

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

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a submission to the Stage 2 Proposed
Queenstown Lakes District Council Plan by **ZJV
(NZ) Limited (Submission 2485)**

**STATEMENT OF EVIDENCE OF JEFFREY ANDREW BROWN
ON BEHALF OF ZJV (NZ LIMITED
STREAM 15 – CHAPTER 38 – OPEN SPACE AND RECREATION
6 August 2018**

**BROOKFIELDS
LAWYERS**
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Introduction

1. My name is Jeffrey Andrew Brown. I have the qualifications of Bachelor of Science with Honours and Master of Regional and Resource Planning, both from the University of Otago. I am a full member of the New Zealand Planning Institute. I am also a member of the New Zealand Resource Management Law Association. I was employed by the Queenstown Lakes District Council (**QLDC**) from 1992 – 1996, the latter half of that time as the District Planner. Since 1996 I have practiced as an independent resource management planning consultant, and I am currently a director of Brown & Company Planning Group Ltd, a consultancy with offices in Auckland and Queenstown. I have resided in Auckland since 2001.
2. **Attachment A** contains a more detailed description of my work and experience.
3. 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.
4. This evidence is on behalf of ZJV (NZ) Limited (Submitter 2485) (**ZJV**). The submission relates to the proposed Open Space and Recreation Zone (**OSRZ**) (Chapter 38) and the Ben Lomond Sub Zone (**BLSZ**) for the Ben Lomond area.
5. I have read the Section 42A report prepared by Ms Edgley and the evidence of Ms Galavazi for the Council.
6. As a method, I support the OSRZ / BLSZ for the Ben Lomond area. It better reflects the existing range of commercial recreation, associated commercial activities, and other activities, and the BLSZ is more consistent with the existing Ben Lomond / Queenstown Hill Reserve Management Plan than the Rural Zone.
7. My evidence addresses the updated provisions of the OSRZ / BLSZ in Appendix 1 of Ms Edgley's s42A report. Below I comment on and proposed some modifications to the provisions.

Objectives and policies

8. I agree with the additional policies 38.4.1.7 – 38.4.1.9, for the BLSZ, as recommended by Ms Edgley in response to Skyline Enterprises Limited's submission¹ but prefer some modifications to those policies, as follows:

¹ Submission 2493.

Within the Ben Lomond Sub-Zone

In addition to the objectives and policies in 38.2 and 38.4 above, the following policies apply:

38.4.1.7 ~~Control~~ Ensure that the visual impact of buildings, passenger lift systems, earthworks and infrastructure associated with commercial and commercial recreation activities minimise adverse effects on landscape and amenity values.

38.4.1.8 Ensure that buildings, passenger lift systems and infrastructure associated with commercial and commercial recreation activities are not highly prominent on the skyline and remain subservient to the view of Walter Peak when viewed from the north east (Malaghans Road / Gorge Road).

38.4.1.9 Require landscape rehabilitation following the removal of exotic conifers to mitigate effects on landscape and visual amenity, including revegetation with indigenous species and provision for the ongoing control of conifer regrowth.

38.4.1.10 Ensure that forest harvesting takes into account effects on amenity values and other users of the reserve environment, and enable day to day forest management.

9. The modifications:

- Ensure that the specific policies for the BLSZ are additional to, not instead of, the more general provisions for the OSRZ;
- Strengthen and provide more focus in relation to the visual impact of buildings; and
- Give some policy basis for the forest harvesting and management provisions (which I address further later in this evidence).

10. I consider that the modification to Policy 38.4.1.7 brings the policy more in line with the higher order provisions, including, for example, in Chapter 3 (Strategic Direction)²:

Strategic Objectives

3.2.5 The retention of the District's distinctive landscapes

3.2.5.1 The landscape and visual amenity values and the natural character of Outstanding Natural Landscapes and Outstanding Natural Features are protected from adverse effects of subdivision, use and development that are more than minor and/or not temporary in duration. ...

Strategic Policies

3.3.30 Avoid adverse effects on the landscape and visual amenity values and natural character of the District's Outstanding Natural Landscapes and Outstanding Natural Features that are more than minor and or not temporary in duration.

11. Numerous Chapter 6 objectives and policies are relevant also.

Rule 38.11.1 – Buildings

12. I consider that the following addition is necessary:

² These are taken from the Recommendations version.

	Table 38.3: Activities and Standards for Activities in the Ben Lomond Sub Zone	Activity or Non-compliance status
	Activity	Activity Status
38.11.1	<p>Buildings</p> <p>Construction, relocation, addition or alteration of any building.</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • Landscape and visual amenity values; • Scale, intensity and cumulative effects; • Associated earthworks and landscaping; • Lighting; • Provision of water supply, sewerage treatment and disposal, storm water disposal, electricity and communication services; • Natural Hazards; and • Effects on the transportation network; • <u>Public access to and the use of open space.</u> 	RD

13. The reason for the additional matter of discretion is that the location of any new building, or extension to existing building, could impact on where and how people access open space areas nearby. For example, a new building might impede access from one part of the reserve to another, and affect users' experience or appreciation of the reserve, and alternative methods of access may need to be proposed and addressed at the time of the application for the building. This issue is not captured by any of the other matters of discretion.

Rule 38.11.3 – Commercial recreation activities

14. The rule should be modified as follows:

38.11.3	<p>Commercial recreation activity and related <u>ancillary</u> Commercial activity</p> <p>38.11.3.1 Commercial recreation activity</p> <p>38.11.3.2 Commercial activity only where:</p> <p>a. the commercial activity including any retail is associated with ancillary to, and located on the same site as, the commercial recreation activity; or</p> <p>b. the commercial activity is retail ancillary to the commercial recreation activity.</p> <p>Discretion is restricted to the following:</p> <ul style="list-style-type: none"> • Intensity and scale of the activity <u>and effects</u> on recreation use and amenity values; • Noise; • Public access to, and use of the open space; • Other occupiers or users of the site or adjoining sites; • Infrastructure; • Access and parking; and 	RD
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	• Effects on the transportation network	
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15. The reason for the modification is that the words “related”, “associated with” and “ancillary to” may be different, which potentially confuses the interpretation of the rule, and “ancillary to” is preferable because it is used in other instances in the Plan where an activity is intended to be subservient to the primary activity anticipated on the site. Also, I do not see the need for any ancillary retail to be not on the same location as the primary commercial recreation activity on the site.

Rule 38.11.4 – Forestry activities

16. I consider that the rule should be modified as follows:

38.11.4	<p>Harvesting and management of existing Forestry</p> <p>Control Discretion is reserved restricted to the following:</p> <ul style="list-style-type: none"> • Hours of operation; • Noise; • Health and safety; • Traffic generation; • Earthworks; • Soil erosion, sediment generation and run-off; and • Landscape rehabilitation; <u>and</u> • <u>Effects on the amenity values of the forest and on other users of the reserve.</u> 	<p>☺</p> <p>RD</p>
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17. The activity status for forest harvesting should be Restricted Discretionary (RD), in my view. Harvesting could potentially be a high impact activity. There are other occupiers of the reserve, for example, ZJV, mountain bikers, walkers and runners, who rely on the forest either for their business and for the enjoyment and amenity values the forest provides. ZJV relies on the forest because the tree hut structures which are constructed entirely within and supported solely by the trees. For these reasons I consider that the status for harvesting should be RD, and that an additional matter for the impact of harvesting should be included (and I consider that this matter should be included in the event that the status of harvesting remains as Controlled).
18. Further, I question whether “management” of the forest should be part of the rule, as forest management such as pruning, managing any die-back, and other day to day forest tasks should not require a resource consent.
19. This has implications for Rule 38.9.30 in the Activity Table 38.1, which in my view should be modified as follows:

Rule	...	Activities	Informal Recreation Zone	...
...
38.9.30	...	Harvesting and management of existing Forestry within the Outstanding Natural Features or Landscapes	D	...
<u>38.9.30A</u>	...	<u>Management of existing forestry, limited to pruning, and other works required for safety purposes</u>	<u>P</u>	...

20. The same rules (38.9.30 and 38.8.30A as above) are appropriate for all of the other Zones in Table 38.1 also (noting that Discretionary status applies to them all), to avoid needing resource consents for day-to-day forest management such as pruning or removal of a dead or dying tree.
21. I consider that the above suggested modifications for Rules 38.11.1, 38.11.3 and 38.11.4 are consistent with and better give effect to the relevant objectives and policies of the OSRZ, including:

38.2.2 Objective - Recreation activities are undertaken and facilities constructed in a way that maintains or enhances the values of open space areas and the recreation opportunities available within the District.

Policies

38.2.2.1 Ensure activities are undertaken in a manner that maintains or enhances the amenity values of the relevant reserve and surrounding environment, including natural, scenic and heritage values.

38.2.2.2 Limit activities, buildings and structures to those compatible with the role and function of the zone, the sensitivity of the surrounding environment and maintain or enhance the anticipated use or values of the zone.

38.2.2.4 Ensure the scale and location of buildings including associated structures, trails and accesses, and noise and lighting associated with recreation activities is consistent with the level of amenity anticipated in the zone and in the surrounding environment, having particular regard to the following where new buildings, structures or lighting are proposed: ...

38.2.2.5 Ensure that any buildings or structures located within, adjoining or nearby to an Outstanding Natural Feature or Landscape, protect, maintain or enhance those values by:

- a. limiting development and activities in the vicinity of water bodies to the land based components of community recreation water based activities, which have a practical and functional need to be located within these areas;)
- b. preserving the natural character of the margins of waterbodies;
- c. ensuring buildings are located in areas that are least sensitive to change and have capacity to absorb development;
- d. requiring buildings to be designed and finished so they:
 - i. avoid visual dominance; and

- ii. mitigate or remedy adverse effects on the values of the Outstanding Natural Feature or Landscape; and
 - e. ensuring trails, access and carparking areas (including associated earthworks) do not degrade visual amenity values or disrupt the natural character or landforms.
22. These relate to effects on landscape and visual amenity values of the reserve, and the amenities of the users of the reserve, and my modifications to the rules enable better achievement of the objective and policies, in my view.

Rule 38.11.8 – Height of buildings

23. I consider that the rule should be modified as follows, to better enable ZJV’s tree hut transition points between the ziplines:

38.11.4	<p>Building Height</p> <p>The maximum height of buildings and structures as specified shall be:</p> <ul style="list-style-type: none"> a. Buildings within the Bob’s Peak Area: 10m. b. Passenger Lift Systems within the Bob’s Peak Area: 12m. c. Buildings within the Lower Terminal Area: 17m. d. <u>Structures for the purpose of supporting ziplines and for transition of customers between ziplines, provided that any such structure is attached to and wholly supported by tree(s) and has a platform floor area of no greater than 10m²: 20m</u> 	D
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24. The addition is a refinement of the more generic rule sought in the submission. The addition specifies what type of structure (i.e. tree structures for the ziplines) that are sought to be higher than other types of structures. Given their very limited size (10m²) and their location within trees, there would be minimal if any visual effect when viewed from anywhere other than under or close to the tree. For this reason I do not consider that any further landscape assessment is necessary. In any case, the structure would be an RDA (under Rule 38.11.1) and effects on landscape and visual amenity values would still be addressed.

Rule 38.12 – non-notification

25. The s42A report recommends removal of Rule 38.12.2 relating to non-notification of Controlled activities. In the setting of the Ben Lomond reserve, where there are many different types of recreational activities, some controlled activities could potentially adversely impact on other activities, for example a new passenger lift system – a Controlled activity – could interfere with a zipline operation. I consider that there should still be opportunity for the Council to contemplate limited notification or written approval should the need arise, and that the rule should be retained.

Conclusion

26. For the reasons set out above I consider that the modifications suggested to the BLSZ policies, and to some of the BLSZ rules, enable the provisions to give better effect to the higher order provisions of the Plan and to the wider OSRZ objectives and policies.

J A Brown

6 August 2018

A**Curriculum vitae – Jeffrey Brown****Professional Qualifications**

1986: Bachelor of Science with Honours (Geography), University of Otago

1988: Master of Regional and Resource Planning, University of Otago

1996: Full Member of the New Zealand Planning Institute

Employment Profile

May 05 – present: Director, Brown & Company Planning Group Ltd – resource management planning consultancy based in Queenstown and Auckland. Consultants in resource management/statutory planning, strategic planning, environmental impact assessment, and public liaison and consultation. Involved in numerous resource consent, plan preparation, changes, variations and designations on behalf of property development companies, Councils and other authorities throughout New Zealand.

1998 – May 2005: Director, Baxter Brown Limited – planning and design consultancy (Auckland and Queenstown, New Zealand). Consultants in resource management statutory planning, landscape architecture, urban design, strategic planning, land development, environmental impact assessment, public liaison and consultation.

1996-1998: Director, JBA, Queenstown – resource management consultant.

1989 – 1996: Resource management planner in several local government roles, including Planner (1992 – 1994) and District Planner (1994 – 96), Queenstown-Lakes District Council. Held responsibility for all policy formulation and consent administration.

Other

- New Zealand Planning Institute – presenter at *The Art of Presenting Good Planning Evidence* workshops for young planners (2016 –)
- Judge, New Zealand Planning Institute Best Practice Awards (2017 –)