

**BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL
INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management Act
1991 (**RMA**)

AND

IN THE MATTER of a further submission to the Stage 1
Proposed Queenstown Lakes District
Council Plan by **ZJV (NZ) Limited**
(Further Submission 1370.1)

**REBUTTAL EVIDENCE OF JEFFREY ANDREW BROWN
ON BEHALF OF ZJV (NZ) LIMITED**

(PLANNING)

**HEARING TOPIC 013 – QUEENSTOWN MAPPING:
Stream 1A – Queenstown Business and Industrial**

7 July 2017

**BROOKFIELDS
LAWYERS**

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1. INTRODUCTION

- 1.1 My name is Jeffrey Andrew Brown. My qualifications and experience are set out in my primary statement of evidence dated 9 June 2017.
- 1.2 I confirm I have complied with the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2014. This evidence is within my area of expertise, except where I state that I am relying on another person, and I have not omitted to consider any material facts known to me that might alter or detract from the opinions I express.
- 1.3 This rebuttal evidence addresses the primary evidence of Sean Dent on behalf of Skyline Enterprises Limited (submission 574)¹. Mr Dent's evidence promotes the *Commercial Tourism and Recreation Sub-zone (CTRSZ)* for land at the Skyline gondola lower and upper facilities and the gondola corridor area.
- 1.4 My rebuttal statement focuses on three aspects of Mr Dent's evidence:
- (a) The relationship between the CTRSZ and Skyline's resource consent application RM160647 (currently before the Environment Court²) to upgrade the gondola and the upper and lower terminal areas;
 - (b) The relationship between the CTRSZ and the *Ben Lomond and Queenstown Hill Reserve Management Plan 2005* (the **RMP**); and
 - (c) The lack of any meaningful section 32 evaluation of the CTRSZ.

2. THE CTRSZ AND RESOURCE CONSENT APPLICATION RM160647

- 2.1 My observation is that the scale of the proposed CTRSZ is considerably larger than the proposed gondola upgrade that is the subject to Skyline's resource consent application. For the upper terminal building, the area of the CTRSZ (as shown on the Patterson Pitts plans at the end of Mr Dent's evidence) is significantly greater than the total footprint area for the proposed upgrade to the upper terminal building contained in the resource consent application (which is around double the existing footprint shown in blue on the plans).

¹ Primary evidence of Sean Dent dated 9 June 2017.
² ENV-2016-CHC-107.

2.2 Notwithstanding the CTRSZ's 35% building coverage rule, the CTRSZ anticipates a very large area and volume of built development.

3. THE RESERVE MANAGEMENT PLAN

3.1 My view is that Mr Dent has not assessed how the CTRSZ's anticipated level of development relates to, or is consistent with, the RMP.

3.2 As I stated in my primary evidence, the RMP contains objectives, including for example the "*protection of the reserve's natural and quiet values*" and the "*provision for recreation and tourism activities that do not adversely impact on the landscape, recreation and natural values of the reserve*". The "Vision Statement" for the Ben Lomond area is "*To protect and enhance the natural values of Ben Lomond Reserve and provide opportunity for compatible recreation activities*"³.

3.3 On the RMP, Mr Dent states at paragraphs 109 - 112:

109. Further to all of the above the Council has an additional layer of protection under the Reserves Act 1977. Every part of the proposed CTRSZ will require a Lease or License from the Council to occupy and operate activities under the Reserves Act 1977 regardless of the grant of resource consent under the RMA.

110. Any approvals under the Reserves Act 1977 will need to be in accordance with the Ben Lomond and Queenstown Hill Reserve Management Plan and the Ben Lomond and Queenstown Hill Forestry Management Plans.

111. It is my opinion that any new Leases or Licenses will be subject to a publicly notified process under the Reserves Act. In the case of Skyline's existing Lease, all new buildings, activities and improvements require 'Lessor Approval' under the terms of their lease which can only be given by full Council.

112. I don't consider the above process to be a derogation of Council's functions and responsibilities under the RMA to another statutory process but it simply highlights there is a robust, participatory process the [sic] enables further scrutiny of any future development in the proposed CTRSZ notwithstanding the provisions of the PDP which may ultimately apply to them.

3.4 Given that "*any approvals will need to be in accordance with RMP*" (para 110) and that "*a robust, participatory process that enables further scrutiny ... notwithstanding the provisions of the PDP*" (para 112) is required, I consider that

³ At Section 8.0 of the RMP.

more assessment by Skyline is necessary to understand whether the CTRSZ enables development that accords with the RMP.

- 3.5 At this stage, given the very limited information and analysis we have on the CTRSZ, I am concerned that it would pose risks to the amenity and landscape values of the reserve.
- 3.6 Further, it would be very inefficient and create planning difficulties if the CTRSZ is not consistent with the RMP because, in addition to the duplication of processes, it could well be that one instrument may be enabling of a proposal but the other instrument may be disabling of the same proposal. This puts the Council and the other parties in a potentially conflicting position.
- 3.7 Overall, I consider there is difficulty in reconciling the CTRSZ with the RMP because of the potential scale of the development anticipated by the CTRSZ that is not anticipated by the RMP.

4. LACK OF S32 EVALUATION

- 4.1 The conclusion to my primary evidence (paragraph 3.2) stated that at this stage I would need to see a full s32 evaluation, including an analysis of the relevant higher order objectives and the options (District Plan and non-District Plan (RMP) methods) available to achieve the objectives.
- 4.2 Such an evaluation is lacking.
- 4.3 Mr Dent has cited many relevant higher order objectives and policies (his paragraphs 42 – 67) but does not then evaluate whether the CTRSZ is the most appropriate method to achieve them or the purpose of the RMA. To be satisfied with the assessment, I would expect to see a range of reasonably practicable options identified and examined, for example:
- (a) The status quo; or
 - (b) The CTRSZ; or
 - (c) Updating the RMP;

- (d) A hybrid – enable a CTRSZ-type zone but crafted with more cognisance of and consistency with the RMP; or
- (e) Ms Evans’ suggested policy in the Rural Zone (her paragraph 8.24⁴), or similar wording or similar approach.

4.4 The options must then be subjected to the s32 evaluative “tests”, as to:

- (a) assessing the efficiency and effectiveness of the provisions in achieving the objectives, with reasons, to a level of detail that corresponds to the scale and significance of the anticipated environmental, economic, social, and cultural effects; and
- (b) identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions; and
- (c) assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions; and
- (d) based on the above, evaluating whether the provisions in the proposal are the most appropriate way to achieve the objectives.

4.5 To reiterate my primary evidence (paragraphs 2.6 – 2.8), I agree in principle with the concept of an updated, improved approach for managing the Ben Lomond area. I consider that this may be more effectively achieved by a comprehensive review of the RMP, which is outdated. If there is to be a bespoke zoning approach, this would need to encapsulate and properly deal with the RMP and all of the other relevant issues before it could be adopted into the PDP. For example, the evaluation might identify that a method is a bespoke zone that is based on a structure plan that delineates certain activity areas with corresponding development standards, and addresses related matters such as parking.

4.6 In any case, in my view the s32 requirements have thus far not been met.

J A Brown
7 July 2017

⁴ S42A report / evidence of Ruth Evans, Stream 1A, dated 24 May 2017.