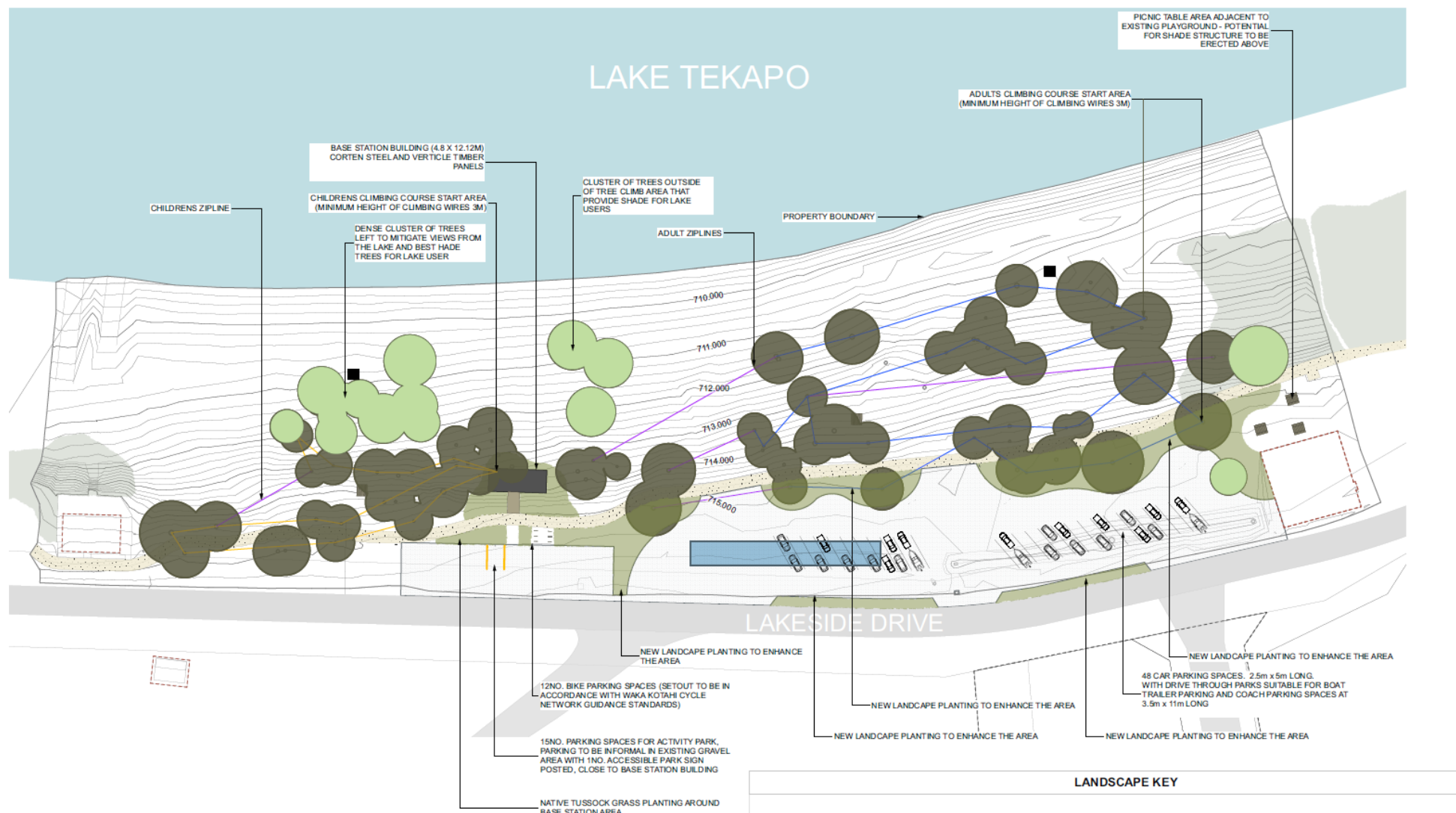


Figure 3 – Layout of the proposed ropes course – provided by way of background information only