

Before the Queenstown Lakes District Council

And The Queenstown Lakes District Proposed District Plan – Topic 15

Memorandum of Counsel re supplementary information for

Kiwi Birdlife Park Limited (#2569)

Dated 27 September 2018

Solicitors:
Vanessa Robb
Anderson Lloyd
Level 2, 13 Camp Street, Queenstown 9300
PO Box 201, Queenstown 9348
DX Box ZP95010 Queenstown
p + 64 3 450 0700 | f + 64 3 450 0799
Vanessa.robb@al.nz

**anderson
lloyd.**

May it please the Panel

Introduction

- 1 This memorandum of Counsel is presented on behalf of Kiwi Birdlife Park Limited (**KBP**) (Submitter #2569), providing supplementary information in response to questions from the Panel raised in today's hearing.
- 2 Two issues are addressed in this Memorandum:
 - (a) The relevance of the operative zoning and rule regime in the context of reduced height limits over the Ben Lomond Subzone; and
 - (b) KBP's position on informal airports in the Ben Lomond Subzone.

Relevance of operative zoning / rules and proposed height limits

- 3 The Panel queried Counsel on the relevance of the current / operative zoning under the District Plan when considering the proposed zoning and associated rules at hand. The question was raised in the context of the KBP Site which is currently zoned High Density Residential (**HDR**) and proposed to be zoned Informal Recreation – Ben Lomond SubZone (**Ben Lomond Subzone**), and the consequence that height limitations are more restrictive under the proposed zone than the operative position. KBP seeks more lenient height restrictions for its site and for certain activities (aviaries and fencing).
- 4 Counsel understands that the appropriate zoning (and consequently, rule regime) of land in the PDP is a matter to be considered in accordance with section 32, and in particular the question for consideration is which provisions would most appropriately achieve the objectives of the PDP.¹
- 5 The question of what is the most appropriate zoning and rule regime must be an effects-based planning decision, rather than a directive planning approach with respect to future development.²
- 6 Consideration of the status quo (or operative zoning) and any departure from that position is required as part of any section 32 analysis, pursuant to the

¹ *Rutherford Family Trust v Christchurch City Council*, Environment Court, C026/03.

² *Cerebos Greggs Ltd v Dunedin City Council*, Environment Court, C169/01.

requirement to assess 'other reasonably practicable options' for achieving the objectives (s32(1)(b)(i)).³

- 7 Counsel has reviewed the Chapter 38 Section 32 analysis again and it is clear the Council has considered, to a general extent, the options and preferences for maintaining the operative zoning as compared to a revised Chapter 38.⁴ Pages 54 – 57 of the section 32 report specially consider the proposed policies and rules within the Ben Lomond Subzone. This assessment considers that:

The Informal Recreation Ben Lomond Sub Zone recognises and manages the existence and wide range of commercial and informal recreation activities in the Ben Lomond Recreation Reserve.

The overall suite of rules are both effective and efficient in that they reflect in part the existing environment and the general position of Skyline Enterprises Ltd, Council officers and further submitters (ZJV Ltd) as to the zoning and rules that will be most appropriate way to meet the objectives of the Open Space Chapter, and the Strategic Directions of the PDP.⁵

- 8 No part of the analysis Counsel has reviewed specifically considers a significant reduction in height limitations from the operative to the proposed position, despite the zoning intending to recognise the wide range of commercial activities in this zone and the existing environment (as above). It is also concerning to Counsel that the section 32 report appears to place primacy on satisfying some (stage 1) submissions and not others (such as that of KBP) in determining its most appropriate section 32 outcomes.
- 9 It is submitted that this lack of specific analysis, coupled with KBPs evidence as to very limited adverse effects for the height increase exemptions it seeks, does not justify the PDP rules as currently proposed as most appropriate.
- 10 The rule exemptions for heights as proposed by KBP better achieve the objectives of the proposed zone as it recognises the nature of the activities to be conducted on site and will ensure those can be efficiently carried out to provide for recreation needs of the District's residents and visitors.⁶

³ *Well Smart Investment Holding (NZQN) Lt d v Queenstown Lakes DC* [2015] NZEnvC 214; and *Orewa Land Ltd v Auckland City Council CIV-2010-404-6912*, 21 April 2011 (HC).

⁴ Page 20, section 32 report Chapter 38 in particular.

⁵ At page 54

⁶ Objectives 38.2.1; 38.2.2; 38.2.3; 38.2.4; 38.4.1.

Informal Airports

- 11 The Panel put to Counsel the question of whether KBP's interests would be better met by the Skyline land being rezoned Rural (and consequently, the Rural Stage 1 informal airport rules applying), or the land being rezoned Ben Lomond Subzone, with site-specific rules controlling aircraft movements.
- 12 KBP's confirmed position is that it does not oppose the Ben Lomond Subzone sought by Skyline, subject to appropriate rules being included to address aircraft activity in that zone.
- 13 KBP is of the opinion that site-specific aircraft rules are appropriate for the Skyline land, as opposed to the district-wide Rural Zone provisions for informal airports. This is because the Skyline land is of a different nature to other Rural Zone land in that it is a highly used recreation resource. Previous Court litigation on the regulation of aircraft in this location is evidence of the fact that this is a particularly sensitive / bespoke planning environment. The ultimate position of the informal airport activity rules in the PDP is also somewhat uncertain given multiple appeals to the Environment Court are live on those provisions.
- 14 For these reasons, KBP considers that the combination of a restricted discretionary regime, plus specific restrictions on aircraft operations, is most appropriate on the Skyline land. Those proposed restrictions are as set out in para 48 of Mr Kavanagh's evidence and are derived from the Environment Court decision *JV (NZ) Ltd v Queenstown Lakes District Council* [2016] NZEnvC 90.

Dated this 27th day of September 2018



VJ Robb

Counsel for Kiwi Birdlife Park Limited