

RESOURCE MANAGEMENT ACT 1991

**DECISION OF COMMISSIONER DARRYL MILLAR APPOINTED BY THE
MACKENZIE DISTRICT COUNCIL**

QUEENSTOWN COMMERCIAL PARAPENTERS LIMITED

APPLICANT:	Queenstown Commercial Parapenters Limited
APPLICATION REFERENCE:	RM230149
APPLICATION:	Land Use Consent
SITE LOCATION:	Lakeside Drive Lake Tekapo
LEGAL DESCRIPTION:	Lot 2 DP562455 and Lot 5 DP455053
PROPOSAL:	To establish and operate a commercial tree-climb ropes course and picnic facilities
HEARING DATE:	27 th August 2025
DECISION:	Granted
DECISION DATE:	13 th November 2025

HEARING APPEARANCES

The Applicant

- Rosie Hill – Counsel
- Jamie McMurtrie – Corporate
- Andrew Craig – Landscape
- Rob Hay – Noise
- Samantha Strong - Recreation
- Mark Geddes - Planning

The Council

- Nick Boyes – Planning
- Bronwyn Faulkner - Landscape

Submitters

- Samuel Staley
- Caroline and Lester Groundwater
- Juliet Satterthwaite
- Tekapo Landco Limited and Godwit Leisure Limited:
 - Amanda Dewar – Counsel
 - Jonathan Speedy – Corporate
 - Paul Smith – Landscape
 - Kimberley Banks – Planning
- Stan and Angie Taylor
- Diane Johnston and Peter Hobbs

DELEGATION

I was appointed by the Mackenzie District Council as Commissioner to hear submissions, evidence and to make a decision on Resource Consent RM230149. This decision records the evidence and statements, my deliberations on the issues and the outcome of my deliberations.

INTRODUCTION

Introduction

1. This is a decision on a resource consent application made to the Mackenzie District Council (the **Council**) by Queenstown Commercial Parapenters Limited (the **Applicant**) for land use consent. The Applicant proposes to establish and operate a commercial tree-climb ropes course on a site located at Lakeside Drive, Lake Tekapo. The site is legally described as Lot 2 DP562455 and Lot 5 DP455053 held in Records of Title 999813 and 584960.
2. I visited the site and surrounding environs on 26th August 2025.

The Site and Receiving Environment

3. Understanding the nature of the receiving environment is critical to an assessment of effects (s104(1)(a)). The application documentation describes the site and surrounding environments. The nature of the existing environment is also addressed in the evidence and reports of the various experts who appeared at the hearing. By way of summary:
 - 3.1. The application site (the **Site**) is located on land owned and administered by the Council. The land does not have reserve status under the Reserves Act 1977. If the consent application is successful, however, a formal lease will be required. This decision does not inform nor influence any decision that the Council may make on such a lease, nor does it diminish the impact on any lease arrangement that may be in place on the Site.
 - 3.2. The Site is located on the foreshore side of Lakeside Drive and is part of a wider open space network administered by the Council.
 - 3.3. The Site contains mature pine trees. The trees provide shelter and space for users of the lake foreshore.
 - 3.4. A paved pedestrian/cycle path runs through the site connecting the Lake Tekapo lakefront to the Tekapo Springs recreational facility and beyond to the Mt John Walkway.
 - 3.5. The foreshore side of the Site is used for a range of recreational activities, some of which are associated with the Lake Tekapo Powerboat and Water Ski Club which has an existing club house building adjacent to the Site. Two boat ramps are located on the foreshore side of the club house. One of the two existing boat ramp access points runs through the northern section of the Site.
 - 3.6. The Lakeside Drive side of the Site provides informal, unsealed vehicle parking areas.
 - 3.7. As noted above, the Tekapo Springs recreational facility is located north of the Site. This facility provides a range of commercial recreational activities and includes dedicated car parking.
 - 3.8. Visitor accommodation facilities are located on the west side of Lakeside Drive comprising the Lakes Edge Holiday Park and the Lake Edge Lodge.
 - 3.9. The Station Bay residential subdivision is located west (and above) the Holiday Park and Lodge.
 - 3.10. Station Bay and the Holiday Park are, generally, elevated above Lakeside Drive and the Site.
 - 3.11. Public toilets are located on the west side of Lakeside Drive, opposite the north end of the Site.
4. The Site, lakeside foreshore and land to the immediate west, north and south contain a broad range of land uses reflecting the current land use zoning pattern of the District Plan.

5. Mr Boyes¹ noted also the consented reception/café complex on Lakeside Drive and mini golf course located to the north of the Site.
6. Mr Geddes² described the nature of the existing environment noting, by way of summary, that:
“the receiving environment is not a pristine or unmodified area of open space. It is an area that has been highly modified, partly urban and is characterised by high levels of activity during certain times of year, and in particular, is characterised by high levels of existing (and some consented and likely to be implemented) active recreation activities that will likely continue as permitted activities in the future.”

The Proposal

7. The application documentation and related assessments described the key components of the proposal and operational characteristics. The Evidence in Chief (**EiC**) of Mr Geddes noted, at paragraph 42, some project amendments. During the hearing I posed several questions to the Applicant as to the detail of the project and how it may operate. These were necessary in my view to ascertain and decide on the effects that may arise from the proposal. It was also necessary to clarify some inconsistencies in the application documentation.
8. As a result, Minutes 3 and 4 were issued to provide greater clarity.
9. Ultimately this led to several iterations of the project detail following the adjournment of the hearing; being primarily:
 - 9.1. Further detail on the physical components of the project and operational characteristics provided in the Applicant’s Reply Legal Submission, Mr Geddes’ Supplementary Evidence, Mr McMurtrie’s Reply Evidence and Mr Craig’s Supplementary Evidence (26th September).
 - 9.2. This included amended detail on the base station building, ropes course layout, detailed configuration of platforms, ladders and rope apparatus (including schedules and illustrations), landscaping, extent of tree limbing/trimming, and car parking provision.
 - 9.3. Further amendments were made to the application plans (6th October) which included further illustrations of the ropes obstacles, additional ropes obstacles, a plan defining the location of where the ropes course is required to be single level, and redesigned car park landscaping.

¹ S42A report paragraph 97

² Geddes EiC paragraphs 75-85

10. Related to this, several iterations of draft consent conditions were developed.
11. Two key questions arise:
 - 11.1. First, does the final version of the project I am considering fit within the scope of the application as lodged, and
 - 11.2. Second, and related to the above, is any person disadvantaged in any way by the manner in which the project has evolved during the course of the hearing – either as a submitter or as a party who chose not to submit, but may have if this level of detail was available at the time the proposal was open for submissions?
12. On the first issue, I note that there was a general consensus amongst the submitters at the hearing that there was an absence of sufficient detail to understand the effects of the proposal. This was not just limited to the detail of the ropes course components, but also the extent to which tree limbing/trimming may have to occur and matters of detail such as the height of the course above ground level, scale and form of the base building, number and form of obstacles in the course, exit and entry points and the locations where multiple course layers may be developed.
13. From a high-level perspective, the spatial extent of the proposal has not changed. What is now available is a more defined and refined proposal, including specifics on the course components, the location and extent of exit ladder points and the extent of changes that may be required to the existing trees in the course. It is not a materially different project. Of some significance in my view is the clear definition of where the course will be limited to a single level; which is spatially extensive – this was an unknown factor in the application as notified. Further, I note that it is common for a proposal to be refined during the process of a consent process including during a hearing process. That is what has occurred here.
14. Overall, I find the proposal as presented in reply is within scope.
15. On the second issue I do not consider that the proposal has changed in scope sufficient for the parties already involved in the process to require further opportunity for evidential or lay submitter input via a reconvened hearing. The submitters views and concerns on the proposal, and those of the experts engaged by submitters, are well understood and the proposal as further refined does not introduce new issues in scale, extent or subject matter. Accordingly, I form a similar view with respect to the issue of whether a party considering the proposal at the time of notification would have formed a different view as to whether a submission was required.

16. Notwithstanding the above, I do wish to comment specifically on the base building. The application as lodged³ described the base building as a 58m² building comprising two re-clad shipping containers with a height of 2.6m. Imagery (Attachment F) included in the Design Works Group landscape and visual assessment attached to the application show an observation deck with balustrade occupying approximately half of the roof space of the base building.
17. The base building proposal was amended in evidence and subsequently in Reply. In short, the final proposal as outlined in Mr Geddes' Supplementary Evidence (26 September) is:
 - 17.1. The building will sit level with the existing path, as was originally proposed. This eliminates the need for a ramp and steps, as was proposed in evidence, as it was proposed that the base building be located below the path.
 - 17.2. A 50m² deck is proposed adjacent to the base building to provide space for users to congregate without interfering with the operation of the path. This was not part of the proposal as notified.
 - 17.3. The base building will be 2.8m high, marginally above the original 2.6m proposed. A 1m high balustrade will outline the entire roof of the base building providing a deck and access to the ropes course, adults zipline and a zipline exit.
 - 17.4. Rather than using shipping containers, the base building will be a bespoke design and relocatable. A minor increase in the base building footprint is proposed. Mr Geddes' EiC included plans attached as Appendix 1 showing a 61m² footprint. This is highlighted in Appendix 1 (page 15) to Mr Geddes Summary Statement presented at the hearing, although I note at paragraphs 40 and 217 Mr Geddes notes the floorspace at 56m².
 - 17.5. Overall, I find that the changes settled upon, building height, area and deck area fall into the same category as I have concluded in paragraphs 14 and 15 above. If consent is to be granted, however, an additional condition is required limiting the floorspace of the base building to 61m².
18. Given all the above, the key components of the proposal and its operational characteristics are:
 - 18.1. The base station building and deck, as described above.
 - 18.2. Picnic tables.
 - 18.3. Ropes courses, platforms and obstacles, and ziplines – the location and options for such as shown in Plans dated 6th October and attached to Mr Geddes' email of 10th October.
 - 18.4. As noted, these Plans provided greater specificity as to the location of the various ropes courses, extent of ground level structures,

³ DLS Application page 14

- spatial limitations on where single level courses are required, the obstacles to be used, and the extent of tree modification required.
- 18.5. Minimum and maximum structure/ropes and zipline heights above sea level. As noted in Mr Craig's Supplementary evidence⁴ (23 September) this results in the lowest parts of the ropes course (apart from ladders and the base building) being at least 4.5m above the existing footpath.
 - 18.6. Limitations as to the maximum number (60) of users on the course in any two-hour period.
 - 18.7. Landscaping proposed adjacent to the existing informal car parking and the proposed base station building.
 - 18.8. Limitations on the extent of tree trimming/limbing and a related Council certification process.
 - 18.9. Removal of the proposed dedicated car parking area adjacent to the base station, as originally proposed. Retention of the proposed cycle parking.
 - 18.10. Earthworks limitations.
 - 18.11. The development of a Construction Management Plan (**CMP**) for Council certification.
 - 18.12. A process, and associated design limitations, for the Council to certify changes to the ropes course.
 - 18.13. The development of a Staff Travel Plan (**STP**) for Council certification.
 - 18.14. Reduced operational hours during the period 1 June – 30 August, as follows:
The ropes course may operate 7 days a week, 365 days a year but only between the 9am and 7pm and not during the hours of darkness. Between 1 June to 30 August the hours of operation shall be 9am to 5pm
 - 18.15. Compliance with noise standards and a requirement to record, and make available to the Council, noise complaints.
 - 18.16. Requirements for removal of structures and buildings, and earthworks reinstatement, should the course close.

Conditions

19. There have been several iterations of proposed conditions since the application was lodged. As a result, I directed⁵ that the Planners⁶ meet to determine if agreement could be reached on the nature and extent of consent conditions. Following conferencing, the Planners issued a Joint Witness Statement (**JWS**) and a set of revised conditions.

⁴ Paragraphs 9 and 10

⁵ Minutes 3 and 4

⁶ Mr Boyes, Mr Geddes and Ms Banks

20. Not unexpectedly, there was some disagreement on the conditions and these exceptions and the reasons for them are noted in the JWS. Also, for certainty, and as noted in my Minutes, any agreements as to the wording of conditions did not signal an agreement to the merits of the proposal itself by Ms Banks and Mr Boyes.

Application Processing and Submissions

21. The Application was publicly notified on 13th November 2024. Twenty submissions were received; being two in support, three neutral and 15 in opposition. Two submissions were subsequently withdrawn (Ward and Tekapo Springs).
22. The full list of the submitters and the content of their submissions are a matter of record and, as a consequence, I do not propose to detail that in this decision. Mr Boyes provided a helpful summary in paragraphs 81 to 84 of the s42A report and the issues are also addressed in various experts reports and in the presentations that some submitters made at the hearing. Within this context, I will address the various issues raised on a topic basis as they arise later in this decision.

The Hearing, Adjournment and Closure

23. The hearing to consider the application commenced on 27th August 2025. After hearing from the Applicant, Submitters and the Council's Reporting Officers, I adjourned the proceedings to allow the Applicant to respond to various issues.
24. Minutes 3 and 4, which I have referred to above, were issued and directed the Applicant and the participating Planners to complete various tasks. As a result of this I received:
- 24.1. Supplementary evidence⁷, legal submissions and revised plans on 26th September.
 - 24.2. The Planners JWS and revised conditions, and revised Plans on 10th October.
 - 24.3. A Memorandum of Counsel (15th October) seeking directions as the process to complete the hearing.
25. Following receipt and consideration of the above, I closed⁸ the hearing on 16th October 2025.

The Planning Framework and Activity Status

26. The planning framework relevant to this proposal is somewhat complex given the Council's rolling review programme and the timing of Appeal closure periods on provisions relevant to this proposal. That said, there was

⁷ Geddes, Craig, Hay and McMurtrie

⁸ Minute 5

a high degree of agreement between the Planners as to the consent trigger points and, overall, on the activity status.

The Mackenzie District Plan

27. The Mackenzie District Plan (**MDP**) became operative in 2004. The Council has adopted a staged approach to reviewing the MDP by way of discrete Chapter based Plan Changes (**PC**). Both Mr Boyes and Mr Geddes provided a detailed assessment⁹ of compliance with the relevant rules of the MDP and the various Plan Changes. Mr Boyes, Mr Geddes and Ms Banks also provided helpful evidence on the weighting that should be applied to the various policy frameworks.
28. The Site is zoned Recreation Passive (**RecP**) in the MDP and Open Space Zone (**OSZ**) by way of PC29. The RecP zone provides for a range of passive recreation activities, with limitations on structure and building size. The proposal before me is not for a passive recreation activity. The trigger points for resource consent are:
- 28.1. Picnic facilities – controlled activity (rule 4.5.1.a)
 - 28.2. Commercial recreation activity – discretionary activity (rule 4.6.2)
 - 28.3. Buildings and structures not associated with passive recreation – non-complying activity (rule 4.7.4)
 - 28.4. Lack of dedicated on site car parking, on site loading and accessible parking – discretionary activity (Transport rules 2a, 2i and 2d)
29. Overall, this proposal attracts non-complying activity status under the RecP zone provisions of the MDC.

Plan Changes

30. With respect to the Open Space Zone (PC29) and other relevant PC's, the consent trigger points are:
- 30.1. Intrusion into the 25m building and structure setback from Lake Tekapo – restricted discretionary activity (Natural Character Chapter (PC23) rules NATC-S1 and NATC-SCHED1)). There was some disagreement amongst the Planners as to where the 25m distance should be measured from. While there was agreement that some of the ropes course structures would be located in the set back, there were different opinions as to whether the base building would be.
 - 30.2. Structures (elements of the ropes course – noting that the base building complies) located in the Tekapo Precinct exceed 7.5m in height – restricted discretionary activity (PREC1-R1, PREC1-S4 height).

⁹ Boyes s42A report paragraphs 31 – 78. Geddes EiC paragraphs 46 - 68

- 30.3. The required number of on-site car parking spaces are not provided – restricted discretionary activity (Transport Chapter (PC27) rules TRAN6 and TRAN-S1)).
 - 30.4. Commercial recreation facilities are a restricted discretionary activity (Open Space and Recreation Chapter (PC29) rule OSZ-R6)).
 - 30.5. Buildings and structures associated with the proposal are a discretionary activity (Open Space and Recreation Chapter (PC29) rule OSZ-R5.1)).
31. It is arguable that the rules relating to “buildings” and “structures” do not apply to the ropes course elements of the project, given the definition of these terms contained in the Plan. I did not receive evidence on this issue and the Planners seemed aligned that the rules applied. Given this, whether this is an intentional drafting approach in the Plan, or a lacuna, is a moot point. Accordingly, I have identified this non-compliance out of caution.
32. It is clear that the base building is a “building” by definition.
33. Overall, the proposal is a discretionary activity under the above-mentioned PC’s.

Overall Activity Status

34. Given all of the above, the proposal must be assessed as a non-complying activity. There is no disagreement with this conclusion amongst the Planners.
35. Ms Hill argued in opening legal submissions that s88A of the RMA provided a pathway for me to conclude that the activity status should fall to the less restrictive discretionary activity category proposed in PC29. Ms Hill cited *Infinity Investment Group Holdings Limited v Canterbury Regional Council 2017* [NZEnvC 35]. As discussed at the hearing, that case appears to apply to a situation where a change in activity status occurred within a proposed Plan process, rather than a change in status between an operative and proposed Plan. As a result, I do not consider the argument to be relevant.
36. At that time of the hearing the Appeal period on the Council’s decisions had not expired and thus it was not possible to consider the new provisions operative and the former provisions inoperative. While we now know that Appeals¹⁰ have been lodged on aspects of the provisions of the PC29 that are directly relevant to this proposal, that does not alter the situation insofar as it relates s88A. It is, however, relevant to the consideration of weighting when it comes to the application of the MDP and the PC provisions, I will return to this matter later.

¹⁰ Hill Reply Legal Submissions paragraphs 22 – 33

37. I do wish to note a few additional matters:
- 37.1. Ms Banks EiC notes at paragraph 43 that a “*further resource consent is required for the proposed limbing of trees, as this is not a specified activity in the rules of either the operative Rec P zone, or the PC29 OSZ, and also does not appear to be captured by any other district wide rule*”.
- 37.2. While tree trimming/limbing will be required, it was recognised as an activity in the application as lodged¹¹ and in the evidence of Mr Geddes and Mr Craig. Mr Geddes notes in the table included as Appendix 1 to the evidence summary presented at the hearing that a consent would be required under rule 4.7.1 of the MDP and that such a consent is not required under the OSZ rules given that “conservation” activities are permitted by rule OSZ-R3.
- 37.3. Rule 4.7.1 is a catch-all rule that classifies any activity not provided for as a permitted, controlled or discretionary activity as a non-complying activity. Whether any such activity is captured by this rule is questionable in my view, given that it forms an ancillary part of the overall activity classified by other rules in the RecP zone. If I am incorrect, it is of little moment given it does not alter the activity status overall and the effects of such must be considered in any case.
- 37.4. On the issue of the OSZ I note that the definition of Conservation Activity is (emphasis added):
means the use of land for any activity undertaken for the purposes of the preservation, protection and restoration of natural and historic resources for the purpose of maintaining or enhancing their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations
- 37.5. I do not agree that the proposed tree limbing/trimming is for the purpose of “preservation, protection and restoration” of natural resources. As a consequence, this element of the proposal cannot be a permitted activity within the context of the rule. I have considered from a wider perspective whether there are other rules in the OSZ or the PC amendments that would apply. In short I was unable to identify any; noting that the trees subject to this proposal are not listed or protected in any other way. Again, if I am incorrect in this, the fact remains is that the effects of such are to be assessed.
- 37.6. Both Mr Boyes and Mr Geddes identified that the Site is subject to a Council stormwater designation (MDC-51). Mr Boyes correctly identified s176(1)(b) of the RMA which requires the approval of the Requiring Authority (**RA**) to do anything that would “prevent or

¹¹ Geddes Supplementary evidence paragraphs 11-13

hinder” the ability of the RA to use the designation. As I discussed at the hearing, that is a matter between the Applicant and the RA and is not within the jurisdiction of this consent process and my role as a decision maker on this resource consent application.

My Approach to this Decision

38. I do not propose to repeat verbatim the content of the reports, evidence and statements made at the hearing. Given that pre-circulation of the material occurred, and all are a matter of record, including a recording of the hearing which is publicly available, my deliberations and the balance of this decision address the issues on a topic basis.

STATUTORY CONSIDERATIONS

Introduction

39. The proposal is for a non-complying activity. Section 104(1) of the RMA sets out the matters which I must consider when assessing the proposal. It is considered that in this instance, subject to Part 2, regard shall be had to:
- *any actual and potential effects of allowing the activity (section 104(1)(a));*
 - *any relevant objectives, policies, rules, or other provisions of a regional policy statement and plan (section 104(1)(b)); and*
 - *any other matter the consent authority considers relevant...(section 104(1)(c).*
40. The relevant Plan is the MDP, and as amended by PC's. My findings with respect to this document is outlined later in this decision. The relevant Regional Policy document is the Canterbury Regional Policy Statement (CRPS). I am of the view that the proposal does not give rise to matters of regional significance that require any further assessment, and thus I do not consider the CRPS further.
41. Section 104(1)(c) enables me to consider any other matter relevant and reasonably necessary to determine the application. In my view this could include matters of Plan integrity and precedent. Given the non-complying activity status of the proposal, I discuss these issues later in this decision.
42. Section 104D(1) sets out the circumstances where I may issue a decision to grant consent. It reads, in part:
- ... a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*

- a. *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- b. *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

43. Section 104(2) states:

When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

44. This is commonly referred to as the “permitted baseline” argument. I propose to deal with this first.

45. Pursuant to section 104(3)(a)(ii) of the RMA, I am unable to consider any effect on the parties that have provided written approval. This includes Genesis Energy and Te Arowhenua o Runanga who have provided such approvals.

The Permitted Baseline

46. Mr Boyes¹² was of the view that there was no permitted baseline relevant to this proposal.

47. Mr Geddes took a more nuanced approach, noting that a range of non-commercial activities take place in the area and are, as such, permitted. This includes the effects that will be associated with them, including noise and activity. I agree that when considering effects associated with the proposal such as noise, there is merit in assessing the impact within the context of Plan standards. Beyond that, however, I do not accept that I am able to measure other effects from this proposal within the context of other activities permitted by the Plan.

THE ISSUES AND FINDINGS

Introduction – The Planner’s Conclusions

48. Mr Boyes¹³ concluded in the s42A report that the proposal as currently presented should be refused. In arriving at this position, Mr Boyes

¹² Boyes s42A report paragraph 95

concluded that adverse effects on natural character, landscape character, the potential for creating a sense of exclusive occupation and visual amenity and outlook from sites to the west would be more than minor. With respect to the policy framework Mr Boyes¹⁴ considered that while there were elements of the proposal that were inconsistent with the relevant objectives and policies of the MDP, they were not contrary. Given this, the proposal would not pass the effects threshold tests of s104D, but could meet the second “policy” limb of the RMA. Ms Banks was largely aligned with Mr Boyes.

49. Ms Geddes, on the other hand, considered that the consent application was capable of approval and concluded the proposal would have less than minor adverse effects and was fundamentally aligned with the outcomes sought in the relevant objectives and policies.

Environmental Effects (section 104(1)(a))

Introduction

50. I am satisfied on the basis of the evidence¹⁵ produced on traffic matters and noise issues that adverse effects arising from the proposal are acceptable, subject to the draft conditions presented to me.
51. The issue of noise effects was the subject of much discussion at the hearing, including concerns raised by submitters as to impacts not only on the users of the space below the ropes course but also on their residences above the site. Mr Hay’s assessment of how the noise rules of PC29 should be applied and interpreted was not in dispute. Mr Hay concluded, overall, that noise from the proposed activity would likely comply with the PC29 noise standards and be acceptable given the receiving environment – the latter being a reference to existing ambient noise levels. To reinforce this position, conditions are proposed requiring compliance with noise standards (daytime, nighttime and maximum), a requirement for a noise complaint register, and a requirement to comply with construction noise standard NZS 6803. Arguably, the nighttime noise standard is not required given the proposed operational hours. I propose, however, to leave that aspect of the condition unchanged for completeness.
52. This was the only expert noise evidence received.
53. Mr Leckie’s transport evidence concluded that there was sufficient capacity in the existing informal car parking areas on Lakeside Drive to cater for demand, and given the expected increase in number of traffic movements this would result in negligible adverse effects on the safety and efficiency of Lakeside Drive.

¹³ Boyes s42A report paragraphs 199 - 202

¹⁴ Boyes s42A report paragraphs 186 - 188

¹⁵ Mr Hay (EiC and Supplementary evidence) and Mr Leckie (EiC)

54. That said, Mr Leckie acknowledged that there may be shortfalls in peak periods but concluded that such shortfalls would be minor and would be acceptable. I agree with his assessment¹⁶ that it is not necessary to design for peak demand.
55. This was the only expert traffic evidence received.
56. I acknowledge that Tekapo Landco Limited and Godwit Leisure Limited advised that they hold a lease with the Council to use Lot 5 DP455053. The nature and scope of that lease is unknown to me. In many ways, however, that is not an issue that I need to consider directly. I say this, as it will be a matter that the Council will need to consider in any subsequent lease negotiations with the proponent of this application, including how this fits in with any future traffic management plan the Council is developing.¹⁷
57. Within this context, the focus of my remaining considerations relate to:
- 57.1. Effects on open space and recreation
 - 57.2. Landscape and visual impacts, and tree limbing
 - 57.3. Natural character and lake margins
 - 57.4. Positive effects
58. The MDP and the PC Zone rules provide the key framework for assessing these various effects.
59. The Site is zoned RecP in the MDP. The Zone Purpose is:
- This zone is intended to protect areas considered by Council to be appropriate for passive recreation. Recreational use of these areas is mostly informal in nature involving activities such as walking and playing. These areas therefore often require seating, playground equipment or other small structures. It is the purpose of this zone to maintain their open space or planted character and avoid cluttering with facilities, while maintaining their important role as recreational areas and visual open space for local neighbourhoods and for all residents and visitors.*
60. The rule structure reflects this purpose as:
- 60.1. Passive recreation activities are permitted, and structures and buildings associated with such activities 100m² or less are controlled activities.
 - 60.2. Commercial recreation activities are discretionary activities.

¹⁶ Leckie EiC paragraph 49

¹⁷ Boyes s42A report paragraph 111.

- 60.3. Buildings and structures for activities not associated with passive recreation are non-complying activities.
61. The activity status cascade of the RecP zone is clear. It anticipates passive recreation activities with limited building/structure footprints. There is a consenting pathway for commercial recreation activities, but that becomes more complex if buildings and structures are proposed.
62. The Site is zoned OSZ as a result of PC29. The OSZ provides a step change approach to the way in which a broader range of passive and active recreation activities are enabled in the zone - acknowledging that some of the zone provisions remain subject to Appeal. The zone provides for Commercial Recreation Activities as a more enabling restricted discretionary activity, compared to the MDP. Commercial Recreation Activity is defined to mean:
a commercial activity which is based on the use of land, air, water and buildings for the primary purpose of recreation and entertainment but does not include commercial aviation activity.
63. The matters of discretion¹⁸ relevant to the above are:
- 63.1. The nature, scale and intensity of the activity.
- 63.2. Compatibility with recreational users.
- 63.3. Any impacts on other users of the site, or on accessibility.
- 63.4. Consistency with the zone's anticipated character and amenity values.
- 63.5. Any positive impacts of the proposal for users of the area.
64. Buildings and structures not associated with a permitted activity require resource consent as a Discretionary Activity. Again, this is a more enabling activity status compared to the MDP.

Effects on Open Space and Recreation

65. A common theme running through the submissions and in the submitter statements made at the hearing was a concern that the proposal would “privatise” the Site and make it an unwelcome space for passive users of the area. This included those passing through the site, or those using the areas beneath the trees for shade or informal recreation activities and/or associated with the many boating activities making use of the lake front.

¹⁸ Decision version

66. The general evidence¹⁹ of the applicant was that aside from the pathway running through the site, the space beneath the trees was not well used – largely due to uninviting ground conditions.
67. At the hearing I specifically asked each submitter to describe the value they placed on the space and if they could offer a view as to its use. The common response²⁰ received was that the space was highly valued by the community and that the potential privatisation would undermine that value. The key factor in that response was that users of the space would not/could not ignore the activity taking place above them, and this would act as a deterrent to them using it.
68. To the issue of its use, this was more varied. Generally, submitters considered it to be “well used” but acknowledged that the use changed seasonally.
69. The issue of how the proposal may potentially dissuade community use of the site was also raised in the s42A report of Mr Boyes²¹ and the supporting Landscape assessment of Ms Faulkner.
70. I received expert evidence from Ms Strong on this issue. Ms Strong is a consultant recreation and open space planner with qualifications and experience relevant to this matter. The evidence was extensive, but the conclusions formed were²²:
- 70.1. *Mode Shift – The proposed ropes course is unlikely to significantly alter how existing users access or experience Lakeside Drive. The course will not cause major changes in pedestrian traffic or safety, and will have minimal impacts on existing recreational patterns.*
- 70.2. *Dominance of the ropes course – While the physical structures of the ropes course will be noticeable along the shared pathway, it will not dominate or detract from the primary recreation experience and will continue to allow for current and future recreation to occur. Mr Craig outlines in his landscape evidence that visual impacts are considered minor, as the course integrates with the natural environment, and the views of the lake and surrounding areas remain unimpeded and Mr Hay concludes that noise from the course is not expected to dominate the site, with predicted levels falling within permissible limits.*
- 70.3. *Carrying capacity and crowding – The ropes course is expected to attract up to 250 visitors per day during peak times. This is a small increase compared to the current visitor numbers, and the site can comfortably accommodate this additional traffic without overcrowding. The introduction of the course will not exceed the*

¹⁹ Geddes EiC paragraphs 25-32

²⁰ Submitters Staley, Taylor, Groundwater, Satterthwaite and Johnston

²¹ Boyes s42A report paragraphs 104 - 107

²² Strong EiC paragraphs 35 - 83

site's carrying capacity, and the current mix of activities is unlikely to lead to significant user conflict while participating in recreation. Crowd perceptions may vary, but the overall impact on the experience will be minor for most users.

70.4. *Specialisation - The proposed ropes course will activate a previously unused space, but it will not displace or compromise any specialised recreation resources at the site. The primary specialised feature is the view across Lake Tekapō, which remains unaffected by the course. The location is a mixed-use setting that accommodates various types of passive recreation, which will not be disrupted by the new development.*

70.5. *Commercialism - The proposed commercial activity aligns with the existing tourism context of Lake Tekapō. The Destination Management Plan highlights the area's diverse tourism offerings, and the introduction of a small-scale commercial activity like the ropes course is compatible with the broader tourism landscape. The area already hosts various commercial activities, and the proposed development will not undermine the visitor experience but rather enhance the recreational options available.*

71. Related to this, Ms Strong notes at paragraph 60 that:
"...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. Providing seating will encourage bystanders to pause, observe, and enjoy the tree-climbing activity above while also making the space more suitable for passive recreation, such as picnicking or seeking shade."

72. Overall, on this issue, Ms Strong finds, at paragraph 17:
"My assessment concludes that, given Lake Tekapō's established role as a developed recreation and tourism destination, and the capacity of the area to sustain current 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."

73. I accept that there are many and varied views on this issue. I do, however, favour the evidence of Ms Strong. This is particularly so given that since Ms Strong drafted her EiC, the minimum height of the course above ground has been increased from 3m to at least 4.5m.

74. One of the issues also raised at the hearing related to health and safety concerns from objects falling to ground from the ropes course users and whether this would impact on passive use of the space by others. This

matter was addressed in Mr McMurtrie’s Reply evidence²³ where he outlined the duties and responsibilities for operators of “adventure activities”. This includes a requirement under the Health and Safety at Work (Adventure Activities) Regulations 2016 to:

- 74.1. Be registered as an Adventure Activity Operator (AAO) with WorkSafe NZ
 - 74.2. Develop, demonstrate, and maintain a certified Safety Management System (SMS).
75. Mr McMurtrie noted that controls dealing with prohibiting loose items in pockets are a matter dealt with under the SMS process.
76. Another potential impact to consider is how the construction process will be managed to ensure minimal impact on users of the space. Mr Geddes²⁴ addressed this matter in Supplementary evidence and in proposed draft conditions. The construction period is anticipated to occur over a 13 to 15 week period during the quiet autumn to spring period. Proposed conditions require the preparation and certification (by Council) of a Construction Management Plan (**CMP**). This includes a stated objective that the CMP must minimise disruption to users of the space and a requirement to develop measure to ensure that occurs.
77. Given the above, I am satisfied that any adverse effects on users of the space, and the values associated with the space, will be acceptable.

Landscape and Visual Impacts

78. There were divergent opinions on the nature and extent of these effects from the Landscape Architects²⁵. From a visual impact perspective, Mr Smith agreed with Mr Craig’s determination of the visual catchment and that the potentially affected parties were residents within the Station Bay Development and operators and guests within the campground and lodge.
79. The submitters²⁶ I heard from on this issue raised concerns such as:
- 79.1. Views to the lake, including views through the trees, are important and should be maintained.
 - 79.2. The proposed ropes course, and ziplines spanning the large gaps between trees, would detract from these views.

²³ Paragraphs 3 - 8

²⁴ Paragraphs 24-29

²⁵ Mr Smith, Ms Faulkner and Mr Craig

²⁶ Speedy, Taylor, Groundwater, Satterthwaite, Johnson

80. Mr Smith²⁷ considered views and the outlook from the Station Bay Development, Tourist Accommodation Facilities, Lakeside Drive and Lake Tekapo Foreshore and considered:
- 80.1. The current outlook provides a high degree of amenity for residents and guests of the accommodation facilities.
 - 80.2. The addition of the ropes course, platforms, obstacles, zip lines and suspended users, and “unnaturally limbed” trees would reduce views through the trees and give rise to moderate to moderate-high²⁸ adverse effects. I interpret this to mean a more than minor effect in an RMA context, but not a significant effect.
 - 80.3. With respect to the Foreshore, Mr Smith notes that the proposal will result in a reduction to the backdrop (as a result of tree trimming/limbing), open up views to Station Bay, and increase the presence of built form. The overall result is an adverse effect on amenity gained from the Foreshore. Mr Smith assessed this as a low-moderate to moderate effect – being at the boundary between a minor to more than minor adverse effect in an RMA context.
81. Ms Faulkner concludes in the assessment attached to Mr Boyes s42A report that adverse effects on visual amenity will be more than minor.
82. Mr Craig’s²⁹ EiC considered visual effects. Mr Craig acknowledged there would be adverse visual effects arising from the proposal. The scale and extent of such effects would, however, variable as a result of tree density and the location and placement of course components. Overall Mr Craig concluded that:
- “Apart from the base station building, the low visual bulk of the proposed activity will inherently contribute to the lessening of view intrusion and apparent view quality. While these visual effects are not entirely absent, they will nonetheless enable the ongoing attainment of views, albeit not without some degree of adversity depending on the aforementioned variables.”*
83. At that point Mr Craig³⁰ concluded that such effects would be minor to less than minor.
84. Following the adjournment of the hearing and in response to Minutes 3 and 4, the Applicant supplied additional project information as requested. While that was helpful, it clearly narrowed the scope of the proposal, for example by better defining the proposal components. This included additional detail defining the range and scope of obstacles to be used, the location of

²⁷ Smith EiC paragraphs 36 - 55

²⁸ On the TTatM 7 point scale

²⁹ Craig EiC paragraphs 120 - 142

³⁰ Craig EiC paragraph 243

platforms and the extent of areas that will be single level ropes – with the latter being spatially extensive.

85. Mr Craig considered this in Supplementary evidence³¹. This included:
- 85.1. Plans showing visual sensitivity categories across the site, with the categories representing the ability of an area to absorb change. This influenced the additional detail provided on the course design.
 - 85.2. An assessment that the increased minimum height above ground level (as noted earlier) would ensure views to the lake and mountains from low elevation vantage points would remain uninterrupted by the ropes course – noting that the base building is located at ground level. This also elevated the activity further into the tree canopy where it would be visually better absorbed.
 - 85.3. Confirmation that the most complex part of the ropes course (the greatest concentration of apparatus) would be centred around the base building which is located in the least sensitive area.
 - 85.4. While the base building is taller than originally proposed, and this results in a greater adverse visual effect, the effect remains less than minor.
86. From a landscape character perspective, Mr Smith³² was of the opinion that this proposal was not consistent with the current use, character and values associated with this part of the foreshore. While recognising that there are activities such as the Tekapo Powerboat and Water Ski Club and associated boat ramp, and playground nearby, Mr Smith argued that they have a functional connection to the lake unlike the Applicant's proposal. If I have understood Mr Smith's arguments correctly, he also considers that the perception of "privatisation", safety risks from falling objects and noise effects will impact on community use and perception of the space. Given the evidence of Mr McMurtrie, Mr Hay and Ms Strong I do not believe that to be the case.
87. The issue of tree trimming and limbing was a significant matter discussed at the hearing and I agree with the submitters that it was not well defined. The subsequent Supplementary evidence better defines and limits the proposal and, together with amended draft conditions, provide appropriate measures to ensure acceptable environmental outcomes. I acknowledge Ms Banks' concern about the scope of the condition and the potential for cumulative and irreversible adverse effects as outlined in paragraph 9 of the Planners JWS. On balance, however, I accept, as does Ms Banks, that a degree of flexibility is required and more relevantly:
- 87.1. Condition 20 defines the location of such activity in Plan form; and

³¹ Craig Supplementary evidence paragraphs 5 - 16

³² Smith EiC paragraphs 56 - 67

- 87.2. Beyond this, condition 21 provides a Council certification process for limbing/trimming of tree branches greater than 40mm in diameter not authorised by condition 20.
88. When I have considered the evidence of the landscape experts, the ziplines (and their use) traversing the tree gaps represent the greatest visual intrusion, followed by the base building station itself. Much of the remaining elements of the ropes course will be located within the trees given the elevated height and thus will be better absorbed.
89. Views cannot be guaranteed and the current views to the lake are interrupted to a large extent from various locations by the trees as they currently exist. The proposal does not introduce any structures beyond the external boundaries of the treed area per se.
90. I am mindful also that the site is not located within an outstanding natural landscape or feature, or lakeside protection area or other site of significance.
91. Given the above, I favour the evidence of Mr Craig and conclude that the landscape and visual impacts are acceptable, subject to the range of conditions offered. I do, however, acknowledge that the issue of lakeside margin setback and the relationship with s6(a) of the RMA requires separate consideration and I will address this below.

Natural Character and the Lake Margin

92. As noted earlier (paragraph 30.1) there was disagreement amongst the Planners as to where the 25m building and structure setback from Lake Tekapo should be measured from (Natural Character Chapter (PC23) rules NATC-S1 and NATC-SCHED1)). An advisory note to Table NATC-1 (which specifies the setback requirements) states that it should be measured from the “top of the bank edge of the surface water body, as illustrated in Figure NATC-1”.
93. The plans accompanying the application showed a Genesis Maximum Control Level at 710.9m (**Max**) and a Genesis Maximum Design Flood Level at 713m (**Design**). Mr Geddes argued that the setback should be measured from the Max line, meaning that elements of the ropes course would be located within the 25m setback, but not the base building. This triggers resource consent as a restricted discretionary activity.
94. Figure NATC-1 is provided to assist in determining how the setback should be measured. It is unhelpful as it appears to be largely designed for a river or stream context, rather than a lake that in this location does not have a

- “bank”. Mr Geddes has considered this in Supplementary evidence³³ and notes:
- 94.1. The diagram defines the bank edge as being the full flow level.
- 94.2. In this case it corresponds to the Max level, and is not the Design Flood Level.
95. On the issue of the Design level, Mr Geddes comments that it is not appropriate to apply the setback from the flood level of the lake as:
“... flooding occurs randomly and at different levels and potentially covers large areas ... and therefore would not commonly be considered the margin of [sic] lake”
96. I note also that Figure NATC-1 clearly illustrates that a “floodplain” exists beyond the bank of the waterbody, which is relevant to the point made above. Consequently, I agree with the assessment of Mr Geddes.
97. Mr Boyes considered the setback non-compliance in the s42A report³⁴ and referenced Ms Faulkner’s accompanying assessment. Ms Faulkner concluded that:
“... the scale of the proposed built elements in the existing trees is small in the context of the lake and its margins and this modification would have a minor effect on the level of natural character of the area.”
98. I agree and accept that assessment.
99. For clarity, however, I do not consider that the rule itself serves to define the margin of the lake for the purpose of s6(a) of the RMA which reads:
- 6 *Matters of national importance*
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development
100. The issue discussed at the hearing was how to determine the margin and, if this proposal is in the margin, how to consider the outcome sought by s6(a).

³³ Geddes Supplementary evidence paragraphs 40 - 44

³⁴ Boyes s42A report paragraphs 113 -120

101. Relevant to this I received similar legal submissions from Ms Dewar and Ms Hill on the same case; being *Save Wanaka Lakefront Reserve Inc v Queenstown Lakes District Council* [2017] NZEnvC 88.
102. Ms Dewar submitted³⁵ that the margin of a lake is not a fixed distance but must be interpreted contextually based on a range of factors. Furthermore, that the Court emphasised that s6(a) is capable of being applied to a development even if it would take place beyond the “margin” of a lake.
103. Ms Hill³⁶ agreed with Ms Dewar’s interpretation of the *Save Wanaka* case insofar as it is necessary to determine the extent of a lake’s margin on a case-by-case basis and that within a s6(a) context margins are not mapped.
104. That said, Ms Hill points out that only one expert, being Mr Craig, has undertaken a contextual assessment to determine if the proposal is located within the lake margin. On this issue Mr Craig states³⁷:

“Nor do I consider it to be within the lake margin environment subject to RMA s6(a). The reasons for this is [sic] that, firstly, there is no evident sign that the area directly beneath the ropes course is subject to ongoing lakeside processes – namely effects generated by wave action and lake level fluctuation. Secondly, the presence of indigenous riparian vegetation and allied ecology is clearly not apparent. For its entirety the area beneath the ropes course solely comprises gravels and pine litter – that is, needles, twigs and cones. And thirdly, there are no natural processes occurring within the ropes course umbrella that contribute lake shore processes such as indigenous vegetation, water courses, springs, ponds or ephemeral inundation features such as the sand flats on the shore line opposite the Tekapo Springs complex.”

“Nevertheless, the ropes course envelope does adjoin the shoreline environment. But because it is elevated, does not involve disturbance to the land surface (apart from initial implementation of the base station) and visual continuity is maintained it is my opinion that the interface relationship largely remains intact. That is to say, existing natural processes within the lakeshore environment will remain unaffected in any way.”

105. Ms Faulkner concluded, in respect of the 25m Natural Character rule (paragraph 97 above), that the built form elements of the proposal were acceptable and then went on to say³⁸ that “*establishing a commercial activity park within the lake margin does not constitute appropriate use and development of the lake margin in terms of RMAs6(a).*”

³⁵ Dewar legal submissions paragraphs 1 - 10

³⁶ Hill Reply Legal submissions paragraphs 49 - 58

³⁷ Craig EiC paragraphs 69 and 70

³⁸ Faulkner Peer Review Landscape Assessment page 5

106. Ms Faulkner has not completed an assessment of the extent of the lake margin within the context of the Save Wanaka case and appears to have concluded that the activity is not appropriate as it is a commercial activity. I do not see evidence to support this proposition.

Positive Effects

107. I am required to consider the positive effects of the proposal; if such effects exist. Mr Geddes, Ms Strong and Mr Boyes³⁹ outlined the following:
- 107.1. Positive economic outcomes – noting that none are experts in this field.
 - 107.2. Increased recreational opportunities.
 - 107.3. Activation of the space beneath the ropes course which currently is largely dormant, aside from the existing walkway.

Overall Effects Conclusions

108. Overall, from the evidence and statements I have received, and following my conclusions above, I have formed the view that any adverse effects associated with this proposal will be acceptable. For clarity, and for the purpose of a s104D assessment, any adverse effects that arise will be no more than minor in nature.

District Plan Objectives and Policies (section 104(1)(b))

Introduction – Plan Weighting

109. As noted earlier there are elements of OSZ (PC29) that are subject to Appeal. This means the provisions are unresolved and cannot be considered as operative. As a consequence, I must consider the relevant policy elements of the MDP and this requires a weighting assessment.
110. Before I get to this, however, I wish to comment specifically on the policy matters that require detailed assessment, and those that do not.
111. From the evidence received I am satisfied that the proposal is either aligned with, or not inconsistent with, the relevant policy matters as outlined below:
- 111.1. MDP Transport Chapter – while relevant at the time the application was lodged, a new chapter has been inserted by PC27 and there are no Appeals. The chapter is no longer relevant.
 - 111.2. PC27 Transport, PC30 Lake Tekapo Precinct, PC23 Natural Character, PC28 Hazards and Risks, PC20 Strategic Directions – From the evidence received and my aforementioned effects

³⁹ Mr Geddes EiC paragraphs 145 – 149, Ms Strong EiC paragraphs 60 and 136, Mr Boyes s42A report paragraphs 138 and 139

conclusions, I conclude that the proposal aligns with or at worst case is not inconsistent with the relevant policy framework.

112. This leaves me to consider the policy framework of the RecP zone of the MDP and the OSZ of PC29 and the weighting that should be applied. I am advised⁴⁰ there are two Appeals on the OSZ Chapter; being Appeals by:
- 112.1. The Applicant on:
- 112.1.1. The zone introduction
 - 112.1.2. OSZ-P4 – which deals with built form
- 112.2. Tekapo Landco and Godwit Leisure Ltd (**TLGL**) seeking to retain the following provisions as notified:
- 112.2.1. OSZ-P2 – which deals with community facilities and commercial recreation activities
 - 112.2.2. OSZ-R6 – which provides for commercial recreation activities as restricted discretionary activities
 - 112.2.3. OSZ-R7 – which provides for community activities
113. I received additional legal submissions⁴¹ from Ms Hill on the issue of weighting, including asserted limitations on the scope of the TLGL appeal. That is a matter that I cannot consider as ultimately the scope issue will be determined by the Environment Court. There are several points, however, that I have noted:
- 113.1. The Site has been rezoned from RecP to OSZ. The zoning itself is not subject to Appeal.
 - 113.2. The National Planning Standards (Table 13) describe the OSZ as *“areas used predominantly for a range of passive and active recreational activities, along with limited associated facilities and structures.”*
 - 113.3. OSZ-O1 is not subject to Appeal and seeks a range of passive and active recreational activities.
 - 113.4. OSZ-O2 is not subject to Appeal and seeks to limit facilities and structures which support the zone purpose (OSZ-O1) and maintain the predominance of open space.
114. Given the zoning has been confirmed and the general direction of OSZ-O1, which is not subject to Appeal and is aligned with the National Planning Standards, it does confirm for me that greater weight should be placed on the PC provisions as amended by decision. In any case, if I am wrong and the worst-case scenario was that equal weight should be applied to the RecP and OSZ objectives and policies, and even less weight on the provisions that are subject to Appeal, then that does not necessarily cast a

⁴⁰ Hill Reply legal submissions paragraphs 22 - 33

⁴¹ *ibid*

doubt on the outcome of this proposal. I say this, given my earlier comment regarding the direction provided by settled objective OSZ-O1.

The Objectives and Policies of the RecP Zone

115. The relevant objectives and policies are:

Objective 1 - Recreation, Reserves And Open Space

A conveniently distributed and accessible range of public open space, community facilities and recreational areas and facilities to meet the diverse needs of residents and visitors to the District.

Policies

- 1. To encourage, and where possible, provide for a range of recreation opportunities and community facilities within the District.*
- 2. To ensure the provision of open spaces and recreational areas within or in reasonable proximity to new residential subdivisions to meet the needs of the future community.*

Recreation Objective 2 – Lakeside Open Space – Lake Tekapo

A continuous reserve of open space and passive recreational areas located along the lakeside between and either side of the Lake Tekapo township and Lake Tekapo.

Policies

- 1. To provide for a large range of active and passive recreation opportunities in close proximity to Lake Tekapo.*
- 2. To ensure that built form is minimised, and the open spaces and visual amenity of the lakeside areas are safeguarded.*
- 3. To retain the naturalness of the lakeside, and preserve uninterrupted views from the township.*

116. Mr Geddes⁴² considered the proposal was aligned with Objective 1 and the related policies. Objective 2 and the related policies are relevant to the Site. As before Mr Geddes considers the proposal to be consistent and highlights policy 2 which seeks to provide for a large range of active and passive recreational opportunities. That policy is of course constrained by policies 2 and 3, although I do note that policy 2 does anticipate some built form – it does not seek to avoid it.

117. Mr Boyes⁴³ holds a different view to that of Mr Geddes noting that:
“As set out in the assessment above, I am of the view that the proposed activity will not safeguard open spaces and visual amenity of lakeside areas;

⁴² Geddes EiC paragraphs 178 - 185

⁴³ Boyes s42A report paragraphs 161 and 162

and will not retain the naturalness of the lakeside or preserve the uninterrupted views from the lakeside area and those residences to the south west of the site, including within the Station Bay Development and the land owned by Tekapo Landco Ltd and Godwit Lesure Ltd.”

*“It is acknowledged that the proposal finds some support from **Policy 1**, which seeks to “provide for a large range of active and passive recreation opportunities in close proximity to Lake Tekapo”.”*

118. Given my earlier effects conclusions, it is my view that the proposal is not inconsistent with the policy framework of the MDP. I do consider, however, that there is a degree of uncertainty as to whether this particular policy direction anticipates commercial active recreation activities (Objective 2 Policy 1). It is for that reason that I settle on the position that the proposal is not entirely aligned.

The Objectives and Policies of the OSZ

119. I have inserted below the relevant objectives and policies of the OSZ. This is the decision version highlighting the amendments made by the Hearings Panel.

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 <u>complementary</u> complimentary ⁵ to, and does not detract from, ⁶ the <u>passive recreational</u> ⁷ focus of the zone.	
OSZ-P3	Other Activities
Only allow other activities where they: 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: 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.	

120. Mr Geddes considers that the proposal is consistent⁴⁴ with OSZ-O1, noting that the objective makes it clear that the OSZ predominantly provides for a range of passive and active recreation activities. Ms Banks⁴⁵ acknowledges the proposal is for an active recreational activity but does not consider this extends to the built elements of the proposal or to the commercial nature of the activity.
121. There is nothing in the objective to support Ms Banks' view. This is particularly so given:
- 121.1. The objective seeks that the zone “predominantly” provides for active and passive recreational activities. The use of the word “predominantly” means that if Ms Banks is correct, structures and commercial activities could still be established, and this becomes a merit-based assessment.
- 121.2. That aside OSZ-O1 and O2 need to be read together, and it is clear that OSZ-O2 anticipates facilities and structure on a limited basis. Within this context it is inherent in the wording of these objectives that activities and structures are anticipated.
- 121.3. Similarly, OSZ-P2 implements the above objectives. Both the decision version and the notified version of the policy anticipate commercial recreation activities in principle. The definition of commercial recreation activity in the Plan means activity based on the use of “land, air, water and buildings”.
122. With respect to OSZ-O2, I agree with Mr Geddes⁴⁶ where he opines that *“the proposal is consistent with Objective OSZ-O2 as limited facilities and structures are proposed and that facilities and structures that are proposed support the purpose of the zone to provide for active and passive recreation.”* Ms Banks⁴⁷ disagrees and draws on the evidence of Mr Smith where he concludes that *“while the proposal will physically maintain a predominance of open space, the proposal will deter the general public from spending time under these trees reducing its perception of openness.”* Given this Ms Banks considers the proposal is not consistent with the objective. Given the evidence of Ms Strong regarding the relationship between the ropes course and the users of the space below it, I do not agree with Ms Banks' conclusion.
123. Policy OSZ-P2 is directly relevant to this proposal. Mr Geddes⁴⁸ argues (in the decision version):
“That policy specifically provides for community and commercial recreation activities which are of a nature and scale that are complementary to the recreation focus of the zone. The proposal is a commercial recreation

⁴⁴ Geddes EIC paragraph 209

⁴⁵ Banks EIC paragraph 92

⁴⁶ Geddes EIC paragraph 210

⁴⁷ Banks EIC paragraph 94

⁴⁸ Geddes EIC paragraph 212

activity, so it meets the prerequisite of Policy OSZ-P2 in that it is either a community or commercial recreation activity. In terms of whether the proposed activity's nature complements the recreational focus of the zone, it is an active recreation activity, which aligns Objective OSZ-O1 that specifically states the purpose of the zone is to provide for passive and active recreational activities. Its nature, being predominantly located above ground level also aligns with that objective by still enabling most of the area at ground level to be used for passive and other active forms of recreation. Ms. Strong's evidence agrees, stating that the nature and scale of the activity will complement and will not detract from recreation focus of the zone."

124. By contrast Ms Banks⁴⁹ argues:

The Council's decision to remove the word 'passive' from this policy again reflects that the zone can accommodate active recreation. I consider that recreation would remain the focus of the site, however the nature of this proposal is likely to result in active recreation being predominant. This policy does enable commercial recreation, if complementary to the recreational focus. However, I note that commercial recreation does not necessarily require permanent built form or structures. I consider that the active component, being the physical activity of walking or climbing, and the commercial operation of this, is consistent with this provision. However, the commercial element in this instance introduces the need for extensive additional built elements and structures.

Mr Smith notes that commercial recreation activities are "unlikely to always be complementary with the varied character within the zone, and additionally, that the proposal has very limited associative values with Takapō / Lake Tekapo or its foreshore. Therefore, perceptually, it will always appear out of place."

I consider that this particular activity is not complementary to the existing values of the site and the effects of this 'busyness', noise and visual effects associated with the scale of built form and lines proposed within the trees is not anticipated by this policy.

125. Given the evidence of Ms Strong, which I have referred to earlier, I do not agree with Ms Banks including the reliance on Mr Smith's assessment that the proposal could not be complementary. Accordingly, I agree with Mr Geddes.
126. I wish to comment also that if the TLGL Appeal on this policy is successful, that does not alter my view. That is because the proposal would remain complementary to the activities anticipated in the zone.

⁴⁹ Banks EIC paragraphs 96 - 98

127. Policy OSZ-P4 seeks to limit the scale of built form in the zone so as to retain a clear predominance of open space, maintain uninterrupted views from urban areas to the lake and maintain the amenity of lakeside areas. On this matter Mr Geddes⁵⁰ comments:

“In terms of the consistency of the proposal with Policy OSZ-P4, I defer to Mr Craig’s evidence, which states it will retain the clear predominance of open space, maintain views and the visual amenity of the lakeside area. While Policy OSZ-P4 refers to maintain uninterrupted views from urban areas to the lake, I consider that the views of the urban area to the south and southwest re [sic] not uninterrupted and are currently interrupted by the trees on site and vehicles parked in the carpark. In terms of the properties in Station Bay Rise, views of the lake will also be interrupted by the landscaping provided as part of that subdivision. Therefore, I do not consider that this policy applies to the application as it was obviously intended to apply to areas that had uninterrupted views of the lake. Mr. Craig’s evidence states that the proposal will maintain the views of properties to the south and southwest.”

128. Ms Banks⁵¹ considers:

Paragraph 2 of Introduction of the OSZ provides context to this policy and indicates that the limited built form that is anticipated in the OSZ is considered to include “seating, picnic and barbeque facilities, toilets, shelters and playground or sporting equipment, reflecting the dominance of open space”.

I consider that the ropes and structures proposed, and the length of the course reduces the predominance of open space and introduces interruption to views of the lake that are presently available between the trees. Mr Smith has noted that the current outlook “consisting of a pine tree foreground, a crisp blue lake midground and alpine mountain backdrop is quintessential of the area” and provides a high degree of amenity to residents of Station Bay and visitors within the campground and lodge. Additionally, the site is known to have a range of passive and natural values and ‘quietude’ which contribute to the overall amenity of the site.

Mr Smith considers that at the broader receiving environment scale a predominance of open space will be retained, however the 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.

I agree with Mr Smith that the proposal will interrupt views and will not maintain the amenity of this lakeside location. I consider the proposal is inconsistent with this policy.

⁵⁰ Geddes EIC paragraph 189

⁵¹ Banks EIC paragraphs 99 - 103

129. On the issue of uninterrupted views to the lake I questioned Mr Smith at the hearing and asked how he would characterise the view from Lakeside Drive and adjoining properties to the Lake. In response Mr Smith stated:
- 129.1. That on Lakeside Drive views were lower down and at the Site there were filtered views through the trees to the lake.
 - 129.2. Up the hill in the residential areas there were again filtered views through the trees to the lake and surrounding mountains.
 - 129.3. The Pine trees do interrupt views from the residential areas.
 - 129.4. The key point made by Mr Smith is that while the trees do screen the views of the lake, there are filtered views through
130. In the context of the policy which seeks to maintain uninterrupted views Mr Smith acknowledged that was not the case here. But he did stress that maintenance of those remaining filtered views was important.
131. The extent to which this policy seeks to maintain uninterrupted views is a matter of degree and context. If the policy is to be interpreted in such a way that there should be no interruption to views, where no interruption currently exists, then that means no structure or building could ever be established in such a location. While that may have been the intention of the policy makers, I have formed the view that this Site should not be considered in the same way given the screening that currently exist. Given also the amendments made by the Applicant with respect to confirming the spatial extent of the single level ropes course and the increased ropes course height, I have determined that the proposal is not inconsistent with OSZ-P4.
132. Given the above, I am of the view that while the proposal is not fully aligned with the relevant OSZ objectives and policies, it cannot be considered contrary to them.

Threshold Tests (section 104D)

133. Section 104D(1) sets out the circumstances where I may issue a decision to grant consent for a non-complying activity. My findings are:
- a. Any adverse effects associated with this proposal will be acceptable. For clarity, and for the purpose of a s104D assessment, any adverse effects that arise will be no more than minor in nature.
 - b. While the proposal is not fully aligned with the relevant objective and policies, it cannot be considered contrary to them.
134. Within this context the proposal passes both gateway tests and is able to be considered for approval.

Other Matters (Section 104(1)(c))

135. I am mindful that if this consent is granted, arguments of equivalent treatment may be raised by other applicants. The issue of precedent and consistent Plan administration is a matter that I must consider.
136. If precedent arguments were to be successful, then it raises questions of Plan integrity. Clearly it is not possible to quantify the likelihood of such occurrences and to do so would be pure speculation. That aside, any such application would need to be considered on its individual merits and on a case-by-case basis.
137. I accept that no two applications are ever likely to be the same, but there may of course be similarities. Should that situation arise, there is the prospect that the manner in which one application has been processed may well influence the processing of another and ultimately the outcome itself.
138. Overall, I do not consider that this proposal gives rise to Plan integrity or precedent issues. I say this because of:
- 138.1. my overall effects and policy conclusions, which are application and site specific and not automatically transferable to other locations or proposals.
- 138.2. the particular nature of this proposal and its location – both of which would be difficult to replicate.
139. I note for completeness that Mr Boyes and Mr Geddes share this view

PART 2 OF THE RMA AND DETERMINATIONS

140. The purpose of the RMA is to promote sustainable management of natural and physical resources. Section 5 of the RMA imposes a duty on consent authorities to promote sustainable management while endeavouring to avoid, remedy or mitigate adverse effects of activities on the environment. The term *sustainable management* is defined in section 5(2). In simple terms, the definition places emphasis on enabling people and communities to undertake activities, while ensuring that the ‘bottom line’ standards specified in subsections (a) – (c) are met.
141. Sections 6-8 of the RMA provide guidance on how the purpose of the RMA should be achieved. With the exception of s6(a) as discussed above, there are no matters in sections 6 and 8 that I consider relevant to this application.
142. Section 7 prescribes “other matters” to which I am directed to have particular regard. These matters include:
- (b) The efficient use and development of natural and physical resources;

- (c) The maintenance and enhancement of amenity values; and
 - (f) Maintenance and enhancement of the quality of the environment.
143. I am satisfied, based on my earlier conclusions, that the proposal is aligned with sections 7(b), (c) and (f). I note my earlier effects-based conclusions, including the additional mitigation measures offered by the Applicant.
144. Given all the above I consider that the proposal will achieve the purpose and principles of the RMA and that the consent can be granted, subject to the conditions, as detailed in **Attachment A**.

DECISION

Pursuant to sections 104, 104B, 104D and 108 of the Resource Management Act land use consent RM230149 is granted for the non-complying activity application of Queenstown Commercial Parapenters Ltd to establish a commercial tree-climb ropes course and picnic facilities on a site at Lakeside Drive Lake Tekapo, subject to the conditions included in Attachment A.

Dated at Christchurch this 13th day of November 2025



Darryl Millar
Commissioner