S0572-NZ Ski Ltd-T011-Macdonald J-Legal Submissions.pdf

BEFORE THE QUEENSTOWN LAKES DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND in the matter of the Queenstown Lakes Proposed District Plan, Submissions Ski Area Sub Zones – Mapping – Hearing Stream 11.

BY NZ SKI LIMITED

Submitter

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INTRODUCTION

1. NZ Ski Limited ("NZ Ski") filed a submission on the Proposed District Plan ("PDP") (number S0572). NZ Ski requested that the ski area sub zone ("SASZ") be extended to take in a greater area within both the Coronet Peak and Remarkables Ski areas. A new ski area sub zone B ("SASZ B") is sought on land owned by NZ Ski on the lower slopes of the Remarkables, near the entry to the ski field off State Highway 8.

2. NZ Ski is not presenting evidence and abides the decision of the Council regarding its submission seeking an extended SASZ over the Coronet Peak Ski area.

3. The submissions and evidence for this hearing are limited to NZ Ski's submission seeking an expansion and addition of two areas associated with the Remarkables Ski Area. These are set out the map attached to Mr Skelton's evidence as attachment "A".[1]

4. The first is an extension of the SASZ over Area A and the nearby ridgeline located adjacent to the existing/notified SASZ boundary, and the second labelled Area B, located below Mr Skelton's "interpretation" of the ONL boundary.

5. By way of background, the expansion and addition has been sought for a number of reasons:

   (a) To encapsulate all land areas where NZ Ski patrons ski/board and in which snow patrols, grooming and avalanche control are undertaken.

   (b) To provide for future ski field development into the Doolan's catchment and a contiguous SASZ between the Remarkables in the QLDC District and a potential future SASZ in the Doolan's within the CODC District.

[1] Area reduced with respect to SASZ B – see Appendix B to Mr Dent's evidence

(c) To provide for the provision of ancillary buildings and activities necessary to maintain the efficient and effective operation of the Remarkables Ski Area.

6. SASZ B is within the submitter's ownership located immediately adjacent to the existing Ski Area access road and contains approved (by way of resource consent) outdoor storage area, car parking, signage and commercial transport activities. From the submitter's perspective, the site is a logical location for re-zoning to enable future activities of the type already established.

7. The Remarkables Ski Area in the Rastus Burn is different to a number of the other SASZ's in the District in that the base facilities and car parks are located within a "pinch point" in the valley. As such it is NZ Ski's evidence[2] that there is not a geographically large area available to provide for car parking, storage and any further built development.

8. One of the key reasons NZ Ski is seeking SASZ B is the potential to provide residential/visitor accommodation (less than 3 month stays) for its seasonal staff. The Remarkables Ski Area employs approximately 450 staff at the peak of the season. [3]

9. Mr Dent explains[4] that there is a large and growing risk to NZ Ski's business from the shortage of suitable affordable accommodation in Queenstown for its workers.

ISSUES FOR CONSIDERATION

Definition Ski Area Activities

10. Ski Area Activities ("SAA") are defined as[5]:

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[2] Dent, Paragraph 128
[3] Dent, paragraph 163
[4] At paragraph 164
[5] Proposed District Plan as notified, page 2-30

Means the use of natural and physical resources for the purpose of providing for:

- *(a) recreational activities either commercial or non commercial*
- *(b) chairlifts, t-bars and rope tows to facilitate commercial recreation activities*
- *(c) use of snowgroomers, snowmobiles and 4WD vehicles for support or operational activities*
- *(d) activities ancillary to commercial recreational activities*
- *(e) in the Wairorau Snow Farm Ski Area Sub Zone vehicle and product testing activities, being activities deigned to test the safety, efficiency and durability of vehicles, their parts and accessories.*

11. The Council appears to accept that a possible interpretation of the definition is that advanced and discussed in paragraphs 24 – 30 of Mr Dents evidence, that is, that SAA as defined could result in a requirement for non-complying consent where SAA's are undertaken outside of the SASZ, and that this is unintended.

12. While the Council promotes a minor rule change to clarify that some SAA as defined taking place outside the SASZ are permitted, Mr Dent's evidence is that it is ad-hoc to identify and define SAA's, have a zone purpose that anticipates such activities to be undertaken within the SASZ and then to provide additional rules that address and provide for such defined activities when undertaken elsewhere. NZ Ski submits, in line with Mr Dent's expert evidence[6], that it is more effective an outcome for SASZ boundaries to be appropriately identified to encapsulate SAA's.

13. To address the Council's concerns regarding the extension of the SASZ in the vicinity of Lake Alta - specifically building and earthworks, a building restriction area and accompanying rule is proposed[7].

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[6] Paragraph 33
[7] Refer Appendix A to Mr Dent's evidence and Rule 21.5.33

Scope – ONL line and extent of SASZ 'B'

14. NZ Ski clarifies that it does not seek to change the location of the ONL line as it bisects the site sought to be zoned SASZ B. Rather, Mr Skelton has undertaken an exercise of determining where development is appropriate in the context of where the ONL line in his opinion, should lie across the site, and this has informed the revised extent of the boundary of SASZ B.[8]

15. The Council in its evidence has helpfully explained how the ONL classification, and assessment criteria apply to SASZ's and activities within them. All SASZ's within the District are within the ONL. SASZ B will thus be no exception. Mr Dent addresses the planning and assessment implications of this further, with reference to the definition of SAA, in his introductory statement.

16. So far as the Council's landscape evidence is concerned, I hold the same concerns as Mr Dent[9], that Dr Read's landscape assessment is very brief (primary evidence and rebuttal). She appears to misunderstand the status of the activities proposed – specifically earthworks and buildings, as well as SAA's (as defined). It is thus unclear to what extent her opinion may have been affected, had she a better understanding and appreciation of the provisions proposed. Given those failings, NZ Ski submits the evidence of Mr Skelton is to be preferred.

Relevance of the "existing environment"

17. It is *not the case* that existing activities (or unimplemented consents) which may comprise the "exiting environment" are irrelevant to a plan change or district plan review process. Ms Banks refers to *Shotover Park Limited and Remarkables Park Limited v Queenstown Lakes District Council* [10]. In *Shotover Park* much of the argument about whether the consented activities in that case came within the concept of the "existing environment" centred around the issue

[8] See Dent evidence paragraph 48
[9] At paragraph 140
[10] [2013] NZHC 1712

that the consents had been appealed, and it was thus not possible to find as a fact that it was likely the consents would be given effect to.

18. On the subject of the "existing environment" Fogarty J stated:

> *[112] The purpose of a territorial authority's plan is to establish and implement objectives, policies and methods to achieve integrated management...of the land and associated natural and physical resources of the district. Where some of that land is already the subject to resource consents likely to be implemented, and the plan has not yet been made for that locality, it is natural enough that the territorial authority has to write a plan which accommodates the presence of that activity."*

19. Thus Fogarty J did not dismiss the concept of the "existing environment" as relevant in the formulation of a district plan on review. What his Honour said is rather that when deciding the plan for the future, there is nothing in the Act intended to *constrain* forward-looking thinking[11]. The Court is thus not obliged[12] to confine the environment to the "existing environment".

20. Reference is also made to the Environment Court's decision in *A & A King Family Trust v Hamilton City Council* [13]. At paragraph [78] the Court refers to the "permitted baseline" in the context of an unimplemented consent for a supermarket. Presently however, we are talking about the "existing environment" rather than the permitted baseline, so the case is distinguishable on that point. In any event it appears the Court was conflating the concepts of permitted baseline and existing environment, and as such the decision of the High Court in *Shotover Park Limited* remains the higher authority, so far as the relevance of the existing environment to the plan change process.

21. From paragraph 42 to 44 of his evidence, Mr Dent describes some of the existing consented activities on the site sought to be included within SASZ B. Those

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[11] At paragraph 116
[12] As it is applying *Hawthorn* to a resource consent process
[13] [2016] NZEnvC 229, at [78]

activities include buildings, car parking, storage, signage, and commercial activities. The sub zone provides for these activities, together with accommodation – all to be ancillary to the operation of the Remarkables Ski Area.

22. The purpose of listing the existing activities is not to use them as a "spring board" to justify further like development, or confine the environment to what exists on site by way of consented activities, but rather to provide a comprehensive overview of the site and existing use/activities and to provide high degree of veracity to NZ Ski's submission that this sub zone is an essential adjunct to its Ski Area activities. Furthermore, the activities are illustrative of the manner in which development can be appropriately accommodated in this landscape.[14]

What is the most appropriate RMA outcome?

23. The RMA objective is what is "the most appropriate way" to achieve the purposes of the Act (s32(3)(a) and (b)). The phrase "the most appropriate" acknowledges that there can be more than one appropriate way to achieve the purpose of the Act.

24. The task of the territorial authority is to select the most appropriate way, the one that it considers best.

25. The submitter's case is that the rezoning of the lower site SASZ B with limitations on built form, and restriction to activities ancillary to the operation of the Remarkables Ski Area is the most appropriate RMA outcome. It is a more effective and efficient use of the land than if it were to be left in a Rural zoning, subject to the notified provisions of the PDP.

26. NZ Ski submit that its rezoning submission is consistent with the intended purpose of the zone. For the Council, Ms Banks supports the principle that activities that support the operation of the ski field should be located in

[14] This is discussed in Mr Dent's evidence, at paragraphs 142-144

proximity to it.[15] Mr Dent discusses the efficiency of locating activities directly associated with ski area operations on the site and the benefits of this option, rather than at Jacks Point or Henley Downs which are geographically displaced from the Remarkables Ski Area and don't have the added benefit of control, in terms of affordability, which comes with ownership of the site[16].

27. While the Council's goal of streamlining and reducing the complexity of the Proposed District Plan is laudable, it is submitted that the rezoning sought by NZ Ski will not run counter to this. The amendments proposed are easily understood and concise.

OTHER ISSUES

Earthworks

28. The evidence for NZ Ski, is that in determining whether it is appropriate to allow the SASZ B (and to extend the subzone above the Lake Alta area), rules regulating earthworks must be addressed. NZ Ski does not seek to replicate provisions that might come in a later plan change. For present purposes, it is a matter of timing. The rule must sit somewhere - and it can't wait for a future plan change process. That is not to say however rules relating to earthworks cannot in the future be relocated.

Traffic Assessment and Servicing

29. Vehicle access to the Remarkables Ski Area is constructed to a commercial access standard, presently providing for some 5000 visitors per day to the ski area in both private vehicles and large coaches[17]. Mr Dent addresses these matters further in his introductory statement. In short however, this is not a resource consent application. The level of detail and assessment so far as potential traffic effects are concerned need not match that which might be expected in a resource consenting process. This is particularly the case here

[15] Paragraph 4.41 second statement of evidence
[16] Dent at paragraphs 161 to 168
[17] Dent paragraph 155

where (a) NZTA has not submitted on the rezoning and (b) the level of control at the resource consenting stage allows a full consideration of such issues as one of the matters of discretion.

30. So far as servicing is concerned, the Council does not appear to be opposed to on site "private" systems for water and waste water. Mr Dent is of the opinion that the site could be appropriately serviced by means other than Council reticulated services, and further that the proposed provisions afford the Council discretion over such matters as part of the resource consenting process.

Visibility from Ski field access road

31. Mr Skelton addresses this matter in his summary statement. His evidence is to the effect that the part of the site proposed for the SASZ B overlay holds relatively limited visual amenity as it zig-zags across the low, westerly foot of the mountain.

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